

ACTS
OF THE
LEGISLATURE
OF
WEST VIRGINIA



Regular Session, 1969
Second Extraordinary Session, 1968

JARRETT PRINTING COMPANY, CHARLESTON, W. VA.



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

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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

District	Name	Address
First	*Chester R. Hubbard (R) William Tompos (D)	Wheeling Weirton
Second	Theodore M. Bowers (R) *John E. Carrigan (R)	New Martinsville Moundsville
Third	J. Frank Deem (R) †Robert W. Burk, Jr. (R)	St. Marys Parkersburg
Fourth	*V. K. Knapp (R) Brad Sayre (R)	Hurricane Gay
Fifth	C. H. McKown (D) *Lyle A. Smith (D)	Wayne Huntington
Sixth	John Pat Fanning (D) *Noah E. Floyd (D)	Iaeger Williamson
Seventh	*Lloyd G. Jackson (D) W. Bernard Smith (D)	Hamlin Logan
Eighth	Marlo J. Palumbo (D) *John T. Poffenbarger (R)	Charleston Charleston
Ninth	Bernard L. Crawford (D) Tracy W. Hylton (D)	Beckley Mullens
Tenth	R. E. Barnett (D) *Ray E. Sawyers (D)	Bluefield Hinton
Eleventh	*John H. Bowling, Jr. (D) Robert K. Holliday (D)	White Sul. Springs Oak Hill
Twelfth	*Carl E. Gainer (D) E. Hans McCourt (D)	Richwood Webster Springs
Thirteenth	*Walter A. Holden (D) Wm. R. Sharpe, Jr. (D)	Clarksburg Weston
Fourteenth	O. G. Hedrick (D) *William A. Moreland (D)	Fairmont Morgantown
Fifteenth	*J. Kenton Lambert (R) Dallas Wolfe (R)	Parsons Rowlesburg
Sixteenth	*Clarence E. Martin, Jr. (D) John I. Rogers (R)	Martinsburg Keyser
Seventeenth	W. T. Brotherton, Jr. (D) *Neal A. Kinsolving (R)	Charleston Charleston
(D) Democrats		22
(R) Republicans		12
Total		34

(*) Senators elected in 1966.

(†) Appointed February 26, 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

County or District	Name	Address
Barbour	Kenneth Auvil (D)	Belington
Boone	Thomas G. Goodwin (D) Dennie Lee Hill (D)	Seth Madison
Braxton	Rodney B. Belknap (D)	Gassaway
Brooke	Mino R. D'Aurora (D) Irma M. Maple (D)	Follansbee Follansbee
Cabell	¹ John M. Bobbitt (R) David B. Daugherty (R) Hugh A. Kincaid (D) Robert R. Nelson (D) C. E. Romine, Jr. (R) Jody G. Smirl (R)	Huntington Huntington Huntington Huntington Huntington Huntington
Clay	John W. Kyle (R)	Clay
Fayette	Ethel L. Crandall (D) T. E. Myles (D) Adam Toney (D)	Gauley Bridge Fayetteville Oak Hill
Hampshire	James B. Cookman (D)	Romney
Hancock	Gust G. Brenda, Jr. (D) George G. Griffith (D)	Weirton Weirton
Harrison	Donald L. Kopp (D) James Laulis (D) Paul G. Lister (D) C. Paul Wanstreet (D)	Clarksburg Bridgeport Nutter Fort Clarksburg
Jackson	B. Noel Poling (R)	Ripley
Jefferson	Roger J. Perry (D)	Charles Town
Kanawha	Ivor F. Boiarsky (D) Russell L. Davisson (R) Si. Galperin, Jr. (D) J. Dempsey Gibson (D) James Clay Jeter (R) Cleo S. Jones (R) ² Lon Clark Kinder, Sr. (R) Leo G. Kopelman (R) James W. Loop (D) Thomas E. Potter (R) Phyllis J. Rutledge (D) Sam C. Savilla (D) Harlan Wilson, Jr. (R) Paul Zakaib, Jr. (R)	Charleston St. Albans Charleston St. Albans Charleston Charleston Charleston East Bank Charleston Charleston Charleston St. Albans Charleston Charleston
Lewis	Fred L. Mulneix (R)	Weston
Lincoln	H. Leon Hager (D)	Hamlin
Logan	Earl Hager (D) Paul E. Hicks (D) Ervin S. Queen (D)	Chapmanville Logan Logan
Marion	Nick Fantasia (D) William J. Parker (D) J. E. Watson (D)	Kingmont Fairmont Fairmont
Marshall	Robert C. Polen (R) Roy H. Rogerson (R)	Moundsville Moundsville
Mason	Eugene Ball (D)	Point Pleasant
McDowell	Corbett Church (D) Chester M. Matney (D) Harry R. Pauley (D) Fred G. Wooten (D)	Yukon Welch Jaeger Coalwood

¹ Resigned March 8, 1969.

² Resigned February 24, 1969.

HOUSE OF DELEGATES

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County or District	Name	Address
Mercer	Clarence C. Christian, Jr. (D)	Princeton
	Odell H. Huffman (D)	Princeton
	Charles E. Lohr (D)	Princeton
	Mrs. Lucille W. Thornhill (D)	Bluefield
Mineral	Robert D. Harman (R)	Keyser
Mingo	Robert L. Simpkins (D)	Meador
	T. I. Varney (D)	Matewan
Monongalia	Robert W. Dinsmore (D)	Morgantown
	Clifford B. Hoard (D)	Morgantown
	Harry U. Howell (D)	Morgantown
Monroe	William Marion Shiflet (D)	Union
Nicholas	D. R. Frazer (D)	Richwood
Ohio	James F. Companion (R)	Wheeling
	Fred A. Grewe, Jr. (R)	Wheeling
	George H. Seibert, Jr. (R)	Wheeling
	Frederick P. Stamp, Jr. (R)	Wheeling
Preston	Robert C. Halbritter (R)	Kingwood
Putnam	Charles R. Henderson (R)	Hurricane
Raleigh	Lewis N. McManus (D)	Beckley
	Anthony J. Sparacino (D)	Beckley
	Ted T. Stacy (D)	Beckley
	Mrs. W. W. Withrow (D)	Beckley
Randolph	Earl H. Stalnaker (D)	Elkins
Roane	Orton A. Jones (R)	Spencer
Summers	Jack E. Holt (D)	Hinton
Taylor	C. N. Harman (R)	Grafton
Upshur	Charles R. Shaffer (R)	Buckhannon
Wayne	Clayton C. Davidson (D)	Huntington
	Robert K. Flanagan (D)	Ceredo
Webster	Albert L. Sommerville, Jr. (D)	Webster Springs
Wetzel	William A. Powell, Jr. (R)	New Martinsville
Wood	Robert W. Burk, Jr. (R)	Vienna
	J. C. Butcher (R)	Parkersburg
	Spencer K. Creel (R)	Parkersburg
	William P. A. Nicely (R)	Parkersburg
Wyoming	J. T. Davidson, Jr. (D)	Mullens
	Warren R. McGraw (D)	Pineville
1st District		
Berkeley,	Wallace L. Files (R)	Martinsburg
Morgan	Ward W. Keesecker (R)	Berkeley Springs
2nd District		
Grant, Tucker	Larkin B. Ours (R)	Dorcas
3rd District		
Hardy, Pendleton	Thomas J. Hawse (D)	Moorefield
4th District		
Greenbrier,	Richard H. Bowman (D)	Rainelle
Pocahontas	Thomas C. Edgar (D)	Hillsboro
5th District		
Doddridge, Tyler	Forrest M. Buck (R)	Sistersville
6th District		
Pleasants, Ritchie	J. C. Powell (R)	St. Marys
7th District		
Calhoun,		
Gilmer, Wirt	Billy B. Burke (D)	Glenville

Resigned March 3, 1969.

(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.

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, Davisson, 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, Rogerson, 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,

[xx]

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

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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. (Boiarsky *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.

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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-

ley, Thornhill, Wanstreet, Halbritter, Harman (of Mineral), Harman (of Taylor), Kinder, Polen, Poling, Powell (of 6th Dist.), Wilson and Zakaib.

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.

LEGISLATURE OF WEST VIRGINIA

ACTS OF 1969

REGULAR SESSION

CHAPTER 1

(Senate Bill No. 104—By Mr. Bowling)

[Passed February 24, 1969; in effect July 1, 1969. Approved by the Governor.]

AN ACT to amend chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article twelve-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
2 Interagency Pesticide Committee Act."

§19-12C-2. Definitions.

1 The following definitions shall apply in the interpre-
2 tation of this article:

3 (a) "Pesticides" shall include rodenticides, insecti-
4 cides, fungicides, nematocides, herbicides, and avicides.

5 (b) "Rodenticides" means any substance or mixture
6 of substances intended for preventing, destroying, re-
7 pelling, or mitigating any rodent.

8 (c) "Insecticide" means any substance or mixture of
9 substances intended for preventing, destroying, repell-
10 ing, or mitigating any insect.

11 (d) "Fungicide" means any substance or mixture of
12 substances intended for preventing, destroying, repelling,
13 or mitigating any plant parasitic fungus.

14 (e) "Nematocide" means any substance or mixture
15 of substances intended for preventing, destroying, repell-
16 ing, or mitigating plant parasitic nematodes.

17 (f) "Herbicide" means any substance or mixture of
18 substances intended for preventing, destroying, repelling,
19 or mitigating any weed.

20 (g) "Avicide" means any substance or mixture of sub-
21 stances intended for preventing, destroying, repelling or
22 mitigating any bird.

23 (h) "Rodent" means any animal of the order Ro-
24 dentia.

25 (i) "Insect" means any of the invertebrate animals,
26 for the most part belonging to the class Insecta, charac-
27 terized by more or less obviously segmented bodies, six
28 legs and wings as, for example, beetles, bugs, flies, bees
29 and other allied classes of arthropods whose members are
30 wingless and usually have eight legs as for example
31 mites, ticks, wood lice, spiders and centipedes.

32 (j) "Fungus" means any nonchlorophyll bearing
33 thallophyte, as for example rusts, smuts, mildews, molds,

34 yeasts bacteria and viruses, which is, or is capable of
35 becoming a plant parasite.

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

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

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

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

1 There is hereby created an interagency committee on
2 pesticides to consist of the (1) commissioner of the de-
3 partment of agriculture, (2) director of the department
4 of natural resources, (3) director of the department of
5 public health, (4) director of the West Virginia Univer-
6 sity agricultural experiment station, and (5) director of
7 the air pollution control commission.

8 The commissioner of agriculture shall be chairman of
9 this committee. Each member of the committee may des-
10 ignate some person in his department to serve in his
11 stead on the committee.

§19-12C-4. Compensation.

1 Members of this committee shall receive no compen-
2 sation for their services on this committee other than
3 that provided by law for their respective positions with
4 the state of West Virginia. All travel expenses shall be
5 paid out of regular appropriations of their respective
6 departments or agencies.

§19-12C-5. Meetings; quorum.

1 The committee shall meet at least once each year and
2 may hold additional meetings upon the call of the chair-
3 man. Four members shall constitute a quorum.

§19-12C-6. Duties.

1 The committee shall (1) review the current use of
2 pesticides within the state of West Virginia; (2) review
3 pesticide programs to be sponsored or directed by a
4 governmental agency; (3) consider the problems arising
5 from pesticide use with particular emphasis on the pos-
6 sible adverse effects or hazards to human health, live-
7 stock, crops, fish and wildlife, or to business, industry,
8 agriculture, or the general public; (4) recommend legis-
9 lation to the governor, if appropriate, which will pro-
10 hibit the irresponsible use of pesticides; (5) contact and
11 collate the opinions of the various experts and lay groups
12 to obtain their views and cooperation; and (6) advise
13 on and approve all programs involving the use of pesti-
14 cides on state-owned property, state-controlled property,
15 or property administered by state agencies. This shall
16 not be construed to include research programs or to the
17 generally accepted and label-approved practices essential
18 to good farm and institutional management on the prem-
19 ises of the various state institutions.

§19-12C-7. Reports.

1 The committee shall prepare and forward detailed
2 reports of its findings and recommendations to the gov-
3 ernor prior to the next session of the Legislature, after
4 passage, and prior to each regular session of the Legis-
5 lature 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.
- §19-13-2. Definitions.
- §19-13-3. Apiary education.
- §19-13-4. Commissioner to enforce article; rules and regulations.
- §19-13-5. Apiary inspection; orders of commissioner as to eradication or control of bee diseases.
- §19-13-6. Right of entry on premises.
- §19-13-7. Keeping of diseased bees unlawful.
- §19-13-8. Transporting diseased bees unlawful.
- §19-13-9. Identification of apiaries.
- §19-13-10. Abandoned apiaries; notice.
- §19-13-11. Destruction of diseased abandoned apiary.
- §19-13-12. Bees brought into state to carry inspection certificate; commissioner to be notified.
- §19-13-13. Importation of bees from foreign countries unlawful.
- §19-13-14. Registration of bees.
- §19-13-15. Candy for mailing cages.
- §19-13-16. Unsanitary conditions; rules; standards.
- §19-13-17. Hindrance of commissioner made unlawful.
- §19-13-18. Fruit trees; spraying.
- §19-13-19. Penalties for violations of article; rules or regulations.
- §19-13-20. Severability.

§19-13-1. Title.

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

§19-13-2. Definitions.

- 1 The following definitions shall apply in the interpre-
- 2 tation and enforcement of this article. All words shall
- 3 be construed to impart either the plural or the singular,
- 4 as the case demands:
- 5 (a) "Department" means the department of agricul-
- 6 ture of the state of West Virginia.
- 7 (b) "Commissioner" means the commissioner of agri-
- 8 culture of the state of West Virginia or his duly autho-
- 9 rized agent.

10 (c) "Person" shall include all corporations, partner-
11 ships, associations, societies, individuals or group of indi-
12 viduals or any employee, servant or agent acting for or
13 employed by any person as above defined.

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

17 (e) "Bee diseases" shall be construed to mean Amer-
18 ican foulbrood, European foulbrood, sac brood, bee pa-
19 ralysis, or any other disease or abnormal condition of
20 eggs, larval, pupal, or adult stages of bees.

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

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

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

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

32 (j) "Appliances" means any apparatus, tools, machine
33 or other device, used in the handling and manipulating
34 of bees, honey, wax and hives. It also means any con-
35 tainer of honey and wax that may be used in any apiary
36 or in transporting bees and their products and apiary
37 supplies.

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

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

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

45 2. Provide super room during honey flow.

46 3. Remove the honey crop at the end of the
47 season and inspect each colony when the crop is removed

48 and destroy any colony containing American foul-
49 brood.

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

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

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

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

§19-13-3. Apiary education.

1 The commissioner of agriculture is authorized to con-
2 duct apiary education in a manner which may advance
3 and promote bee culture in West Virginia.

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

1 (a) It shall be the duty of the commissioner to exer-
2 cise the powers and duties imposed upon him by this
3 article for the purpose of protecting apiculture and for
4 this purpose he is hereby authorized and empowered
5 to promulgate such rules and regulations as are neces-
6 sary to effectively eradicate, suppress or control bee
7 diseases as far as may be practical and to employ such
8 persons as may be appropriate.

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

§19-13-5. Apiary inspection; orders of commissioner as to eradication or control of bee diseases.

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

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

25 (c) All apiaries, bees, bee products, premises, bee
26 equipment and appliances wherein or on which bee
27 diseases are found to exist may be quarantined by the
28 commissioner. Such quarantine shall continue until the
29 commissioner declares the same to be free from any such
30 bee diseases. The commissioner may declare any area
31 surrounding or adjoining those premises wherein the
32 bee diseases are found to exist to be under quarantine
33 as he deems necessary to assist in the control or eradi-
34 cation of bee diseases.

§19-13-6. Right of entry on premises.

1 To effectuate the purpose of this article, the commis-
2 sioner is hereby invested with authority, during reason-
3 able working hours, to enter upon any public or private

4 premises, except private residences, and shall have access
5 to any apiary for the purpose of inspecting or sampling.

§19-13-7. Keeping of diseased bees unlawful.

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.

§19-13-9. Identification of apiaries.

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.

§19-13-11. Destruction of diseased abandoned apiary.

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 certificate; 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-

4 spection 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.

§19-13-13. Importation of bees from foreign countries unlawful.

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.

§19-13-14. Registration of bees.

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.

§19-13-15. Candy for mailing cages.

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 heit 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.

§19-13-17. Hindrance of commissioner made unlawful.

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.

§19-13-18. Fruit trees; spraying.

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 regulations.

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.

§19-13-20. Severability.

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.

CHAPTER 3

(Senate Bill No. 169—By Mr. Jackson, Mr. President,
and Mr. Carrigan)

[Passed February 20, 1969; in effect from passage. Approved by the Governor.]

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
2 ratified, enacted into law, and entered into by the state
3 of West Virginia, with the state of Ohio legally joining
4 therein in accordance with its terms, in the form sub-
5 stantially as follows:

6 INTERSTATE COMPACT ON AIR POLLUTION

7 The contracting states solemnly agree that:

Article I

1 The party states to this compact hereby provide for the
2 control of the interstate movement of air pollutants
3 through the establishment of an interstate agency with
4 powers to prevent, abate, and control interstate air pollu-
5 tion, and where appropriate, develop and implement
6 ambient air quality standards in any designated air
7 quality control region common to the party states.

8 Each of the party states pledges to the other faithful co-
9 operation in the control of air pollution which originates
10 in one state and endangers human health or welfare,
11 animal or plant life, or property, or which interferes with
12 the enjoyment of life or property, in the other state.

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

Article II

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

Article III

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

4 The commission shall consist of five commissioners
5 from each party state, each of whom shall be a citizen
6 of the state he represents. In addition, the chairman of
7 the commission shall request the President of the United
8 States to designate a federal representative to the com-
9 mission who shall serve as an ex officio member of the
10 commission, but without vote except as hereinafter pro-
11 vided. The commissioners from each party state shall be
12 chosen by the governor of such state in accordance with
13 the laws of such state, as follows:

14 Two of the members from each state shall be chosen
15 from appropriate state agencies, one of whom is the
16 officer responsible for air pollution control, and one of
17 whom is the director of health. The governor of each

18 party state, or his designee, shall be the third member
19 of the commission. Two other members shall be chosen,
20 one of whom is experienced in the field of municipal
21 government and one of whom is experienced in the field
22 of industrial activities. In choosing said two other mem-
23 bers, the governor shall provide for adequate representa-
24 tion of appropriate local interests in any air quality con-
25 trol region designated by the secretary of health, educa-
26 tion and welfare, pursuant to the provisions of Section 107
27 (a) (2) of the Air Quality Act of 1967; 81 Stat. 491;
28 Public Law 90-148.

29 The governor of each state, unless he appoints a de-
30 signee, shall serve during his term of office, and if the
31 governor of any state appoints a designee, such de-
32 signee shall serve at the will of the governor appointing
33 him until the expiration of the governor's term. The
34 commissioners who shall be appointed by virtue of the
35 offices which they hold shall serve during their con-
36 tinuance in office. The term of the other two commission-
37 ers shall be five years. However, the commissioner ap-
38 pointed by reason of his experience in the field of munic-
39 ipal government and the commissioner appointed by
40 reason of his experience in the field of industrial activities
41 shall be appointed, one for an initial term of one year
42 and the other for an initial term of two years. Upon the
43 expiration of each such initial term, commissioners ap-
44 pointed to fill any vacancy shall be appointed for a term
45 of five years.

46 Vacancies on the commission shall be filled for the un-
47 expired term in the same manner as appointments to full
48 terms.

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

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

58 The commission shall elect annually, from among its
59 members, a chairman and vice chairman. The commis-
60 sion shall appoint an executive director who shall act as
61 secretary, and who, together with such other commission
62 personnel as the commission may determine, shall be
63 bonded in such amount or amounts as the commission
64 may require.

65 Notwithstanding the civil service, personnel, or other
66 merit systems laws of any of the party states, the com-
67 mission shall appoint, remove or discharge, and fix the
68 compensation of such personnel as may be necessary for
69 the performance of the commission's functions. To the
70 extent practicable, terms and conditions of employment
71 for members of the staff of the commission shall be similar
72 to those pertaining to comparable employees of the in-
73 dividual party states.

74 The commission may establish and maintain, indepen-
75 dently or in conjunction with one or more of the party
76 states, a suitable retirement system for its employees.
77 Employees of the commission shall be eligible for social
78 security coverage in respect to old-age and survivors in-
79 surance: *Provided*, That the commission takes such steps
80 as may be necessary pursuant to federal law to partici-
81 pate in such program of insurance as a governmental
82 agency or unit. The commission may establish and main-
83 tain or participate in such additional programs of em-
84 ployee benefits as may be appropriate to afford employees
85 of the commission terms and conditions of employment
86 similar to those enjoyed by employees of the party states
87 generally.

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

93 The commission may accept for any of its purposes and
94 functions under this compact any and all donations, and
95 grants of money, equipment, supplies, materials, and
96 services, conditional or otherwise, from the United States
97 or any agency thereof, from any state or any subdivision

98 or agency thereof, or from any institution, person, firm,
99 or corporation, and may receive, utilize, and dispose of
100 the same. The identity of any donor, the amount and
101 character of any assistance, and the conditions, if any,
102 attached thereto shall be set forth in the annual report
103 of the commission.

104 The commission may establish and maintain such facili-
105 ties as may be necessary for the transacting of its busi-
106 ness. The commission may acquire, hold, and convey real
107 and personal property and any interest therein.

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

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

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

Article IV

1 The commission may, whenever it finds air pollution
2 which originates within the area of its jurisdiction in
3 one of the party states and has an adverse effect in the
4 other party state, make a report recommending measures
5 for the prevention, abatement, or control of any such
6 air pollution. Copies of such report shall be furnished
7 to all existing state and local air pollution control agen-
8 cies with jurisdiction over the source or sources of air
9 pollution identified in the report. In preparing any such

10 report, the commission may confer with any appropriate
11 national, regional or local planning body, and any gov-
12 ernmental agency authorized to deal with matters re-
13 lating to air pollution problems and may conduct such
14 hearings and investigations as it may deem appropriate.
15 The commission may consult with and advise the
16 states and local governments, corporations, persons, or
17 other entities with regard to the adoption of programs
18 and the installation of equipment and works for the
19 prevention, abatement, or control of air pollution.

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

23 (a) Develop and implement ambient air quality stan-
24 dards and, in accordance with such data as are available
25 on the latest technology and economic feasibility of com-
26 plying therewith, emission standards in order to prevent
27 and control air pollution located within the area over
28 which it has jurisdiction.

29 (b) Revise and modify such standards to reflect im-
30 provements in knowledge of air pollution and its pre-
31 vention and control and in accordance with such data
32 as are available on the latest technology and economic
33 feasibility of complying with such standards.

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

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

41 (e) Have authority to enter at reasonable times upon
42 any private or public property (excluding any federal
43 building, installation or other property) for the purpose
44 of investigating the source, type, character and amount
45 of any air pollutant or emission alleged to violate the
46 standards at any time established by the commission pur-
47 suant to the provisions of this compact: *Provided, how-*
48 *ever,* That no such investigations shall extend to in-

49 formation relating to secret processes or methods of
50 manufacturing or production.

51 (f) Have authority, upon reasonable evidence of a
52 violation of the standards established by the commission
53 pursuant to the provisions of this compact, which vio-
54 lation presents an imminent and substantial hazard to
55 public health, to issue public notice of such hazard and
56 the cause thereof, by any and all appropriate means, and
57 to issue a cease and desist order or such other reasonable
58 order as may be deemed necessary by the commission
59 to cause such violation to be discontinued, at such time
60 and upon such conditions as the commission may deter-
61 mine, and to enforce such order by appropriate pro-
62 ceedings, including but not limited to injunctive pro-
63 ceedings in any court of competent jurisdiction. And,
64 further, the commission is hereby empowered to insti-
65 tute proceedings in any court of competent jurisdiction
66 to enjoin any air pollution or emission which presents
67 such an imminent and serious hazard to public health as
68 to create an emergency.

69 Before any report of the commission which specifically
70 identifies a particular industrial or other installation,
71 structure, or facility as a source of air pollution becomes
72 final, the commission shall give the owner or operator
73 of such installation, structure, or facility notice by cer-
74 tified mail of the anticipated adoption of such report and
75 shall afford the owner or operator of the installation,
76 structure, or facility not less than ten days after the
77 mailing of such notice to file with the commission its
78 written objections thereto. If no such objections are
79 filed with the commission within such specified period,
80 the report shall become final. If such objections are
81 filed with the commission within such specified period,
82 the commission shall afford such owner or operator not
83 less than ten days from its receipt of such objections to
84 discuss with the commission the findings, conclusions,
85 and recommendations of the report before it is finally
86 adopted by the commission.

87 Within a reasonable time, as determined by the com-
88 mission, after the commission furnishes a report to the

89 appropriate existing state and local air pollution control
90 agencies pursuant to this article and, if the recommendations
91 made in such report for the prevention, abatement, or control
92 of air pollution from a specific source or sources have not
93 been implemented, or if the appropriate state or local air
94 pollution control agencies have not taken sufficient action to
95 prevent, abate or control the air pollution, the commission
96 may, after a duly conducted and constituted hearing, on due
97 notice issue an order or orders upon any municipality, corporation,
98 person, or other entity causing or contributing to a violation
99 of ambient air quality standards. At any such hearing evidence
100 may be received and a finding made on whether, in fact, a
101 violation of the commission's air quality standards exists
102 and on the sources of such pollution. Any such order or
103 orders may prescribe a timetable for the abatement or control
104 of the air pollution involved. Any such order shall become
105 final and binding unless a petition for review of the same
106 shall be filed and prosecuted pursuant to the provisions of
107 article five of this compact.

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

Article V

1 All hearings held by the commission shall be open to
2 the public. At any hearing held pursuant to article four
3 of this compact the party states, any agencies thereof,
4 and any affected person, corporation, municipality or
5 other entity shall be entitled to appear in person or by

6 representative, with or without counsel, and may make
7 oral or written argument, offer testimony, or take any
8 combination of such actions. All testimony taken before
9 the commission shall be under oath and recorded in a
10 written transcript. The transcript so recorded shall be
11 made available to any member of the public or to any
12 participant in such hearing upon payment of reasonable
13 charges as fixed by the commission. No information re-
14 lating to secret processes or methods of manufacture or
15 production shall be disclosed at any public hearing or
16 otherwise and all such information shall be kept con-
17 fidential.

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

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

28 (a) Arbitrary, capricious, an abuse of discretion or
29 otherwise not in accordance with law; or

30 (b) Contrary to constitutional right, power, privilege
31 or immunity; or

32 (c) In excess of authority or jurisdiction conferred by
33 this compact or statutes in implementation hereof; or

34 (d) Without observance of procedure required by law;
35 or

36 (e) Not within the purposes of this compact; or

37 (f) Unsupported by the weight of the evidence.

38 The petition for review shall be filed within thirty-five
39 days after receipt of written notice that such order has
40 been issued. Written notice of the filing of a petition for
41 review and a copy of said petition shall be personally
42 served upon the commission. Any party or person filing
43 a petition for review shall, within fifteen days thereafter,
44 secure from the commission a certified copy of the tran-

45 script of any hearing or hearings held in connection with
46 the issuance of the order, review of which is sought, and
47 shall file the same with the clerk of the court in which
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

8 for the prevention, abatement or control of interstate air
9 pollution.

10 (c) Prevent or restrict any party state or any political
11 subdivision thereof from adopting standards to achieve
12 a higher level of ambient air quality than those adopted
13 by the commission for the area covered by the commis-
14 sion's jurisdiction.

15 (d) Authorize any party state or any political sub-
16 division thereof to adopt standards which will achieve
17 a lower level of ambient air quality than those adopted
18 by the commission for the area covered by the commis-
19 sion's jurisdiction.

Article VIII

1 The commission shall submit to the governor or desig-
2 nated officer or officers of each party state a budget of its
3 estimated expenditures for such period as may be re-
4 quired by the laws of that state for presentation to the
5 legislature thereof.

6 Each of the commission's budgets of estimated expendi-
7 tures shall contain specific recommendations of the
8 amount or amounts to be appropriated by each of the
9 party states. Aside from such support as may be available
10 to the commission pursuant to article three, the cost of
11 operating and maintaining the commission shall be borne
12 equally by the party states.

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

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

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

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

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

Article IX

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

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

Article X

1 The provisions of this compact shall be reasonably and
2 liberally construed. The provisions of this compact shall
3 be severable and if any phrase, clause, sentence or pro-
4 vision is declared to be contrary to the constitution of
5 any party state or of the United States, or the applica-
6 bility 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

29 successor as said state director of health or director of
30 the air pollution control commission. These five commis-
31 sioners, acting jointly with like officers from the other
32 party state, shall promulgate rules and regulations to
33 carry out more effectively the terms of the compact.
34 The commissioners shall cooperate with all departments,
35 agencies, and officers of and in the government of this
36 state and its subdivisions in facilitating the proper ad-
37 ministration of the compact and all such departments,
38 agencies, and officers shall cooperate with the commis-
39 sioners. The non ex officio members shall be paid fifty
40 dollars for each day spent in performing their duties
41 hereunder and shall be reimbursed for all reasonable and
42 necessary expenses actually incurred in performing their
43 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,

3 may make funds available by grant or otherwise to
4 counties, municipalities and regional airport authorities,
5 created under the provisions of chapter eight of this code,
6 for the planning, acquisition, construction, improvement,
7 maintenance, or operation of airports owned or operated
8 or to be owned or operated by such counties, municipali-
9 ties or regional airport authorities. Acceptance of any
10 moneys so made available to any such county, municipal-
11 ity or regional airport authority, shall constitute consent
12 by the recipient that a reasonable use of such airport
13 may be made, upon request of the commission, by the
14 United States government, the state, or any of their re-
15 spective agencies, including the state aeronautics com-
16 mission and the national guard of West Virginia for state
17 purposes related or incidental to aeronautics. Such finan-
18 cial assistance may be furnished in connection with fed-
19 eral 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
2 this article, whenever in any criminal case an indictment
3 is held bad or insufficient by the judgment or order of any
4 court of record of limited jurisdiction, the state, on the
5 application of the attorney general or the prosecuting
6 attorney, may obtain a writ of error to secure a review
7 of such judgment or order by the circuit court of the
8 county in which such court of record of limited jurisdic-
9 tion sits. No such writ of error shall be allowed unless
10 the state presents its petition therefor to the circuit court,
11 or a judge thereof, within thirty days after the entry of
12 such judgment or order. No such judgment or order shall
13 finally discharge, or have the effect of finally discharging,
14 the accused from further proceedings on the indictment
15 unless the state fails, within such period of thirty days,
16 to apply for such writ of error, or fails to obtain such writ
17 of error upon an application made within such period; but
18 after the entry of such judgment or order the accused shall
19 not be kept in custody or required to give bail pending
20 the hearing and determination of the case by the circuit
21 court, or by the supreme court of appeals if a writ of
22 error is thereafter sought with respect to the decision of
23 the circuit court. If, upon the allowance of any such writ
24 of error, process from the circuit court (or the supreme
25 court of appeals in the event of further judicial review as
26 aforesaid) cannot for any reason be served personally
27 upon the accused, service may be had by filing a copy
28 thereof in the clerk's office of the court of record of
29 limited jurisdiction which entered such judgment or
30 order (or the circuit court if further judicial review is had
31 as aforesaid). Every such writ of error shall be heard and
32 determined as speedily as possible. If the judgment is
33 reversed and the indictment is held to be good and suffi-
34 cient for a trial of the accused thereon, the case shall be
35 remanded to the court of record of limited jurisdiction
36 in which the indictment was found, in order that such
37 trial may be had.

38 Except as herein otherwise provided, all of the pro-
39 visions of the other sections of this article shall, so far as
40 appropriate, be applicable to a petition for a writ of error
41 under this section, and to all subsequent proceedings
42 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

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

TITLE 1. GENERAL PROVISIONS.

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

1 **Section 1. General Policy.**—The purpose of this act is to
2 appropriate money necessary for economical and efficient
3 discharge of the duties and responsibilities of the state
4 and its agencies during the fiscal year one thousand nine
5 hundred seventy.

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

2 “Governor” shall mean the Governor of the State of West
3 Virginia;

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

6 The “fiscal year one thousand nine hundred seventy”
7 shall mean the period from July first, one thousand nine

8 hundred sixty-nine through June thirtieth, one thousand
9 nine hundred seventy;

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

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

3 "Personal Services" shall be expended only for the pay-
4 ment of salaries, wages, fees and other compensation for
5 skill, work, or employment, except from the appropria-
6 tions made to the spending units of state government,
7 there may be transferred upon approval of the Governor,
8 to a special account an amount sufficient to match Federal
9 Funds under any Federal Acts;

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

12 "Current Expenses" shall be expended only for operat-
13 ing cost other than personal services or capital outlay;

14 "Repairs and Alterations" shall include all expenditures
15 for materials, supplies and labor used in repairing and
16 altering buildings, grounds and equipment, other than
17 personal services;

18 "Equipment" shall be expended only for things which
19 have an appreciable and calculable period of usefulness in
20 excess of one year;

21 "Buildings" shall include construction and alteration of
22 structures and the improvements of lands, sewer and wa-
23 ter improvements, and shall include shelter, support, stor-
24 age, protection, or the improvement of a natural condition;

25 "Lands" shall be expended only for the purchase of lands
26 or interest in lands.

27 Appropriations otherwise classified shall be expended
28 only where the distribution of expenditures for different

29 purposes cannot well be determined in advance or it is nec-
 30 essary or desirable to permit the spending unit freedom to
 31 spend an appropriation for more than one of the above
 32 purposes.

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

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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.
14. General school fund.

1 **Section 1. Appropriations from General Revenue.—**

2 From the state fund, general revenue, there is hereby ap-
 3 propriated conditionally upon the fulfillment of the provi-
 4 sions set forth in Chapter 5-A, Article 2 of the Code
 5 of West Virginia, the following amounts, as itemized, for
 6 expenditure during the fiscal year one thousand nine
 7 hundred seventy.

LEGISLATIVE

1—Senate

Acct. No. 101

	<i>Fiscal Year</i> 1969-70
1 Salaries of Members	\$ 54,000.00
2 Compensation and per diem of officers and	
3 attaches	105,000.00
4 Mileage of Members	1,500.00
5 Current Expenses and Contingent Fund	130,000.00
6 To pay Clerk of the Senate for compiling and	
7 publishing the West Virginia Blue Book,	
8 the distribution of which shall be made	
9 by the office of the Clerk of the Senate	
10 and shall include seventy-five copies for	
11 each member of the Legislature and two	
12 copies to each classified and approved High	
13 and Junior High School and one to each	
14 Elementary School within the state	10,000.00
15 To pay cost of printing the 1969 edition of the	
16 Blue Book	50,000.00
17 The appropriations for the Senate for the	
18 fiscal year 1968-69 are to remain in full	
19 force and effect, and are hereby reappro-	
20 priated to June 30, 1970.	
21 Any balances so reappropriated may be trans-	
22 ferred and credited to the 1969-70 accounts.	
23 Upon the written request of the Clerk of the	
24 Senate the State Auditor shall transfer	
25 amounts between items of the total appro-	

26 priation 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

	Fiscal Year 1968-69
1 Compensation and per diem of officers and	
2 attaches	\$ 25,000.00

	Fiscal Year 1969-70
3 Salaries of Members	153,000.00
4 Compensation and per diem of officers and	
5 attaches	125,000.00
6 Mileage of Members	5,000.00
7 Current Expenses and Contingent Fund.....	161,250.00

8 The appropriations for the House of Delegates
9 for the fiscal year 1968-69 are to remain
10 in full force and effect, and are hereby
11 reappropriated to June 30, 1970.

12 Any balances so reappropriated may be transferred
13 and credited to the 1969-70 accounts.

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

19 The Clerk of the House of Delegates, with
20 approval of the Speaker, is authorized to

21 draw his requisitions upon the Auditor,
22 payable out of the contingent fund of the
23 House of Delegates, for any bills for sup-
24 plies and services that may have been in-
25 curred by the House of Delegates, and not
26 included in the appropriation bill, for bills
27 for services and supplies incurred in prepa-
28 ration for the opening of the session and
29 after adjournment, and for the necessary
30 operation of the House of Delegates' of-
31 fices, the requisition for same to be accom-
32 panied by bills to be filed with the Audi-
33 tor.

34 For duties imposed by law and by the House
35 of Delegates, including the salary allowed
36 by law as keeper of the rolls, the Clerk of
37 the House of Delegates shall be paid a
38 monthly salary as provided in House Reso-
39 lution No. 26, adopted March 8, 1969,
40 payable from the contingent fund of the
41 House of Delegates, and the Clerk may
42 employ a secretary and a clerk at the
43 salaries provided in said resolution.

44 The Speaker of the House of Delegates, up-
45 on recommendation of the Chairman of
46 the Finance Committee, shall have the
47 authority to convene the Finance Com-
48 mittee at any time within ten (10) days
49 prior to the next Legislative session
50 for the purpose of reviewing the bud-
51 get requests of the various spending units
52 of this State. Such members of the Com-
53 mittee are to be allowed \$25.00 per diem in
54 lieu of actual and necessary expenses, and
55 the Clerk of the House is hereby author-
56 ized to draw requisitions upon the State
57 Auditor payable out of the appropriation
58 for Current Expenses and Contingent Fund
59 for these expenses.

60 The Speaker of the House of Delegates, upon
61 recommendation of the Chairman of the

62 Finance Committee, shall have authority
 63 to employ such staff personnel during and
 64 between sessions of the Legislature as
 65 shall be needed, and the Clerk of the House
 66 is hereby authorized to draw requisitions
 67 upon the State Auditor, payable out of the
 68 appropriation for Contingent Expenses for
 69 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 Fi-		
4	nance		975,900.00

5 The appropriation for Joint Expenses for
 6 the fiscal year 1968-69 are to remain in full
 7 force and effect, and are hereby reappro-
 8 priated to June 30, 1970.

9 Any balances so reappropriated may be
 10 transferred and credited to the 1969-70 ac-
 11 counts.

12 Upon written request of the Clerk of the
 13 Senate and the Clerk of the House of Dele-
 14 gates, the State Auditor shall transfer
 15 amounts between items of the total appro-
 16 priation in order to protect or increase the
 17 efficiency of the service.

JUDICIAL

4—Supreme Court of Appeals

Acct. No. 110

1	Salaries of Judges	\$	137,500.00
3	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

7 This appropriation shall be administered by
8 the State Auditor who shall draw his req-
9 uisition for warrants in payment of sala-
10 ries in the form of payrolls, making deduc-
11 tions therefrom as required by law, for
12 taxes and other items. The appropriation
13 for Judges Retirement System is to be
14 transferred to the Judges Retirement
15 Fund, in accordance with the law relating
16 thereto, upon requisition of the State Audi-
17 tor.

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
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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, in- 7 cluding compensation of servants and em- 8 ployees, household maintenance, cost of of- 9 ficial functions, and any additional house- 10 hold expenses occasioned by such official 11 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.

17 Total\$ 756,980.00

FISCAL

9—Auditor's Office—General Administration

Acct. No. 150

1 Salary of State Auditor\$ 18,000.00
2 Other Personal Services 502,680.00
3 Current Expenses 136,235.00
4 Equipment 10,000.00
5 Microfilm Program 7,500.00

6 Total\$ 674,415.00

10—Treasurer's Office

Acct. No. 160

1 Salary of Treasurer\$ 17,500.00
2 Other Personal Services 160,220.00
3 Current Expenses 26,950.00
4 Equipment 8,000.00
5 Board of Investments 1,500.00

6 Total\$ 214,170.00

11—Sinking Fund Commission

Acct. No. 170

1 Personal Services\$ 32,640.00
2 Current Expenses 2,175.00
3 Equipment 1,000.00

4 Total\$ 35,815.00

12—State Tax Department

Acct. No. 180

1 Personal Services\$ 2,432,847.00
2 Current Expenses 644,465.00
3 Equipment 28,000.00

4 Total\$ 3,105,312.00

13—*State Tax Department*
Property Appraisal
 Acct. No. 185

1	Personal Services	\$ 454,500.00
2	Other Expenses	252,400.00

3	Total	\$ 706,900.00
---	-------------	---------------

4 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.

14—*State Commissioner of Public Institutions*
 Acct. No. 190

1	Salary of Commissioner	\$ 16,000.00
2	Salaries of Board Members—Board of Probation and Parole	36,000.00
4	Other Personal Services	418,500.00
5	Current Expenses	129,920.00
6	Equipment	2,500.00

7	Total	\$ 602,920.00
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15—*Department of Finance and Administration*
 Acct. No. 210

1	Personal Services	\$ 826,820.00
2	Current Expenses	445,000.00
3	Repairs and Alterations	125,000.00
4	Equipment	17,000.00
5	Postage	230,000.00
6	Records Management	49,000.00
7	Office of State Emergency Planning	24,900.00
8	State Agency Surplus Property	29,000.00
9	Information Systems Service Division	300,000.00
10	Major Building Repairs	325,000.00

11	Total	\$ 2,371,720.00
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12 The Workmen's Compensation Commission,
 13 Department of Welfare, Public Service
 14 Commission, Department of Natural Re-

15 sources, Department of Motor Vehicles,
 16 State Road Commission, State Health De-
 17 partment and State Tax Commissioner—
 18 Income Tax Division, shall reimburse the
 19 postage appropriation of the Department
 20 of Finance and Administration monthly for
 21 all meter service. Any spending unit oper-
 22 ing from Special Revenue or receiving re-
 23 imbursement for postage costs from the
 24 Federal Government shall refund to the
 25 postage account of the Department of Fi-
 26 nance and Administration such amounts.
 27 Should this appropriation for postage be
 28 insufficient to meet the mailing require-
 29 ments of the State spending units as set
 30 out above, any excess postage meter serv-
 31 ice requirements shall be a proper charge
 32 against the units, and each spending unit
 33 shall refund to the postage appropriation
 34 of the Department of Finance and Admin-
 35 istration any amounts required for that de-
 36 partment for postage in excess of this ap-
 37 propriation.
 38 Any unexpended balance remaining in the
 39 "Postage Account" at the close of the fiscal
 40 year 1968-69 is hereby reappropriated for
 41 expenditure during the fiscal year 1969-70.
 42 The State Road Commission shall reimburse
 43 the appropriation of the Department of Fi-
 44 nance and Administration monthly for all
 45 actual expenses incurred pursuant to (the
 46 provisions of) Chapter 17, Article 2-A, Sec-
 47 tion 13 of the Code of West Virginia.

16—*State Board of Insurance*
 Acct. No. 225

1 Personal Services	\$	22,400.00
2 Current Expenses		6,660.00
3 Equipment		400.00
4 Fire Insurance Premiums		250,000.00
5 Automobile Insurance Premiums		100,000.00

6	Bond Premiums	30,000.00
7	Self-Insurance Fund	100,000.00

8	Total	\$ 509,460.00
---	-------------	---------------

9 The above appropriations on lines 4, 5 and 6
 10 are for the purpose of paying premiums for
 11 the various state agencies. Should these
 12 appropriations be insufficient to meet the
 13 premium requirements of the state spend-
 14 ing units, any excess premium require-
 15 ments shall be a proper charge against the
 16 units and each spending unit shall transfer
 17 to the Board of Insurance any amounts
 18 required for that department for premi-
 19 ums in excess of this appropriation.

LEGAL

17—Attorney General

Acct. No. 240

1	Salary of Attorney General	\$ 18,500.00
2	Other Personal Services	416,860.00
3	Current Expenses	49,250.00
4	Equipment	11,500.00
5	To protect the resources or tax structure of	
6	the State in controversies or legal proceed-	
7	ings affecting same	3,250.00

8	Total	\$ 499,360.00
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9 When legal counsel or secretarial help is ap-
 10 pointed by the Attorney General, for any
 11 state spending unit, this account shall be
 12 reimbursed from such unit's appropriated
 13 account in an amount agreed upon by the
 14 Attorney General and the proper authority
 15 of said spending unit.

18—Commission on Uniform State Laws

Acct. No. 245

1	Total	\$ 5,000.00
2	To pay expenses of members of the Com-	
3	mission on Uniform State Laws.	

INCORPORATING AND RECORDING

19—*Secretary of State*

Acct. No. 250

1	Salary of Secretary of State	\$	17,000.00
2	Other Personal Services		113,800.00
3	Current Expenses		31,000.00
4	Equipment		15,000.00
5	Total	\$	176,800.00

EDUCATIONAL

20—*West Virginia Board of Regents*

Acct. No. 280

1	Total	\$	175,000.00
2	To be used in accordance with House Bill		
3	No. 783 (Chapter 130, Acts, Regular Ses-		
4	sion, 1969).		

21—*West Virginia University—Medical School*

Acct. No. 285

1	Total	\$	500,000.00
2	To be transferred to the Medical School Fund		
3	upon the requisition of the Governor.		

22—*State Board of Education—Vocational Division—
Adult Basic Education*

Acct. No. 289

1	Total	\$	200,000.00
2	Any unexpended balance remaining in this		
3	appropriation at the close of the fiscal year		
4	1968-69 is hereby reappropriated for ex-		
5	penditure during the fiscal year 1969-70.		

23—*Department of Education*

Acct. No. 290

1	Comprehensive Educational Program	\$	1,000,000.00
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24—*Educational Broadcasting Authority*

Acct. No. 291

1	Personal Services	\$	40,000.00
2	Current Expenses		22,300.00
3	Equipment		3,000.00
4	Regional ETV		350,000.00
5	Total	\$	415,300.00

6 For participation in the construction and op-
7 eration of Regional ETV stations by Mar-
8 shall University, Concord College, Bluefield
9 State College, West Virginia Institute of
10 Technology and West Virginia State Col-
11 lege and may be transferred to special rev-
12 enue accounts for matching county and/or
13 Federal Funds.

14 Any unexpended balance remaining in the
15 appropriation "Regional ETV" at the close
16 of the fiscal year 1968-69 is hereby reap-
17 propriated for expenditure during the fiscal
18 year 1969-70.

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

1 To implement Vocational Education Act of
2 1963 P.L. 88-210 _____ \$ 1,541,770.00
3 The above appropriation includes \$100,000.00
4 for Manpower Training.
5 Any unexpended balance remaining in this
6 appropriation at the close of the fiscal years
7 1967-68 and 1968-69 is hereby reappropri-
8 ated for expenditure during the fiscal year
9 1969-70.

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

1 Total _____ \$ 200,000.00
2 Any unexpended balance remaining in the
3 appropriation "Aid to Counties" at the
4 close of the fiscal year 1968-69 is hereby
5 reappropriated for expenditure during the
6 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
2 Fund _____ \$125,612,845.00
3 To be transferred to the General School Fund
4 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
		<hr/>
5	Total	\$ 1,455,560.00
6	The appropriation for "Out-of-State Instruc-	
7	tion" may be expended to provide instruc-	
8	tion, care and maintenance for educable	
9	persons who have multiple handicaps and	
10	for whom the state provides no facilities.	

29—*Teachers Retirement Board*
Acct. No. 298

1	Benefit Fund—Payments to retired Teachers	\$ 6,752,000.00
2	Employers Accumulation Fund—to match	
3	contributions of members	3,525,000.00
4	Expense Fund	35,000.00
		<hr/>
5	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
		<hr/>
6	Total	\$ 558,400.00
7	The appropriation for Guaranteed Student	
8	Loan Program and Scholarship Program	
9	may be transferred to Special Revenue	
10	Fund for the purpose of matching Federal	
11	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
 15 Services, the sum of \$8,500.00 shall be used
 16 only for the employment of a Spray Spe-
 17 cialist who shall be stationed only at West
 18 Virginia University Farm at Kearneysville,
 19 and \$7,200.00 for the employment of a
 20 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
 7 of the West Virginia University Kanawha
 8 Valley Graduate Center. A sufficient
 9 amount of this appropriation shall be used
 10 to reduce the tuition and registration fees
 11 in comparison with those at West Virginia
 12 University for the same program.

13 The above appropriation shall not be used for
 14 land acquisition, renovating, constructing
 15 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

1 Personal Services\$ 739,285.00
2 Current Expenses128,000.00
3 Repairs and Alterations49,586.00
4 Equipment60,000.00

5 Total.....\$ 976,871.00

35—*Marshall University*
Acct. No. 320

1 Personal Services\$ 6,425,239.00
2 Current Expenses465,200.00
3 Repairs and Alterations249,550.00
4 Equipment250,500.00
5 Flood Wall Assessment3,200.00
6 Experimental Projects in Teacher Education.....40,000.00
7 Educational TV Program73,000.00
8 Branch Colleges83,240.00

9 Total.....\$ 7,589,929.00
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

1	Personal Services	\$ 2,488,688.00
2	Current Expenses	190,000.00
3	Repairs and Alterations	120,000.00
4	Equipment	140,000.00
5	Total	\$ 2,938,688.00

37—*Glenville State College*

Acct. No. 322

1	Personal Services	\$ 1,377,005.00
2	Current Expenses	125,000.00
3	Repairs and Alterations	50,000.00
4	Equipment	112,500.00
5	Community Development and Research	15,500.00
6	Total	\$ 1,680,005.00

38—*West Liberty State College*

Acct. No. 323

1	Personal Services	\$ 2,410,000.00
2	Current Expenses	190,000.00
3	Repairs and Alterations	110,000.00
4	Equipment	129,919.00
5	Branch College	50,000.00
6	Total	\$ 2,889,919.00

7 The above appropriation for "Branch Col-
8 lege" shall be used in reducing tuition and
9 registration fees in comparison with those
10 at West Liberty State College for the same
11 program.

39—*Shepherd College*

Acct. No. 324

1	Personal Services	\$ 1,309,448.00
2	Current Expenses	115,990.00
3	Repairs and Alterations	50,000.00
4	Equipment	98,950.00
5	Total	\$ 1,574,388.00

40—Concord College

Acct. No. 325

1	Personal Services	\$ 1,807,449.00
2	Current Expenses	200,000.00
3	Repairs and Alterations	55,000.00
4	Equipment	120,000.00
5	Center for Economic Action	30,000.00
6	Total	\$ 2,212,449.00
7	Any unexpended balances remaining in the	
8	appropriation "Center for Economic Ac-	
9	tion" at the close of the fiscal year 1968-69	
10	is hereby reappropriated for expenditure	
11	during the fiscal year 1969-70.	

41—West Virginia Institute of Technology

Acct. No. 327

1	Personal Services	\$ 2,217,785.00
2	Current Expenses	242,000.00
3	Repairs and Alterations	88,000.00
4	Equipment	181,020.00
5	Total	\$ 2,728,805.00

42—West Virginia State College

Acct. No. 328

1	Personal Services	\$ 2,569,153.00
2	Current Expenses	240,000.00
3	Repairs and Alterations	138,900.00
4	Equipment	120,000.00
5	Total	\$ 3,068,053.00

43—Bluefield State College

Acct. No. 329

1	Personal Services	\$ 1,097,843.00
2	Current Expenses	132,000.00
3	Repairs and Alterations	62,000.00
4	Equipment	124,000.00
5	Total	\$ 1,415,843.00

44—West Virginia State 4-H Camp**Acct. No. 330**

1	Personal Services	\$	20,380.00
2	Current Expenses		4,675.00
3	Repairs and Alterations		6,650.00
4	Equipment		4,500.00
5	Total	\$	36,205.00

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

1	Personal Services	\$	921,990.00
2	Current Expenses		185,000.00
3	Repairs and Alterations		55,350.00
4	Equipment		39,500.00
5	Total	\$	1,201,840.00

46—State FFA-FHA Camp and Conference Center**Acct. No. 336**

1	Personal Services	\$	40,910.00
2	Current Expenses		7,500.00
3	Repairs and Alterations		6,650.00
4	Equipment		7,500.00
5	Total	\$	62,560.00

47—Department of Archives and History**Acct. No. 340**

1	Personal Services	\$	63,850.00
2	Current Expenses		17,450.00
3	Equipment		14,000.00
4	Total	\$	95,300.00

48—West Virginia Library Commission**Acct. No. 350**

1	Personal Services	\$	138,730.00
2	Current Expenses		4,900.00
3	Equipment		5,000.00
4	Books and Periodicals		31,480.00

5	To Match Federal Funds	209,790.00
6	Library Matching Fund	500,000.00
7	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
5	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
5	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
6	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
5	Total	\$ 127,300.00

53—West Virginia Penitentiary
Acct. No. 375

1	Personal Services	\$ 979,720.00
2	Current Expenses	517,880.00
3	Repairs and Alterations	45,500.00
4	Equipment	26,100.00
5	Total	\$ 1,569,200.00

54—Medium Security Prison
Acct. No. 376

1	Personal Services	\$ 568,356.00
2	Current Expenses	197,250.00
3	Repairs and Alterations	25,000.00
4	Equipment	28,000.00
5	Total	\$ 818,606.00

55—West Virginia Children's Home
Acct. No. 380

1	Personal Services	\$ 95,280.00
2	Current Expenses	40,350.00
3	Repairs and Alterations	14,000.00
4	Equipment	11,620.00
5	Total	\$ 161,250.00

56—Andrew S. Rowan Memorial Home
Acct. No. 384

1	Personal Services	\$ 366,560.00
2	Current Expenses	191,795.00
3	Repairs and Alterations	33,300.00
4	Equipment	10,820.00
5	Total	\$ 602,475.00

HEALTH AND WELFARE

57—State Health Department
Acct. No. 400

1	Personal Services	\$ 688,320.00
2	Current Expenses	131,140.00
3	Equipment	39,400.00

4	Emergency Medical Services	32,860.00
5	Cancer Control and Treatment.....	156,700.00
6	Local Health Services.....	600,000.00
7	Dental Clinics	60,000.00
8	Heart Disease Control.....	150,000.00
9	Maternal and Child Healthmobile Medical	
10	Examination Clinic	150,000.00
11	Home Health Services	40,000.00
12	Mobile Chest X-Ray & Diagnostic Services	
13	for Tuberculosis Control	76,180.00
14	Hospital and Medical Facilities Construction	
15	Program	17,500.00
16	Special Project for Eradication of Tubercu-	
17	losis	181,280.00
18	Environmental Health Services	67,510.00
19	Total	\$ 2,390,890.00

58—*Commission on Postmortem Examinations*

Acct. No. 401

- 1 Any balance remaining in this account at the
 2 close of fiscal 1968-69 is hereby reappropri-
 3 ated for expenditure during the fiscal year
 4 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	
5	Children of War Veterans as provided by	
6	Chapter thirty-nine, Acts of the Legislature,	
7	one thousand nine hundred and forty-three.	15,000.00
8	Total	\$ 301,420.00
9	Any unexpended balances remaining in the	
10	appropriation "To Provide Educational Op-	
11	portunities for Children of War Veterans"	
12	at the close of the fiscal year 1968-69 is here-	
13	by reappropriated for expenditure during	
14	the fiscal year 1969-70.	

60—*Department of Welfare*
Acct. No. 405

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

61—*State Agency on Aging*
Acct. No. 406

1	Personal Services	\$ 34,980.00
2	Current Expenses	7,000.00
3	Total	<u>\$ 41,980.00</u>

62—*Department of Mental Health*
Acct. No. 410

1	Personal Services	\$ 714,090.00
2	Current Expenses	170,000.00
3	Equipment	20,000.00
4	Research and Training	40,000.00
5	Civil Service Costs	75,000.00
6	Alcoholism Information Centers	350,000.00
7	Division of Health Education	20,000.00
8	Community and Mental Health Programs	300,000.00
9	Day Care Center	60,000.00
10	Roney's Point Branch Hospital	100,000.00
11	Commission on Mental Retardation	18,330.00

12 Total\$ 1,867,420.00

13 Any unexpended balance remaining in the
 14 appropriation for "Research and Training"
 15 at the close of the fiscal year 1968-69
 16 is hereby reappropriated for expenditure
 17 during the fiscal year 1969-70.

63—*Colin Anderson Center*

Acct. No. 419

1	Personal Services	\$ 1,819,200.00
2	Current Expenses	335,100.00
3	Repairs and Alterations	57,300.00
4	Equipment	31,500.00
5	Capital Outlay and Improvement	1,165,000.00
6	Total	\$ 3,408,100.00

64—*Weston State Hospital*

Acct. No. 420

1	Personal Services	\$ 3,365,700.00
2	Current Expenses	1,033,488.00
3	Repairs and Alterations	101,000.00
4	Equipment	76,200.00
5	Boiler Replacement	565,000.00
6	Total	\$ 5,141,388.00

65—*Spencer State Hospital*

Acct. No. 421

1	Personal Services	\$ 1,610,560.00
2	Current Expenses	562,300.00
3	Repairs and Alterations	74,000.00
4	Equipment	57,000.00
5	Total	\$ 2,303,860.00

66—*Huntington State Hospital*

Acct. No. 422

1	Personal Services	\$ 2,265,000.00
2	Current Expenses	801,580.00
3	Repairs and Alterations	104,750.00
4	Equipment	65,000.00
5	Total	\$ 3,236,330.00

67—*Lakin State Hospital*

Acct. No. 423

1	Personal Services	\$ 1,090,000.00
2	Current Expenses	315,500.00

3	Repairs and Alterations.....	70,100.00
4	Equipment	60,100.00
		<hr/>
5	Total.....	\$ 1,535,700.00

68—Barboursville State Hospital

Acct. No. 424

1	Personal Services	\$ 569,600.00
2	Current Expenses.....	171,630.00
3	Repairs and Alterations	42,600.00
4	Equipment	20,500.00
		<hr/>
5	Total.....	\$ 804,330.00

69—Fairmont Emergency Hospital

Acct. No. 425

1	Personal Services	\$ 269,850.00
2	Current Expenses	106,630.00
3	Repairs and Alterations	15,000.00
4	Equipment	13,100.00
		<hr/>
5	Total.....	\$ 404,580.00

70—Welch Emergency Hospital

Acct. No. 426

1	Personal Services	\$ 341,720.00
2	Current Expenses.....	174,310.00
3	Repairs and Alterations	45,000.00
4	Equipment	22,500.00
		<hr/>
5	Total.....	\$ 583,530.00

71—Hopemont State Hospital

Acct. No. 430

1	Personal Services	\$ 1,171,600.00
2	Current Expenses.....	309,200.00
3	Repairs and Alterations	29,500.00
4	Equipment	20,650.00
		<hr/>
5	Total.....	\$ 1,530,950.00

72—Pinecrest Sanitarium

Acct. No. 431

1	Personal Services	\$ 1,121,590.00
2	Current Expenses	441,500.00
3	Repairs and Alterations	30,000.00
4	Equipment	18,000.00
5	Total	\$ 1,611,090.00

73—Denmar State Hospital

Acct. No. 432

1	Personal Services	\$ 968,410.00
2	Current Expenses	246,590.00
3	Repairs and Alterations	56,850.00
4	Equipment	31,900.00
5	Total	\$ 1,303,750.00

74—Berkeley Springs Sanitarium

Acct. No. 436

1	Personal Services	\$ 65,830.00
2	Current Expenses	10,000.00
3	Repairs and Alterations	9,000.00
4	Equipment	3,000.00
5	Total	\$ 87,830.00

75—State Board of Education—Rehabilitation Division

Acct. No. 440

1	Personal Services	\$ 484,575.00
2	Current Expenses	91,150.00
3	Rehabilitation Center	381,703.00
4	Case Services	827,694.00
5	Supervisory Services for Vending Stand Pro-	
6	gram for the Blind	21,235.00
7	Training and Special Projects	60,792.00
8	Social Security Matching Fund	34,000.00
9	Total	\$ 1,901,149.00

BUSINESS AND INDUSTRIAL RELATIONS

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

1	Personal Services	\$ 542,010.00
2	Current Expenses.....	143,150.00
3	Equipment	3,500.00
4	Total.....	\$ 688,660.00

77—*Department of Employment Security*
Work Incentive Program
Acct. No. 451

1	Total Unclassified.....	\$ 600,000.00
2	Any unexpended balance remaining in this	
3	appropriation at the close of the fiscal year	
4	1968-69 is hereby reappropriated for ex-	
5	penditure during the fiscal year 1969-70.	

78—*Department of Mines*
Acct. No. 460

1	Personal Services	\$ 1,276,240.00
2	Current Expenses.....	192,075.00
3	Equipment	34,500.00
4	Total.....	\$ 1,502,815.00

79—*Department of Commerce*
Acct. No. 465

1	Personal Services	\$ 525,760.00
2	Current Expenses.....	573,900.00
3	Equipment	5,000.00
4	Mt. State Forest Festival.....	15,000.00
5	Alpine Festival	1,000.00
6	Mountain State Arts and Crafts Fair.....	5,000.00
7	National Hydroplane Championship.....	20,000.00
8	West Virginia Historical Drama Association..	35,000.00
9	Arts and Humanities Fund.....	82,300.00
10	Total.....	\$ 1,262,960.00
11	The above appropriations, Mountain State	
12	Forest Festival, Alpine Festival, Mountain	
13	State Arts and Crafts Fair, National Hydro-	

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

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

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

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

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.		

85—*West Virginia Air Pollution Commission*
Acct. No. 476

1	Personal Services	\$	153,900.00
2	Current Expenses		33,232.00
3	Equipment		11,680.00
4	Total	\$	198,812.00

86—*Interstate Education Compact*
Acct. No. 477

1	West Virginia's contribution to Interstate		
2	Education Compact	\$	9,500.00

87—*Antiquities Commission*
Acct. No. 478

1	Personal Services	\$	14,640.00
2	Current Expenses		6,975.00
3	Equipment		2,785.00
4	Total	\$	24,400.00

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

1	Personal Services	\$	153,340.00
2	Current Expenses		49,160.00
3	Equipment		100.00
4	Total	\$	202,600.00

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

1	Personal Services	\$	25,720.00
2	Current Expenses		19,980.00
3	Equipment		1,000.00
4	Aerial Markers		1,000.00
5	Civil Air Patrol Expenses		8,000.00
6	Airport Matching Fund		500,000.00
7	Total	\$	555,700.00

90—*West Virginia Nonintoxicating Beer Commissioner*
Acct. No. 490

1	Personal Services	\$	148,940.00
2	Current Expenses		59,550.00

3	Equipment	1,200.00
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4	Total	\$ 209,690.00
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91—*West Virginia Racing Commission*
Acct. No. 495

1	Personal Services	\$ 161,540.00
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2	Current Expenses	31,480.00
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3	Equipment	1,000.00
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4	Total	\$ 194,020.00
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AGRICULTURE

92—*Department of Agriculture*
Acct. No. 510

1	Salary of Commissioner	\$ 17,000.00
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2	Other Personal Services	782,720.00
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3	Current Expenses	293,700.00
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4	Equipment	25,000.00
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5	Research-Greenhouse (To Match Federal	
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6	Funds)	20,000.00
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7	Total	\$ 1,138,420.00
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8 Any part or all of the appropriation made to
9 "Research-Greenhouse" may be transferred
10 to Special Revenue Fund for the purpose
11 of matching Federal Funds for the above-
12 named program.

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

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

1	Personal Services	\$ 115,715.00
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2	Current Expenses	43,000.00
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3	Watershed Program	50,000.00
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4	Total	\$ 208,715.00
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5 Any unexpended balance remaining in the
6 Watershed Program at the end of the fiscal
7 year 1968-69 is reappropriated for expendi-
8 ture 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
3 transferred to Special Revenue Fund for
4 the purpose of matching Federal Funds for
5 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
3 transferred to Special Revenue Fund for
4 the purpose of matching Federal Funds for
5 the above-named program.
6 Any unexpended balance remaining in the
7 appropriation "Meat Inspection" at the
8 close of the fiscal year 1968-69 is hereby
9 reappropriated for expenditure during the
10 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 Ex-
 7 penses, the sum of \$15,000.00 may be used
 8 to cooperate with the United States Geolog-
 9 ical Survey in Ground Waters Resources
 10 Study.

98—*Department of Veterans Affairs*

Acct. No. 564

1 In aid of Veterans Day Patriotic Exercises—\$	3,000.00
2 To be expended subject to the approval of the	
3 Department of Veterans Affairs upon pres-	
4 entation of satisfactory plans by the Graf-	
5 ton G.A.R. Post, American Legion, Veterans	
6 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
<hr/>	
10 Total	\$ 3,951,933.00

11 Out of the above appropriation for Current
 12 Expenses, subsistence for conservation offi-
 13 cers shall be paid at the rate of five dollars
 14 per calendar day to the chief conservation
 15 officer and to each full-time uniformed
 16 conservation officer, under his direct super-
 17 vision, whose primary duties and responsi-
 18 bilities are law enforcement.
 19 Any unexpended balance remaining in the ap-
 20 propriation "Clarke-McNary—Fire Preven-
 21 tion" at the close of the fiscal year 1968-69
 22 is hereby reappropriated for expenditure
 23 during the fiscal year 1969-70.

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-	
6	cal Allowances and Uniform Allowances...	90,660.00
7	Property Maintenance	170,060.00
8	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 Gen-	
6	eral Revenue Fund and General School	
7	Fund Appropriations. The State Road	
8	Commission, Department of Motor Vehi-	
9	cles, 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		
2 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		
2 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		
2 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		
2 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		
2 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		
2 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		
2 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 Pub-
6 lic Employees Retirement cost in accord-
7 ance with Chapter 5, Article 10 of the Code
8 of West Virginia for those departments
9 operating from General Revenue Fund and
10 General School Fund appropriations. The
11 State Road Commission, Department of Mo-
12 tor Vehicles, State Tax Commissioner—
13 Gasoline Tax Division, Workmen's Com-
14 pensation Commission, Public Service Com-
15 mission, and other departments operating
16 from Special Revenue Funds and/or Fed-
17 eral Funds shall pay their proportionate
18 share of the retirement costs for their re-
19 spective divisions. When specific appropria-
20 tions are not made such payments may be
21 made from the balances in the various
22 Special Revenue Funds in excess of specific
23 appropriations.

120—*Insurance Commissioner*

Acct. No. 616

1 Personal Services \$ 350,000.00

2 Current Expenses 81,900.00

3	Repairs and Alterations	5,500.00
4	Equipment	5,000.00

5 Total.....\$ 442,400.00

1 **Sec. 2. Appropriations from Other Funds.**—From the
 2 funds designated there is hereby appropriated condition-
 3 ally upon the fulfillment of the provisions set forth in Chap-
 4 ter 5-A, Article 2, of the Code of West Virginia the follow-
 5 ing amounts, as itemized, for expenditure during the fiscal
 6 year one thousand nine hundred seventy.

121—*State Road Commission*
 Acct. No. 670

TO BE PAID FROM STATE ROAD FUND

1	Federal-Aid Construction — Interstate Pro-	
2	gram	\$110,243,000.00
3	Federal-Aid Construction — ABC Program	24,046,000.00
4	Appalachian Program	79,226,000.00
5	Interstate Maintenance	1,890,000.00
6	Special Maintenance and State Construction	
7	—Expressway, Trunkline and Feeder.....	5,508,400.00
8	Special Maintenance and State Construction	
9	—State Local Service	6,211,600.00
10	Routine Maintenance — Expressway, Trunk-	
11	line and Feeder.....	17,000,000.00
12	Routine Maintenance—State Local Service...	18,794,000.00
13	Emergency Operations—Snow and Ice Con-	
14	trol—Flood and Slides.....	6,250,000.00
15	Scenic Highway	1,257,000.00
16	Forest Highway	100,000.00
17	General Operations	24,000,000.00
18	Equipment Purchases	4,000,000.00
19	Inventory Purchases	1,000,000.00
20	Debt Service	13,130,000.00

21 Total.....\$312,656,000.00

22 It is the intent to appropriate and make avail-
 23 able for expenditure, the balances and all
 24 revenues and income of the state road fund,
 25 including the proceeds from the sale of
 26 bonds, for the maintenance, construction

27 and reconstruction of state roads and for
28 other purposes in accordance with the pro-
29 visions of Chapter 17, Code of West Vir-
30 ginia, one thousand nine hundred thirty-
31 one, as amended.

32 Funds in excess of amounts herein appropri-
33 ated may be made available by budget
34 amendment upon request of the Road Com-
35 missioner and approval of the Governor.

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

47 There is hereby appropriated, within the
48 above line items, sufficient moneys for the
49 payment of claims, accrued or arising dur-
50 ing this budgetary period, to be paid in ac-
51 cordance with Chapter 14, Article 2, Sec-
52 tions 7 and 8, Code of West Virginia,
53 one thousand nine hundred thirty-one, as
54 amended.

122—*Department of Motor Vehicles*

Acct. No. 671

TO BE PAID FROM STATE ROAD FUND

1	Personal Services	\$ 1,093,970.00
2	Current Expenses	597,000.00
3	Equipment	30,000.00
4	Purchase of License Plates	260,000.00
5	Social Security Matching Fund	51,330.00
6	Public Employees Retirement Matching Fund	47,300.00
7	Total	\$ 2,079,600.00

123—*State Tax Department—Gasoline Tax Division*
Acct. No. 672

TO BE PAID FROM STATE ROAD FUND

1	Personal Services	\$ 250,740.00
2	Current Expenses	69,000.00
3	Equipment	4,000.00
4	Social Security Matching Fund	12,000.00
5	Total	\$ 335,740.00

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

TO BE PAID FROM GENERAL SCHOOL FUND

1	Personal Services	\$ 107,500.00
2	Current Expenses	32,400.00
3	Equipment	3,750.00
4	Vocational Aid	500,000.00
5	Total	\$ 643,650.00
6	Any unexpended balance remaining in the	
7	appropriation—Vocational Aid and Aid	
8	to Counties at the close of the fiscal year	
9	1968-69 is hereby reappropriated for ex-	
10	penditure during the fiscal year 1969-70.	

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

TO BE PAID FROM GENERAL SCHOOL FUND

1	Personal Services	\$ 57,020.00
2	Current Expenses	12,000.00
3	Total	\$ 69,020.00

- 4 Expenditures from this appropriation shall
5 not exceed the amount to be reimbursed
6 by the Federal Government.
7 Federal funds in excess of the amounts here-
8 by appropriated may be made available
9 by budget amendment upon request of the
10 State Superintendent of Schools and ap-
11 proval of the Governor for any emergency
12 which might arise in the operation of this
13 division during the fiscal year.

126—*Department of Education*

Acct. No. 703

TO BE PAID FROM GENERAL SCHOOL FUND

1	Salary of State Superintendent	\$ 22,500.00
2	Other Personal Services	543,448.00
3	Current Expenses	136,550.00
4	Equipment	6,850.00
5	National Defense Education Act	223,270.00
6	Statewide Testing Program	176,000.00
7	Experimental Projects	18,730.00
8	Total	\$ 1,127,348.00

9 The above appropriation includes the State
10 Board of Education and their executive of-
11 fices.

12 Any part or all of the appropriation for "Na-
13 tional Defense Education Act" may be
14 transferred to a Special Revenue Fund for
15 the purpose of matching Federal Funds
16 for this program.

127—*State Board of School Finance*

Acct. No. 704

TO BE PAID FROM GENERAL SCHOOL FUND

1	Personal Services	\$ 45,000.00
2	Current Expenses	8,100.00
3	Equipment	2,500.00
4	Total	\$ 55,600.00

128—*Department of Education—School Lunch Program*

Acct. No. 705

TO BE PAID FROM GENERAL SCHOOL FUND

1	Personal Services	\$ 88,980.00
2	Current Expenses	19,960.00
3	Aid to Counties—Includes hot lunches and	
4	canning for hot lunches	475,000.00
5	Total	\$ 583,940.00

129—*Department of Education*

Acct. No. 706

TO BE PAID FROM GENERAL SCHOOL FUND

1	Salaries of County Superintendents	\$ 61,000.00
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130—*Department of Education*

Acct. No. 707

TO BE PAID FROM GENERAL SCHOOL FUND

1	State Aid to Children's Home	\$	25,000.00
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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
<hr/>			
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-		
3	one, Acts of the Legislature, Regular Ses-		
4	sion, one thousand nine hundred and		
5	thirty-nine.		

133—*Treasurer's Office*

Acct. No. 800

TO BE PAID FROM SPECIAL REVENUE FUND

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

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
<hr/>			
5	Total	\$	54,620.00

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

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

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

11 The above appropriation includes salaries
 12 and operating expenses.

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

17 Special funds in excess of the amounts here-
 18 by appropriated may be made available by
 19 budget amendment upon request of the
 20 Department of Finance and Administra-
 21 tion and approval of the Governor.

138—*Department of Agriculture*
 Acct. No. 818

TO BE PAID FROM SPECIAL REVENUE FUND

1 Personal Services	\$	219,000.00
2 Current Expenses		40,590.00
3 Equipment		8,500.00
4 Social Security Matching Fund		9,300.00
5 Public Employees Retirement Matching Fund		9,000.00
6 Total	\$	286,390.00

7 The total amount of this appropriation shall
 8 be paid from Special Revenue Fund out of
 9 collections made by the Department of
 10 Agriculture as provided by law. It is the
 11 intention that special funds in excess of
 12 the amounts hereby appropriated shall be
 13 made available by budget amendment up-
 14 on request of the Commissioner of Agri-
 15 culture, and approval of the Governor.

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

TO BE PAID FROM SPECIAL REVENUE FUND

1 Personal Services	\$	66,300.00
2 Current Expenses		32,000.00
3 Equipment		900.00

4	Social Security Matching Fund	3,000.00
5	Public Employees Retirement Matching Fund	3,000.00
6	Total	\$ 105,200.00
7	The total amount of this appropriation shall	
8	be paid from Special Revenue Fund out of	
9	collections made by the State Committee of	
10	Barbers and Beauticians as provided by	
11	law.	

140—Public Service Commission
Acct. No. 828

TO BE PAID FROM SPECIAL REVENUE FUND

1	Salaries of Commissioners	\$ 42,000.00
2	Other Personal Services	694,516.00
3	Current Expenses	115,975.00
4	Equipment	16,265.00
5	Social Security Matching Fund	26,316.00
6	Public Employees Retirement Matching Fund	42,066.00
7	Total	\$ 937,138.00
8	The total amount of this appropriation shall	
9	be paid from Special Revenue Fund out of	
10	collections for special license fees from	
11	public service corporations as provided by	
12	law. Out of the above appropriation \$5,-	
13	000.00 may be transferred to the State	
14	Water Resources Commission of the De-	
15	partment of Natural Resources for use in	
16	cooperation with the U. S. Geological Sur-	
17	vey in a program of stream gauging.	

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

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$ 271,244.00
2	Current Expenses	70,400.00
3	Equipment	4,860.00
4	Social Security Matching Fund	11,917.00
5	Public Employees Retirement Matching Fund	15,555.00
6	Total	\$ 373,976.00

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

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

TO BE PAID FROM SPECIAL REVENUE FUND

1 Personal Services	\$ 1,311,055.00
2 Current Expenses	664,445.00
3 Repairs and Alterations	81,500.00
4 Equipment	142,500.00
5 Land Purchase & Building	117,500.00
6 Total	\$ 2,317,000.00

7 The total amount of this appropriation shall
 8 be paid from Special Revenue Fund out of
 9 fees collected by the Department of Nat-
 10 ural Resources. Expenditures shall be lim-
 11 ited to the amounts appropriated except for
 12 Federal Funds received and Special Funds
 13 collected at state parks. Special Funds in
 14 excess of the amounts hereby appropriated
 15 may be made available by budget amend-
 16 ment upon request of the Department of
 17 Natural Resources and approval of the Gov-
 18 ernor.

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

TO BE PAID FROM SPECIAL REVENUE FUND

1 Personal Services	\$ 156,132.00
2 Current Expenses	57,210.00
3 Repairs and Alterations	4,850.00
4 Equipment	10,850.00
5 Social Security Matching Fund	958.00
6 Total	\$ 230,000.00

7 The total amount of this appropriation shall
 8 be paid from Special Revenue Fund out of

9 fees collected for inspection stickers as pro-
10 vided by law.
11 Special Funds in excess of the amounts
12 hereby appropriated may be made avail-
13 able by budget amendment upon request
14 of the Department of Public Safety and
15 approval of the Governor for the purpose
16 of repairs to, or construction of, police bar-
17 racks.

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

TO BE PAID FROM SPECIAL REVENUE FUND

1 Salary of Commissioner _____	\$ 16,000.00
2 Other Personal Services _____	4,072,000.00
3 Current Expenses _____	951,300.00
4 Repairs and Alterations _____	18,000.00
5 Equipment _____	62,500.00
6 Social Security Matching Fund _____	194,000.00
7 Public Employees Retirement Matching Fund _____	188,000.00

8 Total _____ \$ 5,501,800.00

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

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

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

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

TO BE PAID FROM SPECIAL REVENUE FUND

1 Personal Services _____	\$ 216,000.00
2 Current Expenses _____	41,150.00

3	Social Security Matching Fund	9,500.00
4	Public Employees Retirement Matching Fund	10,000.00

5	Total	\$ 276,650.00
---	-------------	---------------

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

10 The Governor is hereby authorized to make
 11 available by budget amendment, upon re-
 12 quest of the Civil Service Commission,
 13 funds in excess of the amounts hereby ap-
 14 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
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7 The total amount of this appropriation shall
 8 be paid from the nonrevolving Capital Im-
 9 provement Fund created by the 1959 Legis-
 10 lature, amended by the 1963 Legislature.
 11 Any unexpended balance remaining in this
 12 appropriation at the close of the fiscal year
 13 1968-69 is hereby reappropriated for ex-
 14 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-	
2	ice	\$ 1,725,000.00
3	Glenville State College—Forest Technology	

4	Building	150,000.00
5	Glenville State College—Land acquisition...	10,000.00
6	Bluefield State College—Additional amount	
7	for Technical Science Building addition...	150,000.00
8	Bluefield State College—Technical Science	
9	Building equipment	75,000.00
10	West Virginia State College—Dormitory fur-	
11	niture and equipment	370,000.00
12	Shepherd College—Dormitory furniture,	
13	equipment and sewers	225,000.00
14	West Virginia Institute of Technology—	
15	Dormitory furniture, equipment and land...	277,000.00
16	West Virginia Board of Regents—Miscella-	
17	neous small projects	175,000.00
18	Bluefield State College—Basic Science Build-	
19	ing	\$ 2,300,000.00
20	Bluefield State College—Land Acquisition ...\$	70,000.00
21	Bluefield State College—Library Facilities—	
22	Alterations and Additions	\$ 530,000.00
23	W. Va. Institute of Technology	
24	Library Building	\$ 1,800,000.00
25	Community Technical College Building	
26	and Land	2,800,000.00
27	Total	\$ 4,600,000.00
28	West Liberty State College	
29	Library-Classroom Building	\$ 1,800,000.00
30	Marshall University	
31	Communications Building	\$ 750,000.00
32	West Virginia State College	
33	Classroom-Office Building	\$ 3,000,000.00
34	Land Acquisition	130,000.00
35	Total	\$ 3,130,000.00
36	Concord College	
37	Health and Physical Education Building...\$	2,500,000.00
38	Land Acquisition	125,000.00
39	Total	\$ 2,625,000.00
40	Fairmont State College	
41	Science Building	\$ 2,940,000.00

42	Glenville State College		
43	Classroom Building and Heating Complex	\$	2,425,000.00
44	Land Acquisition		100,000.00
45	Total	\$	2,525,000.00
46	Shepherd College		
47	Fine Arts Building	\$	1,900,000.00
48	Fairmont State College		
49	Health and Physical Education Building	\$	1,500,000.00
50	Marshall University		
51	Land Acquisition	\$	400,000.00
52	Science Engineering Building		4,000,000.00
53	Total	\$	4,400,000.00
54	West Liberty State College		
55	Maintenance Building	\$	380,000.00
56	Renovation of Main Hall		280,000.00
57	Renovation of Annex II		100,000.00
58	Total	\$	760,000.00
59	Shepherd College		
60	Maintenance Building	\$	200,000.00
61	Renovation of Social Science Building		200,000.00
62	Total	\$	400,000.00
63	Concord College		
64	Improvement of Intramural Field	\$	80,000.00
65	Total	\$	33,467,000.00
66	As required by law, the above projects are		
67	listed in a stated order of priority. The ap-		
68	propriations made in lines 1 through 17 are		
69	to be paid on a cash basis and made avail-		
70	able from date of passage and the cost of		
71	projects in lines 18 through 64 are to be		
72	paid for from proceeds of revenue bonds as		
73	authorized by law with projects in lines		
74	18 through 49 being made available from		
75	date of passage. It is intended that only		
76	complete and usable units or projects be		

77 constructed and/or equipped, and then only
78 in the listed order of priority: *Provided,*
79 *however,* That the amounts shown for each
80 unit or project shall include in said amount
81 matching-grant funds from governmental
82 or nongovernmental sources: *And provided*
83 *further,* That whenever the amount in the
84 Capital Improvement Fund including both
85 cash collections and the proceeds of bond
86 sale, shall be sufficient to cover all capital
87 expenditures authorized above, then the
88 listed projects shall be considered of equal
89 priority and all of them, or any one or
90 more, may be constructed as soon as plans
91 can be prepared and contracts let therefor.
92 The total amount of this appropriation shall
93 be paid from the nonrevolving Capital Im-
94 provement Fund created by the 1959 Legis-
95 lature, amended by the 1963 Legislature.
96 Any unexpended balance remaining in this
97 appropriation at the close of the fiscal year
98 1968-69 is hereby reappropriated for
99 expenditure during the fiscal year 1969-
100 70.
101 The appropriations heretofore authorized by
102 the Legislature for expenditure during
103 the fiscal year 1968-69, set forth in the Bud-
104 get Bill, Regular Session, 1968, Section 2,
105 Appropriations from Other Funds, pages
106 48-50, inclusive, State Board of Education—
107 Special Capital Improvement Fund, Ac-
108 count No. 854, lines 7 thru 49, inclusive, and
109 Acts of 1968 Second Extraordinary Session
110 (September 11-September 14, 1968) Chap-
111 ter 1, pages 4 and 5, inclusive, Item 146,
112 West Virginia Board of Education-Special
113 Capital Improvement Fund, Account No.
114 854, lines 7 through 48, inclusive, is hereby
115 voided and superseded by the above ap-
116 propriation.

148—*West Virginia University—Medical School*

Acct. No. 873

TO BE PAID FROM MEDICAL SCHOOL FUND

1	Personal Services	\$ 9,400,000.00
2	Current Expenses	3,200,000.00
3	Repairs and Alterations	300,000.00
4	Equipment	200,000.00

5 Total\$ 13,100,000.00

6 The above total appropriation includes an
 7 amount of \$500,000.00 to be transferred
 8 from the General Revenue Fund Acct. No.
 9 285 upon requisition of the Governor.

10 Special funds in excess of the amounts hereby
 11 appropriated may be made available by
 12 budget amendment upon request of the
 13 West Virginia Board of Regents and ap-
 14 proval of the Governor.

149—*Workmen's Compensation Commission*

Acct. No. 900

TO BE PAID FROM WORKMEN'S COMPENSATION FUND

1	Personal Services	\$ 997,100.00
2	Current Expenses	324,950.00
3	Equipment	15,600.00
4	Social Security Matching Fund	44,550.00
5	Public Employees Retirement Matching Fund	45,100.00

6 Total\$ 1,427,300.00

7 There is hereby authorized to be paid out of
 8 the above appropriation for current ex-
 9 penses the amount necessary for the premi-
 10 ums on bonds given by the State Treasurer
 11 and bond custodian for the protection of the
 12 Workmen's Compensation Fund. This sum
 13 shall be transferred to the Board of Insur-
 14 ance.

1 **Sec. 3. Supplemental and Deficiency Appropriations.—**
 2 From the State Fund, General Revenue, except as otherwise
 3 provided, there are hereby appropriated the following

4 amounts, as itemized, for expenditure during the fiscal
5 year one thousand nine hundred sixty-nine to supplement
6 the 1968-69 appropriations, and to be available for expen-
7 diture upon date of passage.

150—*Supreme Court of Appeals*

Acct. No. 110

1	Salaries of Judges	\$	11,492.00
2	Equipment		56,000.00
3	Total	\$	67,492.00

151—*Governor's Office*

Acct. No. 120

1	Civil Contingent Fund	\$	500,000.00
2	Office of Federal State Relations		350,000.00
3	Federal State Coordinating Matching Funds..		500,000.00
4	Total	\$	1,350,000.00

5 Any unexpended balance remaining in the
6 appropriation—Civil Contingent Fund,
7 Office of Federal State Relations, and Fed-
8 eral State Coordination, at the close of the
9 fiscal year 1968-69 is hereby reappropriated
10 for expenditure during the fiscal year
11 1969-70.

152—*State Tax Department*

Acct. No. 180

1	Current Expenses	\$	68,000.00
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153—*State Commissioner of Public Institutions*

Acct. No. 190

1	W. Va. Forestry Camp, Leckie, McDowell		
2	County	\$	150,000.00

3 Any unexpended balance remaining in the
4 above appropriation at the close of the
5 fiscal year 1968-69 is hereby reappropriated
6 for expenditure during the fiscal year
7 1969-70.

154—*Department of Finance and Administration*

Acct. No. 210

1 Information Systems Service Division—To
2 provide sufficient funds for remainder of
3 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
3 above appropriation at the close of the
4 fiscal year 1968-69 is hereby reappropriated
5 for expenditure during the fiscal year
6 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
6 appropriation—Construct Recreation Build-
7 ing, Renovate Classroom Building, Con-
8 struct Ward Building, at the close of the
9 fiscal year 1968-69 is hereby reappropriated
10 for expenditure during the fiscal year
11 1969-70.

160—*Department of Commerce*

Acct. No. 465

- 1 Independence Hall, Wheeling, West Vir-
- 2 ginia\$ 125,000.00
- 3 Any unexpended balance remaining in the
- 4 above appropriation at the close of the
- 5 fiscal year 1968-69 is hereby reappropriated
- 6 for expenditure during the fiscal year
- 7 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
- 2 Any unexpended balance remaining in the
- 3 above appropriation at the close of the
- 4 fiscal year 1968-69 is hereby reappropriated
- 5 for expenditure during the fiscal year
- 6 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

1 **Sec. 4. Awards for Claims Against the State.**—From
 2 the funds designated there are hereby appropriated for the
 3 remainder of the fiscal year 1968-69, and to remain in effect
 4 until June 30, 1970, for payment of claims against the state,
 5 the following amounts as itemized.

Claims versus the State Road Commission

TO BE PAID FROM STATE ROAD FUND

1 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 Warren Chamberlain and	
9 Justine Chamberlain	110.16
10 Peter Chapman	73.24
11 Charleston Concrete Floor Company.....	9,713.78
12 Charleston Construction Inc.	1,245.95
13 Katharine Chatfield	247.07
14 Chesapeake & Ohio Railway Company.....	212.01
15 William Curry and Mary E. Curry.....	2,106.71
16 Thornton Deskins	100.00
17 C. L. Dotson	23.00
18 Federal Insurance Company and	
19 Raymond T. Dalton	677.33
20 Doran Frame, d.b.a.Doran Frame	
21 Electrical Contractors.....	3,801.73
22 W. E. Gano, Sr.	16.48
23 Richard Gordon	646.77
24 S. J. Groves & Sons	17,583.06
25 J. I. Hass	23,108.00
26 Haynes Construction Company	144,349.53
27 J. C. Haynes	4,033.76
28 Kenneth G. Keith	52.53
29 Charles J. Kucera and	
30 Josephine Ann Kucera	75.00
31 Laird Office Equipment Company	1,026.54
32 Vincent Lopez	804.09

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
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Claims versus the Department of Welfare

TO BE PAID FROM GENERAL REVENUE FUND

1 Rahall Realty Company	\$	40,500.00
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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		
3 Supply Company		2,275.22
4 Mr. and Mrs. James P. Lewis.....		177.35
5 William L. Wilson		31.00

Claims versus the Department of Education

TO BE PAID FROM GENERAL REVENUE FUND

1 Lawrence V. Jordan	\$	272.14
2 C. A. Robrecht Company		464.41
3 C. A. Robrecht Company		1,687.74
4 Patrick C. Williams		24.00

Claims versus the Department of Natural Resources

TO BE PAID FROM GENERAL REVENUE FUND

1 Eureka Pipe Line Company	\$	6,741.99
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Claims versus the Department of Mental Health

TO BE PAID FROM GENERAL REVENUE FUND

1 Mary Ann DeBolt	\$	177.42
2 C. A. Robrecht Company		170.78
3 C. A. Robrecht Company		83.75
4 C. A. Robrecht Company		135.96

Claims versus the State Aeronautics Commission

TO BE PAID FROM GENERAL REVENUE FUND

1 Ralph E. Phillips	\$	1,744.00
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Claims versus Department of Finance and Administration

TO BE PAID FROM GENERAL REVENUE FUND

1 Columbia Ribbon & Manufacturing		
2 Company, Inc.	\$	94.94
3 International Business Machines		
4 Corporation		7,882.03
5 Otis Elevator Company		426.61
6 United Airlines, Inc.		512.91

Claims versus Alcohol Beverage Control Commissioner

TO BE PAID FROM SPECIAL REVENUE FUND

1 Clarence C. Elmore	\$	803.79
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Claims versus Workmen's Compensation Fund

TO BE PAID FROM WORKMEN'S COMPENSATION FUND

1 Mountain State Consultants, Inc.	\$	7,200.00
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1 **Sec. 5. Reappropriations.**—The unexpended balance, if
2 any, in Item 151, Section 5, of the 1967 Budget Act is hereby
3 reappropriated for expenditure through June 30, 1970.

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

15 (a) An estimate of the amount and sources of all rev-
16 enues accruing to such fund;

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

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

1 **Sec. 8. Appropriation for Refunding Erroneous Pay-**
2 **ments.**—Money that has been erroneously paid into the
3 state treasury is hereby appropriated out of the fund into
4 which it was paid for refund to the proper person.

5 When the officer authorized by law to collect money for
6 the state finds that a sum has been erroneously paid, he
7 shall issue his requisition upon the auditor for the refunding
8 of the proper amount. The auditor shall issue his warrant to
9 the treasurer and the treasurer shall pay the warrant out of
10 the fund into which the amount was originally paid.

1 **Sec. 9. Sinking Fund Deficiencies.**—There is hereby ap-
2 propriated to the Governor a sufficient amount to meet

3 a deficiency that may arise in the funds of the State Sink-
4 ing Fund Commission because of the failure of any state
5 agency for either general obligation or revenue bonds or
6 any local taxing district for general obligation bonds to
7 remit funds necessary for the payment of interest and
8 sinking fund requirements. The Governor is authorized to
9 transfer from time to time such amounts to the State Sink-
10 ing Fund Commission as may be necessary for this purpose.

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

1 **Sec. 10. Appropriations from Taxes and License Fees.—**

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

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

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

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

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, 1960; in effect July 1, 1960. 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

- 1. General Provisions and Definitions.**
- 2. Department of Banking.**
- 3. Board of Banking and Financial Institutions.**
- 4. Banking Institutions and Services Generally.**
- 5. Bank Service Corporations and Bank Services.**
- 6. Nominee Registration of Fiduciary Securities.**
- 7. Changes in Structure and Status.**
- 8. Hearings; Administrative Procedures; Judicial Review; Unlawful Acts; Penalties.**

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

- §31A-1-1. Short title; objects and purposes.
- §31A-1-2. Definitions.
- §31A-1-3. Application and construction of chapter.
- §31A-1-4. Separability; repealer.
- §31A-1-5. Lending and investing powers and authority of fiduciaries, financial institutions, governmental entities and other persons.

§31A-1-1. Short title; objects and purposes.

- 1 This chapter shall constitute and may be cited as the
- 2 state banking code of West Virginia.
- 3 It is the intention of the Legislature in enacting this
- 4 chapter to foster and promote sound and dynamic finan-
- 5 cial institutions and particularly banking institutions in
- 6 the state in order to provide services to the public which
- 7 are necessary and desirable for the economic, social, and
- 8 industrial health and development of the state. There-
- 9 fore the provisions of this chapter shall be interpreted,
- 10 construed and administered liberally to accomplish these
- 11 purposes.

§31A-1-2. Definitions.

- 1 As used in this chapter, unless the context in which
- 2 used plainly requires a different meaning:
- 3 (a) The word "action", in the sense of a judicial pro-
- 4 ceeding, means any proceeding in a court of competent

5 jurisdiction in which rights are adjudicated and deter-
6 mined and shall embrace and include recoupment, coun-
7 terclaim, setoff and other related, similar and summary
8 proceedings;

9 (b) The words "bank" and "banking institution" mean
10 a corporation heretofore or hereafter chartered to con-
11 duct a banking business under the laws of West Virginia
12 or an association heretofore or hereafter authorized to con-
13 duct a banking business in West Virginia under the laws
14 of the United States and having its principal office in this
15 state and shall embrace and include a trust company
16 or an institution combining banking and trust company
17 facilities, functions and services so chartered or au-
18 thorized to conduct such business in this state;

19 (c) The term "banking business" means the func-
20 tions, services and activities contained, detailed and
21 embraced in sections thirteen and fourteen of article
22 four of this chapter and as elsewhere defined by law;

23 (d) The word "board" means the West Virginia board
24 of banking and financial institutions;

25 (e) The words "commissioner" or "commissioner of
26 banking" mean the commissioner of banking of West
27 Virginia;

28 (f) The word "community" means a city, town or
29 other incorporated area, or, where not so incorporated,
30 a trading area;

31 (g) The word "department" means the department of
32 banking of West Virginia;

33 (h) The words "deputy commissioner" or "deputy
34 commissioner of banking" mean the deputy commissioner
35 of banking of West Virginia;

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

41 (j) The words "financial institutions" mean banks,
42 building and loan associations, industrial loan companies,
43 small loan companies, credit unions and all other similar

44 institutions, whether persons, firms or corporations, which
45 are by law under the jurisdiction and supervision of
46 the commissioner of banking;

47 (k) The word "officer" when referring to any finan-
48 cial institution, means any person designated as such
49 in the bylaws and includes, whether or not so designated,
50 any executive officer, the chairman of the board of di-
51 rectors, the chairman of the executive committee, and
52 any trust officer, assistant vice president, assistant treas-
53 urer, assistant secretary, assistant trust officer, assistant
54 cashier, assistant comptroller, or any other person who
55 performs the duties appropriate to those offices, and
56 the term "executive officer" as herein used, when re-
57 ferring to banking institutions, means an officer of a bank
58 whose duties involve regular, active and substantial
59 participation in the daily operations of such institution
60 and who, by virtue of his position, has both a voice in
61 the formulation of the policy of the bank and responsibili-
62 ty for implementation of the policy, such responsibility
63 of and functions performed by the individual, and not
64 his title or office, being determinative of whether he is
65 an "executive officer";

66 (l) The words "person" or "persons" mean any indi-
67 vidual, partnership, society, association, firm, institution,
68 company, public or private corporation, state, govern-
69 mental agency, bureau, department, division or instru-
70 mentality, political subdivision, county court, municipi-
71 pality, trust, syndicate, estate or any other legal entity
72 whatsoever, formed, created or existing under the laws of
73 this state or any other jurisdiction;

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

79 (n) The words "state bank" or "state banking insti-
80 tution" mean a bank chartered under the laws of West
81 Virginia, as distinguished from a national banking asso-
82 ciation; and

83 (o) The words "trust business" mean the functions,
84 services and activities contained, detailed and embraced
85 in section fourteen of article four of this chapter and
86 as elsewhere defined by law and as may be included
87 within the meaning of the term "banking business."

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

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

7 (b) Every person, business or activity under the juris-
8 diction, supervision and control of the commissioner,
9 whether existing or operating as an individual, associa-
10 tion, firm, corporation or otherwise, shall be subject to
11 and be controlled by provisions of this chapter regardless
12 of any word or phrase referring to a particular entity, or
13 form of organization. Wherever in this chapter the word
14 corporation is used or wherever reference is made to
15 stockholders, directors, officers, or other personnel nor-
16 mally applicable only to corporate organizations, such
17 reference, unless the context in which used clearly indi-
18 cates otherwise, shall be construed to apply to and em-
19 brace associations, firms, individuals and any other entity
20 or form of organization by which any business or opera-
21 tions under the jurisdiction, supervision and control of
22 the commissioner may be conducted.

§31A-1-4. Separability; repealer.

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

8 All laws or parts of laws plainly inconsistent with the
9 provisions hereof are hereby repealed. No provision of
10 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-
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-
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- §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
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- §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-
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- §31A-2-7. Duties of officers, employees, etc., of financial institution in
connection with examination; examination under oath;
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- §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
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- §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
2 of commissioner of banking of West Virginia, and the
3 office of deputy commissioner of banking of West Vir-
4 ginia, heretofore created and existing in the state gov-
5 ernment, are continued.

6 The commissioner of banking in office when this chap-
7 ter becomes effective shall continue in office until the
8 expiration of his term, and until his successor is appointed
9 and qualified, unless earlier removed from office as pro-
10 vided by law.

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

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

7 Any person appointed as commissioner shall have had
8 within the fifteen years next preceding his first appoint-
9 ment at least five years' experience as an active execu-
10 tive officer of a bank in this state or a minimum of ten
11 years' experience in a bank examining or supervisory
12 capacity for this state, for other states, or for the federal
13 government, or a combination thereof, or a minimum of
14 ten years' combined experience as such active bank execu-
15 tive officer and in such examining or supervisory capacity.

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

19 Before entering upon the discharge of his duties as
20 commissioner, he shall take and subscribe to the oath
21 of office prescribed in section five of article four of the

22 constitution of West Virginia and shall enter into a
23 bond in the penal sum of one hundred thousand dollars,
24 with a corporate surety authorized to engage in business
25 in this state, conditioned upon the faithful discharge and
26 performance of the duties of his office. The premium
27 on such bond shall be payable from the state treasury
28 out of funds allocated to the department of banking.
29 The executed oath and bond shall be filed in the office
30 of the secretary of state.

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

1 The deputy commissioner of banking shall be ap-
2 pointed by and be under the supervision and direction
3 of the commissioner of banking. The deputy commis-
4 sioner's tenure in office shall be at the will and pleasure
5 of the commissioner. The deputy commissioner's salary
6 shall be fixed annually by the commissioner and shall
7 be payable in installments as provided by law.

8 Any person appointed as deputy commissioner shall
9 have had at least five years' experience as an active
10 executive officer of a bank in this state or a minimum
11 of eight years' experience in a bank examining or super-
12 visory capacity for this state, for other states, or for the
13 federal government, or a combination thereof, or a
14 minimum of eight years' combined experience as such
15 active bank executive officer and in such examining or
16 supervisory capacity.

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

21 In the event of a vacancy in the office of commissioner
22 or in the event of the disability or absence from the
23 state of the commissioner, the deputy commissioner
24 shall have and may exercise all of the authority and
25 powers of the commissioner and shall be responsible
26 for the performance of all duties, functions and services
27 of the commissioner.

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

1 (a) Subject to the powers vested in the board by article
2 three of this chapter, the commissioner shall have super-
3 vision and jurisdiction over state banks (other than those
4 banks excepted by the provisions of section eleven of
5 this article), industrial loan companies, building and loan
6 associations, small loan companies, credit unions, and all
7 other persons now or hereafter made subject to his super-
8 vision or jurisdiction. All powers, duties, rights and
9 privileges vested in the department are hereby vested in
10 the commissioner. He shall be the chief executive officer
11 of the department of banking and shall be responsible for
12 the department's organization, services and personnel,
13 and for the orderly and efficient administration, enforce-
14 ment and execution of the provisions of this chapter and
15 all laws vesting authority or powers in or prescribing
16 duties or functions for the department or the commis-
17 sioner.

18 (b) The commissioner shall:

19 (1) Maintain the office for the department at the state
20 capitol, and there keep a complete record of all the de-
21 partment's transactions, of the financial conditions of all
22 financial institutions and such records of the activities
23 of other persons as the commissioner may deem important.
24 Notwithstanding any other provision of the code of West
25 Virginia, heretofore or hereafter enacted, the records
26 relating to the financial condition of any financial institu-
27 tion and any information contained therein shall be confi-
28 dential for the use of the commissioner and authorized
29 personnel of the department of banking. No person shall
30 divulge any information contained in any such records
31 except in response to a valid subpoena or subpoena duces
32 tecum issued pursuant to law. The commissioner shall
33 have and may exercise reasonable discretion as to the
34 time, manner and extent the other records in his office
35 and the information contained therein shall be available
36 for public examination.

37 (2) Require all financial institutions to comply with

38 all the provisions of this chapter and other applicable
39 laws, or any rule and regulation promulgated or order
40 issued thereunder.

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

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

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

55 (2) Employ, direct, discipline, discharge and establish
56 qualifications and duties for all personnel for the depart-
57 ment, including, but not limited to, examiners, assistant
58 examiners, conservators and receivers, to establish the
59 amount and condition of bonds for such thereof as he
60 deems appropriate and to pay the premiums thereon, and
61 if he so elects, to have all such personnel subject to and
62 under the classified service of the state personnel depart-
63 ment;

64 (3) To cooperate with organizations, agencies, com-
65 mittees and other representatives of financial institutions
66 of the state in connection with schools, seminars, con-
67 ferences and other meetings to improve the responsibili-
68 ties, services and stability of the financial institutions;

69 (4) In addition to the examinations required by sec-
70 tion six of this article, to inspect, examine and audit the
71 books, records, accounts and papers of all financial institu-
72 tions at such times as circumstances in his opinion may
73 warrant;

74 (5) To call for and require all such data, reports and
75 information from financial institutions under his jurisdic-
76 tion, at such times and in such form, content and detail,
77 deemed necessary by him in the faithful discharge of his

78 duties and responsibilities in the supervision of the finan-
79 cial institutions;

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

85 (A) Maintain their accounts consistent with such regu-
86 lations as he may prescribe and in accordance with gen-
87 erally accepted accounting practices;

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

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

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

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

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

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

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

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

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

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

111 (7) Subject to the powers vested in the board by
112 article three of this chapter, to receive from any person
113 or persons and to consider any request, petition or appli-
114 cation relating to the organization, location, conduct, serv-
115 ices, policies and procedures of any financial institution

116 and to act thereupon in accordance with any provisions
117 of law applicable thereto;

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

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

130 (10) To study and survey the location, size and serv-
131 ices of financial institutions, the geographic, industrial,
132 economic and population factors affecting the agricul-
133 tural, commercial and social life of the state, and the
134 needs for reducing, expanding or otherwise modifying
135 the services and facilities of financial institutions in the
136 various parts of the state, and to compile and keep current
137 data thereon to aid and guide him in the administration
138 of the duties of his office;

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

145 (12) To foster and encourage a working relationship
146 between the department of banking and financial institu-
147 tions, credit, consumer, mercantile and other commercial
148 and finance groups and interests in the state in order to
149 make current appraisals of the quality, stability and
150 availability of the services and facilities of financial insti-
151 tutions;

152 (13) To provide to financial institutions and the public
153 copies of the West Virginia statutes relating to financial
154 institutions, suggested drafts of bylaws commonly used

155 by financial institutions, and such other forms and printed
156 materials as may be found by him to be helpful to finan-
157 cial institutions, their stockholders, depositors and pa-
158 trons, and to make reasonable charges therefor;

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

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

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

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

181 (15) To take such other action as he may deem neces-
182 sary to enforce and administer the provisions of this
183 chapter (except the provisions of article three) and all
184 other laws which he is empowered to administer and
185 enforce, and to apply to any court of competent jurisdic-
186 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.**

1 (a) No person shall engage or continue in the business
2 of a financial institution in this state without a license or

3 certificate to do so issued in accordance with this section,
4 or other applicable law, which license or certificate re-
5 mains unsuspended, unexpired and unrevoked except that
6 a corporation which proposes to apply for such license or
7 certificate may secure its charter, adopt bylaws, elect its
8 directors and officers and perfect its organization.

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

20 (c) If the application be that of a banking institution,
21 the commissioner of banking shall examine the informa-
22 tion, documents and statements submitted and, if he
23 finds that such banking institution has adopted bylaws
24 which provide practical, safe, just and equitable rules
25 and methods for the management of its business and it
26 has complied in all respects with the provisions of this
27 chapter and other applicable laws, he shall issue to it a
28 certificate or license permitting it to engage in busi-
29 ness. If the application be that of a financial institution
30 other than a banking institution, the commissioner of
31 banking shall examine the information, documents and
32 statements submitted, and, if he finds that such financial
33 institution has adequate resources for the proposed busi-
34 ness and has provided practical, safe, just and equitable
35 rules and methods for the management of its business,
36 and it has complied in all respects with the provisions of
37 this chapter and other applicable laws, and that the
38 public convenience and advantage will be promoted by
39 the issuance of a certificate or license thereto, he shall
40 issue to it a certificate or license permitting it to engage
41 in business. Such certificate or license shall be preserved
42 and displayed in the place of business of such banking
43 or other financial institution.

44 (d) In addition to the requirements of subsection (b) of
45 this section, every foreign corporation applying for a
46 license or certificate to engage in the business of a
47 financial institution in this state shall file with the com-
48 missioner of banking a copy of the laws of the juris-
49 diction under which it is organized which pertain to its
50 organization and powers and the conduct of its business.
51 The commissioner shall examine the information, docu-
52 ments and statements submitted by such foreign corpora-
53 tion and if he finds that they provide practical, safe, just
54 and equitable rules and methods for the management of
55 the business of the corporation, that it has adequate re-
56 sources for the proposed business and it has complied in
57 all respects with the provisions of this chapter and other
58 applicable laws, and that the public convenience and ad-
59 vantage will be promoted by the issuance of a license or
60 certificate thereto, he shall issue to such corporation a
61 certificate or license permitting it to engage in business
62 in this state, which certificate or license shall authorize
63 such corporation to engage in the business of the type of
64 financial institution specified therein, until the thirtieth
65 day of the following June. Thereafter a new certificate
66 or license shall be secured annually by any such foreign
67 corporation. The fee for the original and each addition-
68 al license or certificate issued to a foreign corporation
69 shall be one hundred dollars, unless otherwise provided
70 by statute. A verified statement of the financial condition
71 of every such foreign corporation shall be filed with the
72 commissioner before the issuance of each annual certifi-
73 cate or license. Such certificate or license shall be pre-
74 served and displayed in the place of business of such
75 corporation.

76 (e) No amendment of the charter or bylaws of any
77 domestic or foreign corporation engaging in business in
78 this state as a financial institution shall become effective
79 until the proposed change shall have been submitted
80 to and approved by the commissioner of banking; but, if
81 the commissioner does not disapprove such proposed
82 change within twenty days after it is received by him, it
83 shall be deemed to have been approved. A certified copy

84 of the amendment of any statute of another state govern-
85 ing such a foreign corporation shall be filed with the
86 commissioner of banking by such foreign corporation
87 within thirty days after such amendment becomes effec-
88 tive in such other state.

89 (f) Nothing contained in this code shall authorize any
90 person to engage in the banking business in this state
91 except corporations chartered to conduct a banking busi-
92 ness under the laws of West Virginia and which hold a li-
93 cense or certificate to do so issued under this section or as-
94 sociations authorized to conduct a banking business in
95 West Virginia under the laws of the United States and
96 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
10 detail of all of its assets and liabilities. The commissioner
11 may also make such examination of any subsidiaries or
12 affiliates of a financial institution as he may deem neces-
13 sary to ascertain the financial condition of such financial
14 institution, the relations between such financial institution
15 and its subsidiaries and affiliates and the effect of such re-
16 lations upon the affairs of such financial institution. A full
17 report of every such examination shall be made and filed
18 and preserved in the office of the commissioner and a copy
19 thereof forthwith mailed to the institution examined.
20 Every such institution shall retain all of its records of final
21 entry for such period of time as required in section
22 thirty-five of article four of this chapter for banking
23 institutions.

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

36 The commissioner of banking, in his discretion, may
37 accept a copy of a reasonably current examination of
38 any banking institution made by the federal deposit
39 insurance corporation or the federal reserve system in
40 lieu of an examination of such banking institution re-
41 quired or authorized to be made by the laws of this
42 state, and the commissioner may furnish to the federal
43 deposit insurance corporation or the federal reserve
44 system, or to any official or examiner thereof, any copy
45 or copies of the commissioner's examinations of and
46 reports on such banking institutions, but nothing herein
47 shall be construed to limit the duty and responsibility
48 of banking institutions to comply with all provisions of
49 law relating to examinations and reports, nor to limit
50 the powers and authority of the commissioner of bank-
51 ing with reference to examinations and reports under
52 existing laws.

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

1 All officers, directors, employees and other persons
2 connected with any financial institution, upon request
3 of the commissioner of banking, or his duly authorized
4 representative, shall furnish and give full access to
5 all of the books, papers, notes, bills, and other evidences
6 of debts due to the institution; produce and furnish all
7 documents, records, writings and papers relating to the
8 business of the institution which the commissioner is

9 required to examine; disclose fully, accurately and in
10 detail all of the debts and liabilities of the institution;
11 and furnish such clerical aid and assistance as may be
12 required in the performance of the commissioner's duties
13 as provided by law. The commissioner or his repre-
14 sentative, as the case may be, shall have the right and
15 authority to administer oaths and to examine under
16 oath each officer, director, employee or other person
17 connected with the institution concerning any matter and
18 thing pertaining to the business and condition of such
19 institution.

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

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

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

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

15 (c) If any such examination be made at a place out-
16 side of this state, the fees, costs and expenses shall be as
17 above provided, except that there shall be an additional
18 charge for mileage and travel expense as provided and
19 allowed by law for state agencies and employees.

20 (d) The commissioner of banking may maintain an
21 action for the recovery of all such fees, costs and
22 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.**

1 Whenever it appears that any law, rule and regulation
2 or order applicable to any financial institution is being
3 violated, or that any irregularities exist or unsound prac-
4 tices or procedures are being engaged in, it shall be the
5 duty of the commissioner of banking to promptly call the
6 same to the attention of the officers and directors of the
7 financial institution offending and to demand that the
8 same be promptly corrected; and he may require a sworn
9 statement from the said officers and directors covering the
10 matter of all such violations and of all such irregularities,
11 unsound practices or procedures to be furnished to him
12 as often as he may deem necessary, until he is satisfied
13 that such violations have ceased and that the irregulari-
14 ties, unsound practices or procedures complained of have
15 been corrected. Such reports shall not be made public.

16 If any such institution owns any asset, the value of
17 which, in the judgment of the commissioner of banking,
18 is questionable, or owns past-due obligations, the com-
19 missioner of banking may require the assets of doubtful
20 value to be at once converted into money or charged off
21 of the books of the financial institution at the expiration
22 of three months from the date of such order; or require
23 legal proceedings to be at once instituted for the collec-
24 tion of any past-due obligations to the financial institution
25 or that they be charged off.

26 Upon the written notice of the commissioner of banking,
27 the directors of any financial institution shall call a gen-
28 eral meeting of the stockholders thereof to consider such
29 matters as the commissioner may prescribe. Notice of
30 such meeting shall be given in accordance with applicable
31 statutes and the bylaws of the financial institution. The
32 expense of such meeting and notice thereof shall be borne
33 by the financial institution whose stockholders are so
34 required to convene.

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

1 Every financial institution other than banking institu-
2 tions shall furnish to the commissioner of banking, at
3 least twice each year and within fifteen days after his
4 request therefor, a statement, verified by its president or
5 secretary, and approved by three of its directors, in such
6 form as may be prescribed by the commissioner of bank-
7 ing, showing in detail the actual financial condition and
8 the amount of the assets and liabilities of such financial
9 institution, and shall furnish such other information as to
10 its business and affairs as the commissioner of banking
11 may require, which reports, in the same form in which
12 they are transmitted to the commissioner of banking,
13 shall be printed and circulated among all of the stock-
14 holders of the financial institution and published as a
15 Class I legal advertisement in compliance with the pro-
16 visions of article three, chapter fifty-nine of this code,
17 and the publication area for such publication shall be the
18 county in which the financial institution is located.

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

1 Any state banking institution, all of whose business is
2 conducted entirely outside of the state of West Virginia,
3 shall not be subject to supervision by the department of
4 banking or the commissioner of banking, and shall not
5 be required to make any reports to it or him, or to pub-
6 lish such reports, and no consent or authority of the
7 commissioner shall be necessary or required as to any
8 of the acts and practices of such nonresident banks in
9 and about the conduct of their business outside of the
10 state of West Virginia, and the commissioner of banking
11 shall not be responsible for any acts or practices of such
12 nonresident banks. The officers and directors of such
13 nonresident banking institutions may all be nonresidents
14 of the state of West Virginia and such nonresident bank-
15 ing institutions may conduct the banking business at such
16 place or places outside of the state of West Virginia as
17 they may be permitted under the laws of the jurisdiction
18 in which such place or places are situated. The restric-

19 tions in the banking laws of this state contained as to
20 establishment and maintenance of branch banks shall not
21 applicable to said nonresident banks, but no non-
22 resident bank shall operate or maintain any branch bank
23 in this state. The provisions, requirements, restrictions
24 and limitations in the banking laws contained relative
25 to the capital stock, either authorized or issued, and to the
26 increase thereof, to the acquisition and holding of real
27 estate, to the oath and qualifications of directors, to loans
28 and the property, real or personal, upon the security of
29 which loans may be made, to the borrowing of money
30 by banking institutions and the hypothecation of securi-
31 ties or other property for the same, to reserves, and to
32 dividends and all other restrictions and limitations of the
33 banking laws of this state, shall not apply to said non-
34 resident banks.

35 No provision of this section shall be construed as re-
36 lieving such nonresident banks from compliance with
37 the laws of the jurisdiction in which they may conduct
38 business. The provisions of this section shall not be ap-
39 plicable to any banking institution any part of whose
40 actual business is conducted within the state of West
41 Virginia, and nothing in this section contained shall be
42 interpreted as rendering any laws now in force or here-
43 after enacted inapplicable to banking institutions doing
44 actual business in the state of West Virginia. Subse-
45 quently enacted legislation shall be construed as appli-
46 cable only to banking institutions having a place of busi-
47 ness in this state, unless a contrary intent specifically or
48 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

10 making such remarks, suggestions and recommendations
11 as he may deem pertinent, including recommendations
12 on policy, administration and legislation pertaining to all
13 financial institutions.

14 Such report shall be verified by the affidavit of said com-
15 missioner, who shall swear that, in making the exami-
16 nation of each financial institution he, or a qualified
17 person in his department appointed by him, has person-
18 ally and carefully inspected the books, papers and affairs
19 of the institution, or in the case of any banking institu-
20 tion, that he has accepted a reasonably current exami-
21 nation made by the federal deposit insurance corpora-
22 tion or the federal reserve system in lieu of conducting
23 such an examination, and that he has not, and, so far as
24 he knows or is informed, no person in his department has,
25 in any case received or agreed to receive directly or in-
26 directly any reward, gift, or promise thereof, from any
27 officer or other person connected with any financial in-
28 stitution.

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

1 If any financial institution other than a state bank
2 shall fail or refuse to comply with any order of the com-
3 missioner, entered pursuant to the provisions of para-
4 graphs (A) or (B), subdivision (14), subsection (c),
5 section four of this article, the commissioner may make
6 and enter an order revoking the certificate of authority,
7 permit or license of such institution to engage in the
8 business of a financial institution in this state, or, at his
9 election, may apply to any court having jurisdiction for
10 a prohibitory or mandatory injunction or other appro-
11 priate remedy to compel obedience to such order.

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

1 No officer or employee of the department of banking
2 shall be an officer, director, trustee, attorney, owner,
3 shareholder, or partner in or of any financial institution.
4 Nor shall any officer or employee of the department re-
5 ceive, directly or indirectly, any payment or gratuity

6 from any financial institution, or be engaged in any man-
7 ner in the negotiation of loans for others therewith.

**ARTICLE 3. BOARD OF BANKING AND FINANCIAL INSTITU-
TIONS.**

§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.

1 (a) There is hereby created the West Virginia board
2 of banking and financial institutions which shall consist
3 of six members and the commissioner, who shall be
4 chairman. The six members shall be appointed by the
5 governor by and with the advice and consent of the
6 Senate. Three of the members shall be executive officers
7 of state banking institutions, of whom one shall be truly
8 representative of such state banking institutions having
9 assets not greater than ten million dollars, one shall be
10 truly representative of such state banking institutions
11 having total assets greater than ten million dollars but
12 not greater than twenty-five million dollars, and one shall
13 be truly representative of such banking institutions hav-
14 ing total assets greater than twenty-five million dollars.
15 One member shall be an executive officer of a financial
16 institution other than a banking institution. Two members
17 shall represent the public, neither of whom shall be an em-
18 ployee, officer, trustee, director or stockholder of any fi-
19 nancial institution. No member shall hold any other office,
20 employment or position with the United States, any
21 state, county, municipality or other governmental entity
22 or any instrumentality or agency of any of the foregoing
23 or with any political party.

24 (b) The members of the board shall be appointed for
25 overlapping terms of six years, except that of the original

26 appointments, two members shall be appointed for a term
27 of two years, two members shall be appointed for a term
28 of four years and two members shall be appointed for a
29 term of six years, and in every instance until their re-
30 spective successors have been appointed and qualified.
31 Any member appointed for a full six-year term may not
32 be reappointed until two years after the expiration of
33 such term. Any member appointed for less than a full
34 six-year term shall be eligible for reappointment for a
35 full term. Before entering upon the performance of his
36 duties each member shall take and subscribe to the oath
37 required by section 5, article IV, of the constitution of
38 the state of West Virginia. The governor shall, within
39 sixty days following the occurrence of a vacancy on the
40 board, fill the same by appointing a person for the un-
41 expired term of, and meeting the same requirements for
42 membership as, the person vacating said office. Any
43 member may be removed by the governor in case of
44 incompetency, neglect of duty, gross immorality or mal-
45 feasant in office.

46 (c) A majority of the members of the board shall con-
47 stitute a quorum. The board shall meet at least once in
48 each calendar quarter on a date fixed by the board. The
49 commissioner may, upon his own motion, or shall upon
50 the written request of three members of the board, call
51 additional meetings of the board upon at least twenty-
52 four hours' notice. No member shall participate in a pro-
53 ceeding before the board to which a corporation, partner-
54 ship or unincorporated association is a party, and of which
55 he is or was at any time in the preceding twelve months
56 a director, officer, owner, partner, employee, member or
57 stockholder. A member may disqualify himself from
58 participation in a proceeding for any other cause
59 deemed by him to be sufficient. Each member shall re-
60 ceive fifty dollars for each day or portion thereof spent
61 in attending meetings of the board and shall be reim-
62 bursed for all reasonable and necessary expenses in-
63 curred incident to his duties as a member of the board.

64 (d) The board shall keep an accurate record of all its
65 proceedings and make certificates thereupon as may be
66 required by law. The commissioner shall make available

67 necessary office space and secretarial and other assist-
68 ance as the board may reasonably require.

§31A-3-2. General powers and duties.

1 (a) In addition to other powers conferred by this
2 chapter, the board shall have the power to:

3 (1) Regulate its own procedure and practice;

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

9 (3) Advise the commissioner in all matters within his
10 jurisdiction;

11 (4) Study the organization, programs and services of
12 financial institutions and the laws relating thereto in this
13 state and in other jurisdictions, and to report and recom-
14 mend to the governor and the Legislature all such
15 changes and amendments in laws, policies and procedures
16 relating thereto as may be by it deemed proper; and

17 (5) Grant permission and authority to a financial in-
18 stitution:

19 (A) To participate in a public agency hereafter cre-
20 ated under the laws of this state or of the United States,
21 the purpose of which is to afford advantages or safe-
22 guards to financial institutions or to depositors therein,
23 and to comply with all lawful requirements and condi-
24 tions imposed upon such participants;

25 (B) To engage in any financial institution activity,
26 services, procedures and practices in which financial in-
27 stitutions of the same type subject to the jurisdiction of
28 the federal government may hereafter be authorized by
29 federal laws, rules or regulations to engage, notwithstand-
30 ing any contrary provision of this code: *Provided, how-*
31 *ever,* That no such permission or authority shall be grant-
32 ed to any banking institution to install or maintain any
33 branch bank or engage in business at any place other than
34 its principal office in this state in contravention of the
35 provisions of section twelve, article eight of this chapter;

36 (C) To pay interest on demand deposits of the United
37 States or any agency thereof, if the payment of such
38 interest shall be permitted under any applicable federal
39 law, rule or regulation.

40 Any permission and authority granted by the board
41 pursuant to this subdivision (5) shall cease and termi-
42 nate upon the adjournment of the next regular session
43 of the Legislature, unless the Legislature shall at such
44 session enact legislation authorizing the financial insti-
45 tution participation, activity, services and procedures or
46 payment of interest with respect to which such permis-
47 sion and authority was granted, in which event such per-
48 mission and authority shall continue in effect until the
49 effective date of such legislation.

50 (b) The board shall further have the power, by en-
51 tering appropriate orders, to:

52 (1) Restrict the withdrawal of deposits from any
53 financial institution when in the judgment of the board
54 extraordinary circumstances make such restrictions nec-
55 essary for the protection of creditors of and depositors in
56 the affected institution;

57 (2) Compel the holder of shares in any corporate
58 financial institution to refrain from voting said shares on
59 any matter when in the judgment of the board such
60 order is necessary to protect the institution against reck-
61 less, incompetent or careless management, to safeguard
62 funds of depositors in the institution, or to prevent wil-
63 ful violation of any applicable law or of any rule and
64 regulation or order issued thereunder. In such a case
65 the shares of such a holder shall not be counted in de-
66 termining the existence of a quorum or a percentage of
67 the outstanding shares necessary to take any corporate
68 action;

69 (3) Approve or disapprove applications to incorporate
70 and organize state banking institutions in accordance
71 with the provisions of sections six and seven of article
72 four of this chapter;

73 (4) Revoke the certificate of authority, permit, cer-
74 tificate or license of any state banking institution to
75 engage in business in this state if such institution shall

76 fail or refuse to comply with any order of the commis-
77 sioner entered pursuant to the provisions of paragraphs
78 (A) or (B), subdivision (14), subsection (c), section
79 four of article two of this chapter, or at the board's
80 election to direct the commissioner to apply to any
81 court having jurisdiction for a prohibitory or mandatory
82 injunction or other appropriate remedy to compel obedi-
83 ence to such order; and

84 (5) Suspend or remove a director, officer or em-
85 ployee of any financial institution who is or becomes
86 ineligible to hold such position under any provision of
87 law or rule and regulation or order, or who wilfully
88 disregards or fails to comply with any order of the board
89 or commissioner made and entered in accordance with
90 the provisions of this chapter or who is dishonest or
91 grossly incompetent in the conduct of financial institution
92 business.

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

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

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

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

19 (b) After any such hearing and consideration of all
20 of the testimony and evidence, the board shall make and

21 enter an order deciding the matters with respect to which
22 such hearing was conducted, which order shall be accom-
23 panied by findings of fact and conclusions of law as
24 specified in section three, article five, chapter twenty-
25 nine-a of this code, and a copy of such order and accom-
26 panying findings and conclusions shall be served upon
27 all parties to such hearing, and their attorneys of record,
28 if any.

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

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

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

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

1 (a) Any party to a hearing before the board adversely
2 affected by any order of the board made and entered after

3 a hearing as provided in section three, article three of
4 this chapter shall be entitled to judicial review thereof
5 in the manner provided in section four, article five, chap-
6 ter twenty-nine-a of this code.

7 (b) Any such party adversely affected by a final judg-
8 ment of a circuit court following judicial review as pro-
9 vided in subsection (a) of this section may seek review
10 thereof by appeal to the supreme court of appeals in the
11 manner provided in article six, chapter twenty-nine-a of
12 this code.

ARTICLE 4. BANKING INSTITUTIONS AND SERVICES GENER- ALLY.

- §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 mortgages 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
2 the provisions of chapter thirty-one of the code of West
3 Virginia, shall govern banking institutions and the char-
4 tering thereof, except as otherwise provided in or where
5 inconsistent with the provisions of this chapter.

6 No charter shall issue in this state for any banking
7 institution, unless the application therefor shall have been
8 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
2 institution, shall use or advertise in connection with such
3 business, or as a designation or title thereof, the term
4 "bank," "banker," "banking," "banking company," "in-
5 dustrial bank," "savings bank," or "trust company," or
6 engage in the banking or trust business in this state.

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

14 Any violation of the provisions of this section shall con-
15 stitute a misdemeanor offense, punishable as provided in
16 section fifteen of article eight of this chapter.

17 The commissioner of banking or any one or more bank-
18 ing institutions, acting individually or jointly, may peti-
19 tion the circuit court of the county in which any violation
20 of the provisions of this section occur or are threatened
21 to occur for injunction or other appropriate judicial
22 remedies for enforcement of the provisions hereof and
23 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 incor-
2 porated unless it shall have a bona fide subscribed capital
3 stock of:

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

7 (2) At least seventy-five thousand dollars, if the popu-
8 lation of the community in which the bank is to be located
9 be more than three thousand, but not more than six
10 thousand;

11 (3) At least one hundred thousand dollars, if the popu-
12 lation of the community in which the bank is to be located
13 be more than six thousand but not more than twenty-
14 five thousand;

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

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

22 The population figures as herein specified shall be ascer-
23 tainable from and be based upon the latest available
24 United States census.

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

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

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

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

1 All of the capital stock of every banking institution,
2 chartered under the laws of this state, shall be paid in
3 full in cash before it shall be authorized to engage in busi-
4 ness, except such business as is incidental and necessarily
5 preliminary to its organization, except that with the ap-

6 proval of the commissioner, the charter of any state bank,
7 now or hereafter organized, may provide that not to ex-
8 ceed five percent of the bank's authorized capital stock
9 may be unissued stock. Such authorized but unissued
10 stock may be issued from time to time to employees of the
11 bank pursuant to a stock option or stock purchase plan
12 approved by the commissioner or may be issued for such
13 other purposes and consideration as may be approved by
14 the board of directors of said bank.

15 Each subscriber at the time he subscribes to the stock
16 of a proposed banking institution shall pay in cash a sum
17 at least equal to five percent of the par value of such
18 stock into a fund to be used to defray the expenses of
19 organization of said institution. No organizational ex-
20 penses shall be paid out of any other funds of the bank. No
21 part of said organizational expense fund shall be used for
22 the payment of any fee, compensation or commission for
23 promotion in connection with the institution's organiza-
24 tion or for obtaining subscriptions, selling shares or other
25 services in connection with its organization, except legal
26 fees and other usual and ordinary expenses necessary for
27 its organization. Upon the grant of a charter to the institu-
28 tion any unexpended balance in the organizational ex-
29 pense fund shall be transferred to undivided profits of the
30 institution. If the charter application is finally denied, any
31 unexpended balance in said fund shall be distributed
32 among the contributors in proportion to their respective
33 payments.

34 A majority of the incorporators shall file with the board
35 at the time of filing of the charter application an affidavit:
36 (1) Setting forth all expenses incurred or to be incurred
37 in connection with the organization of the institution,
38 subscriptions for its shares and sale of its shares, and (2)
39 stating that no fee, compensation or commission pro-
40 hibited by this section has been or will be paid or in-
41 curred. The board may disapprove the charter applica-
42 tion on account of any violation of this section and order
43 the incorporators to restore any sum expended for other
44 than proper organizational expense. In addition, viola-
45 tions hereof shall constitute a misdemeanor offense

46 punishable as prescribed in section fifteen, article eight
47 of this chapter.

48 Unless otherwise provided in the charter, whenever
49 additional stock is offered for sale, stockholders of record
50 on the date of the offer shall have the right to subscribe
51 to such proportion of the shares as the stock held by
52 them bears to the total of the outstanding stock. This
53 right shall be transferable but shall terminate if not
54 exercised within sixty days of the offer. If the right be
55 not exercised, the stock shall not be offered for sale to
56 others at a lower price without the stockholders again
57 being accorded a preemptive right to subscribe. No bank-
58 ing institution shall sell its shares of stock at less than
59 par, but may sell its shares at such price above par as
60 may be set by the board of directors. The preemptive
61 rights of the stockholders, as provided in this paragraph,
62 shall not apply to any stock issued by a banking institu-
63 tion, to another bank or financial institution or the stock-
64 holders thereof, pursuant to a merger or consolidation
65 with such other bank or financial institution, or to autho-
66 rized but unissued stock authorized by the charter of the
67 banking institution.

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

1 A state bank may be organized by five or more in-
2 corporators, a majority of whom shall be residents of the
3 state of West Virginia. Such banking institution shall
4 have as a part of its corporate name or title one or more
5 of the following words indicative of the business which
6 it is authorized to conduct, namely, "bank," "banking com-
7 pany," "banking association," "trust company," "banking
8 and trust company" or "bank and trust company."

9 The incorporators shall file with the board an agree-
10 ment of incorporation, in duplicate, following generally
11 the form prescribed by the secretary of state for charter-
12 ing corporations under provisions of article one of chapter
13 thirty-one of this code. The information set forth in the
14 agreement shall include the following:

15 (1) The name of the proposed bank;

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

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

21 (4) The name, residence and occupation of each in-
22 corporator, and the amount of capital stock subscribed
23 and paid for by each;

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

27 (6) The total authorized capital stock of the institu-
28 tion.

29 The agreement of incorporation shall be signed and
30 acknowledged by each of the incorporators and, when
31 filed with the board, shall be accompanied by the statu-
32 tory corporation charter fees, and an examination and
33 investigation fee of five hundred dollars payable to the
34 board. When transmitting the agreement to the board,
35 the incorporators shall designate by name and give the
36 address of the attorney, agent or other responsible party
37 with whom the board may communicate, on whom the
38 board may call for further information, and to whom the
39 board may officially report as to action on the agreement
40 so filed with him. The agreement shall constitute and
41 may be considered and treated by the board as an appli-
42 cation for the board's approval to incorporate and organ-
43 ize a banking institution in this state.

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

1 (a) When an agreement of incorporation, fully com-
2 plying with the requirements of this article, has been
3 filed with the board, it shall promptly make or cause to
4 be made a careful examination and investigation rela-
5 tive to the following:

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

9 (2) The need for the facilities and services which the

10 proposed bank will offer in the community where it is
11 to be located, giving particular consideration to the
12 adequacy of existing banking and trust facilities and
13 services;

14 (3) The present and future ability of the community
15 to support the proposed bank and all other existing
16 banking and trust facilities and services in the com-
17 munity;

18 (4) The character, financial responsibility, banking
19 experience and business qualifications of the proposed
20 officers; and

21 (5) The character, financial responsibility, business
22 experience and standing of the proposed stockholders
23 and directors.

24 (b) The board shall approve or disapprove the appli-
25 cation, in the exercise of its reasonable discretion, but
26 shall not approve such application unless it finds:

27 (1) Public convenience and advantage will be pro-
28 moted by the establishment of the proposed bank;

29 (2) Local conditions assure reasonable promise of
30 successful operation for the proposed bank and those
31 banks already established in the community;

32 (3) The proposed capital structure is adequate;

33 (4) The proposed officers and directors have sufficient
34 banking experience and trust experience (if the bank
35 proposes to engage in the trust business), ability, charac-
36 ter and standing to assure reasonable promise of suc-
37 cessful operation;

38 (5) The name of the proposed bank or trust company
39 is not so similar as to cause confusion with the name of
40 an existing bank; and

41 (6) Provision has been made for suitable banking
42 house quarters in the community specified in the appli-
43 cation.

44 (c) In the course of its examination and investigation,
45 the board may call upon the attorney, agent or other re-
46 sponsible person representing the incorporators and upon
47 the incorporators for additional information and disclos-
48 ures it deems necessary in taking appropriate action on
49 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.

1 The board shall complete its examination and investi-
2 gation within ninety days from and after the date on
3 which the agreement of incorporation is filed with it,
4 unless it requests in writing additional information and
5 disclosures concerning the proposed banking institution
6 from the incorporators, in which event the period of
7 ninety days shall be extended for an additional period
8 of thirty days.

9 Upon completion of such examination, the board shall
10 forthwith make and proceed to give notice, hold a hear-
11 ing and enter an order approving or disapproving the
12 application in the manner provided in section three,
13 article three of this chapter. Such order shall be accom-
14 panied by findings of fact and conclusions of law on which
15 such approval or disapproval is based. If no judicial
16 review of such order is sought in the time provided
17 therefor and (1) such order disapproves the application,
18 the agreement of incorporation, the corporation char-
19 tering fees, and any other papers filed therewith shall
20 thereupon be promptly returned to the attorney, agent
21 or other responsible person representing the incorporators
22 in the application or (2) if such order approves such
23 application, the agreement of incorporation with a cer-
24 tified copy of the board's order and the accompanying
25 corporation charter fees shall thereupon be transmitted
26 to the secretary of state for processing as in the case
27 of any other corporate charter application. Upon issuance
28 of the charter to a banking institution, the incorporators
29 shall promptly comply with the provisions of section
30 five of article two of this chapter, preliminary to the
31 commissioner's issuance of a permit or license to engage
32 in business in this state, and shall likewise comply with
33 other provisions of this chapter relating to completion
34 of its corporate organization, and the corporation's readi-
35 ness 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
2 board of not less than five nor more than twenty-five
3 directors, who shall meet at least once each month and
4 who shall have power to do, or cause to be done, all
5 things that are proper to be done by the banking insti-
6 tution; and a majority of whom shall at all times be
7 residents of this state. Every such director shall own
8 in his own right shares of the aggregate par value of not
9 less than five hundred dollars, of the capital stock of
10 the banking institution of which he is a director, and,
11 before entering on the discharge of his duties as such
12 director, he shall take an oath that he will, so far as the
13 duty devolves upon him, diligently and honestly admin-
14 ister the affairs of the banking institution, and that he
15 will not knowingly or willingly permit to be violated
16 any of the provisions of the laws of this state relative
17 to banking and banking institutions, and that the stock
18 standing in his name upon the books of the banking
19 institution is not hypothecated or pledged in any way
20 as security for loans obtained from or debts owing to
21 the banking institution of which he is a director, and
22 that the number of shares necessary to qualify a stock-
23 holder to be a director are not now, and shall not at
24 any time while he serves as a director be pledged or
25 hypothecated in any manner for any debt or obligation
26 of the director, or any other person; which oath sub-
27 scribed by him and certified by the officer before whom
28 it was taken shall be filed and preserved in the office
29 of the commissioner of banking. Should a director fail
30 to subscribe to the oath herein provided for within sixty
31 days after notice of his election, or at any time after
32 qualifying as such, sell or dispose of, or in any manner
33 hypothecate or pledge as security for a debt or obliga-
34 tion, such qualifying shares, or any number thereof,
35 necessary for his qualification, thereupon the remaining
36 directors shall elect another director in his stead. No
37 person shall serve as a director of any banking institu-
38 tion who has evidenced personal dishonesty and unfitness
39 to serve as such director by his conduct or practice with

40 another financial institution which resulted in a substan-
41 tial financial loss or damage thereto or who has been con-
42 victed of any crime involving personal dishonesty.

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

1 (a) The directors of a state bank shall direct and re-
2 quire good and sufficient fidelity bonds on all active
3 officers and employees, whether or not they draw salary
4 or compensation, which bonds shall provide for indemnity
5 to such bank on account of any losses sustained by it
6 as the result of any dishonest, fraudulent or criminal act
7 or omission committed or omitted by them acting inde-
8 pendently or in collusion or combination with any person
9 or persons. Such bonds may be in individual, schedule
10 or blanket form, and the premiums therefor shall be paid
11 by the bank.

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

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

§31A-4-10. List of stockholders.

1 The president, cashier, or other executive officer of
2 every state banking institution shall cause to be kept at
3 all times a full and correct list of the names and post-
4 office addresses of all of the stockholders of the banking
5 institution, and the number of shares owned by each, in
6 the office where its business is transacted. Such list shall
7 be open to inspection by all of the stockholders of the
8 banking institution, and the officers authorized by law to
9 assess taxes, during business hours of each day, except
10 Sundays and holidays. A copy of such list shall be made

11 on the first Monday in July of each year and verified by
12 the oath of the president, cashier, or other executive
13 officer and immediately transmitted by mail to the com-
14 missioner of banking at his office.

§31A-4-11. Liability of stockholders.

1 Each stockholder of any state banking institution, in
2 addition to the liability imposed upon him as a stock-
3 holder of a corporation under the provisions of article
4 one of chapter thirty-one of this code, shall be liable to
5 the creditors of the banking institution, on obligations
6 accruing while he is a shareholder, to an amount equal
7 to the par value of the shares of stock held by him; and
8 no sale or transfer of the shares of stock made by any
9 such stockholder, after the liability of the banking insti-
10 tution originated or accrued, shall relieve the stockholder
11 from the liability imposed by this section. Any proceed-
12 ing to enforce the liability of stockholders imposed by
13 this section may be prosecuted severally against any one
14 stockholder or jointly against any number of stockholders.
15 But the additional liability imposed upon such stock-
16 holders by provisions of this section shall not apply with
17 respect to any such institution so long as such institution,
18 pursuant to law, has its deposits insured by the federal
19 deposit insurance corporation or by any other similar
20 federal instrumentality or agency hereafter created and
21 in existence for that purpose. Nor shall such additional
22 liability apply with respect to any banking institution
23 from and after the time it shall obtain from the commis-
24 sioner of banking a certificate setting forth that such
25 institution has, as ascertained by him, an unimpaired sur-
26 plus equal to at least fifty percent of the authorized
27 capital of such institution. Upon application by any state
28 banking institution to the commissioner of banking for
29 such certificate, the commissioner shall ascertain whether
30 such institution has in fact such unimpaired surplus, and
31 if such unimpaired surplus be found by him to exist, then
32 he shall issue such certificate. If impairment of such
33 surplus shall thereafter occur, such impairment shall not
34 impose further or additional liability upon the stock-
35 holders of such institution.

36 Nothing in this section shall affect or impair the au-
37 thority of the officers and directors of a banking institu-
38 tion to cause to be made good any impairment of the
39 capital of such institution, under the provisions of the
40 next succeeding section of this article.

**§31A-4-12. Impairment of capital forbidden; remedies; assess-
ments; sale of stock.**

1 The officers and directors of a state banking institution
2 shall not pay out, disburse or withdraw, or permit to be
3 paid out, disbursed or withdrawn, in any manner what-
4 ever, any part of the capital of the corporation except in
5 case of merger or consolidation, as hereinafter provided.
6 Whenever, from any cause, the capital of such banking
7 institution shall become impaired, it shall be the duty of
8 the officers and directors of such institution, forthwith,
9 to cause any such impairment to be made good, by as-
10 sessing the amount of the deficiency pro rata on the
11 shares of the capital stock outstanding, which assessments
12 shall be paid within thirty days after notice thereof. If
13 any stockholder shall neglect or refuse to pay the assess-
14 ment on his shares after thirty days' notice, it shall be
15 the duty of the board of directors to cause a sufficient
16 number of his shares of stock to be sold for cash, at
17 public sale at the banking room of the banking institution.

18 Notice of such sale shall be published as a Class II
19 legal advertisement in compliance with the provisions of
20 article three, chapter fifty-nine of this code, and the publi-
21 cation area for such publication shall be the county in
22 which the banking institution is located. The first publica-
23 tion shall be made at least ten days before the date of such
24 sale.

25 Any surplus from the sale of any share shall be paid
26 to the defaulting stockholder.

27 A sale of stock as provided in this section shall effect
28 an absolute cancellation of the outstanding certificate, or
29 certificates, evidencing the stock so sold, and shall make
30 such certificate null and void, and a new certificate shall
31 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
2 all of the powers necessary for, or incidental to, the busi-
3 ness of banking, and, without limiting or restricting such
4 general powers, it shall have the right to buy or discount
5 promissory notes and bonds, negotiate drafts, bills of ex-
6 change and other evidences of indebtedness, borrow
7 money, receive deposits on such terms and conditions as
8 its officers may prescribe, buy and sell exchange, bank
9 notes, bullion or coin, loan money on personal or other
10 security, rent safe-deposit boxes and receive on deposit,
11 for safekeeping, jewelry, plate, stocks, bonds and personal
12 property of whatsoever description and provide customer
13 services incidental to the business of banking, including
14 but not limited to the issuance and servicing of and lending
15 money by means of credit cards as letters of credit or
16 otherwise. Any banking institution may accept, for pay-
17 ment at a future date, drafts drawn upon it by its cus-
18 tomers, and issue letters of credit authorizing the holders
19 thereof to draw drafts upon it or its correspondents, at
20 sight or on time, not exceeding one year. Any such
21 banking institution may organize, acquire, own, operate,
22 dispose of, and otherwise manage wholly owned sub-
23 sidiary corporations for purposes incident to the banking
24 powers and services authorized by this chapter.

25 Any such banking institution may hereafter invest in
26 the capital stock of small business investment companies
27 chartered under the laws of this state, which are licensed
28 under the act of Congress known as the "Small Business
29 Investment Act of 1958," as amended. But in no event
30 shall any such bank hold shares in small business invest-
31 ment companies in any amount aggregating more than
32 two percent of the combined capital and surplus of such
33 banking institution.

34 Any such banking institution may acquire, own, hold,
35 use and dispose of, real estate, which shall in no case be
36 carried on its books at a value greater than the actual
37 cost, subject to the following limitations and for the fol-
38 lowing purposes:

39 (a) Such as shall be necessary for the convenient
40 transaction of its business, including in any buildings,
41 office space or other facilities to rent as a source of in-
42 come; such investment hereafter made shall not exceed
43 sixty-five percent of the amount of its capital stock and
44 surplus, unless the consent in writing of the commissioner
45 of banking is first secured;

46 (b) Such as shall be mortgaged to it in good faith as
47 security for debts in its favor;

48 (c) Such as shall be conveyed to it in satisfaction of
49 debts previously contracted in the course of its business
50 dealings;

51 (d) Such as it shall purchase at sales under judgments,
52 decrees, trust deeds or mortgages in its favor, or shall
53 purchase at private sale, to secure and effectuate the pay-
54 ment of debts due to it; and

55 (e) The value at which any real estate is held shall
56 not be increased by the addition thereto of taxes, insur-
57 ance, interest, ordinary repairs, or other charges which
58 do not materially enhance the value of the property.

59 Any real estate acquired by any such banking institution
60 under subdivisions (c) and (d) shall be disposed of by the
61 banking institution at the earliest practicable date, but
62 the officers thereof shall have a reasonable discretion in
63 the matter of the time to dispose of such property in order
64 to save the banking institution from unnecessary losses.
65 In every case such property shall be disposed of within
66 five years from the time it is acquired by the banking
67 institution, unless an extension of time is given in writing
68 by the commissioner of banking.

69 No such banking institution shall hereafter invest more
70 than twenty percent of the amount of its capital and sur-
71 plus in furniture and fixtures, whether the same be in-
72 stalled in a building owned by such banking institution,
73 or in quarters leased by it, unless the consent in writing
74 of the commissioner of banking is first secured.

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

1 Every state banking institution which files the certifi-
2 cates required in the following section and which is

3 otherwise authorized to do so, shall have and exercise the
4 following powers:

5 (a) All the powers, rights and privileges of any state
6 banking institution;

7 (b) To act as trustee, assignee, special commissioner,
8 general or special receiver, guardian, executor, adminis-
9 trator, committee, agent, curator, or in any other fidu-
10 ciary capacity, and to take, assume, accept and execute
11 trusts of every description not inconsistent with the con-
12 stitution and laws of the United States of America or of
13 this state; and to receive, hold, manage and apply any
14 sinking fund on the terms and for the purposes specified
15 in the instrument creating such fund;

16 (c) To act as registrar, transfer agent or dividend or
17 coupon paying agent for any corporation;

18 (d) To make, hold and dispose of investments and
19 establish common trust funds, and account therefor, pur-
20 suant to the provisions of chapter forty-four of this code;

21 (e) To purchase and sell and take charge of and re-
22 ceive the rents, issues and profits of any real estate for
23 other persons or corporations;

24 (f) To act as trustee or agent in any collateral trust
25 and in order to secure the payment of any obligations of
26 any person, firm, private corporation, public corporation,
27 public body or public agency to receive and hold in trust
28 any items of personal property (including without limita-
29 tion notes, bonds, debentures, obligations and certificates
30 for shares of stock) with the right in case of default to sell
31 and dispose of such personal property and to collect,
32 settle and adjust any obligations for the payment of
33 money, and at any sale of such personal property held
34 by it, to purchase the same for the benefit of all or any of
35 the holders of the obligations, to secure the payment of
36 which such items of personal property were pledged and
37 delivered to the trustee or agent. Any such sale may be
38 made without any proceedings in any court, and at such
39 times and upon such terms as may be specified in the
40 instrument or instruments creating the trust, or, in the
41 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 commission-
4 er 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

25 publication area for such publication shall be the county
26 in which such institution is located.

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

1 Every banking institution, authorized to engage in the
2 trust business, shall keep all trust funds and investments
3 separate and distinct from the assets owned by the cor-
4 poration; and shall keep a separate set of books and
5 records showing in proper detail all transactions so
6 engaged in; and all investments made by such institution
7 as fiduciary shall be so designated that the trust to which
8 such investments shall appertain or belong shall be
9 clearly and distinctly shown on the books of the insti-
10 tution; and such funds shall be held for the uses of the
11 trust designated and for the beneficiaries thereof, and
12 shall not be liable for any other obligations of the
13 institution.

§31A-4-17. Oath as fiduciary.

1 Whenever any court, or the clerk thereof, shall appoint
2 any banking institution exercising trust powers, as trus-
3 tee, receiver, assignee, guardian, executor, administrator,
4 special commissioner, curator, committee, or in any other
5 fiduciary capacity to perform any duty or execute any
6 trust, the chairman of the board, the president, vice
7 president, secretary, treasurer, trust officer or assistant
8 trust officer of such institution shall take the oath and
9 make the affirmation required by law of any such fidu-
10 ciary, before the court or the clerk thereof, or before
11 any other officer authorized to administer oaths.

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

1 Whenever any banking institution authorized to exer-
2 cise trust powers, and having complied with the require-
3 ments of this article, shall be appointed trustee, assignee,
4 receiver, guardian, executor, administrator, special com-
5 missioner, curator, committee, or in any other fiduciary
6 capacity, or shall be directed by the order or decree of
7 any court to execute any trust whatsoever, the capital
8 and other assets of the fiduciary corporation shall con-
9 stitute the security required by law for the faithful

10 performance of its duties and shall be absolutely liable
11 in case of any default whatsoever, but, where the lia-
12 bility under any such appointment as trustee, assignee,
13 receiver, guardian, executor, administrator, special com-
14 missioner, curator or committee, or, in the execution of
15 any trust by order or decree of any court, shall be equal
16 to, or shall exceed the capital and surplus of such fiduciary
17 corporation, the court making such appointment or en-
18 tering such order or decree may require, and the fiduciary
19 shall give, additional security. No bond shall be required
20 of any banking institution unless such additional security
21 is required.

§31A-4-19. Reports; publication.

1 Every state banking institution shall make at least
2 four reports each year to the commissioner of banking
3 upon his call therefor. Such reports shall be called for
4 as nearly as conveniently may be on the dates on which
5 the comptroller of the currency shall call for reports
6 by national banking associations, and be in such form
7 and contain such details as shall be prescribed by the
8 commissioner of banking. The reports shall be verified
9 by the oath of the president or active vice president or
10 cashier and attested by the signatures of at least three
11 directors of the banking institution. Each report shall
12 show in detail, under appropriate heads, the resources
13 and liabilities of the banking institution at the close of
14 business on the date specified by the banking com-
15 missioner, and shall be transmitted to the commissioner
16 within ten days from the receipt of the request for the
17 same.

18 Such report, in the same form in which it is made to
19 the commissioner of banking, shall be published as a
20 Class I legal advertisement in compliance with the pro-
21 visions of article three, chapter fifty-nine of this code,
22 and the publication area for such publication shall be
23 the county in which the banking institution is located.

24 In lieu of such report and publication, the commissioner
25 of banking shall have discretion to accept from a banking
26 institution which is a member of the federal reserve
27 system a report, and the publication thereof required

28 of such banking institution by the federal reserve board,
29 or by its agency, provided that such report shall show in
30 detail, under appropriate heads, the resources and lia-
31 bilities of the banking institution at the close of business
32 on the day specified by the federal reserve board, or
33 by its agency, and shall contain such further details as
34 may be deemed necessary or desirable by the commis-
35 sioner of banking.

36 Any report and the publication thereof shall be at
37 the expense of the banking institution, and it shall fur-
38 nish to the commissioner of banking such proof of the
39 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.

1 The stockholders of each state banking institution shall
2 meet annually and at such annual meeting it shall be the
3 duty of the cashier or other executive officer of such bank-
4 ing institution to prepare and submit to the stockholders
5 a clear and concise statement of the financial condition
6 of the corporation as of the close of business on the last
7 day of the month next preceding. At such meeting, the
8 stockholders present in person or by proxy shall elect an
9 examining committee composed of not less than three
10 nor more than five persons, each of whom shall be a stock-
11 holder in such banking institution. At such time or times
12 as it may be directed to do so by the written request of
13 the board of directors or the commissioner of banking,
14 such committee shall immediately proceed to examine
15 the condition of the bank and, upon completion of such
16 examination, shall file its report in writing with the board
17 of directors. Such report shall set forth in detail all items
18 included in the assets of the bank which the committee
19 has reason to believe are not of the value at which they
20 appear on the books and records of the bank, and shall
21 give the value of each of such items according to its judg-
22 ment. The board of directors shall cause such report to
23 be retained as a part of the records of the bank and shall

24 transmit a duly authenticated copy thereof to the com-
25 missioner of banking. With the consent and approval of
26 the stockholders, such committee may employ registered
27 or certified public accountants to make such examination
28 or make the same in conjunction with any official exami-
29 nation made by any supervisory authority. Any official
30 examiner of the department of banking may require the
31 presence of the examining committee or the executive
32 committee during his examination.

§31A-4-21. Federal deposit insurance; membership in federal reserve system.

1 State banking institutions are authorized to do any act
2 necessary to obtain insurance of their deposits by the
3 United States or any agency or instrumentality thereof
4 including the federal deposit insurance corporation and
5 to acquire and hold membership in the federal reserve
6 system. Such banking institutions which are members
7 of the federal reserve system shall be vested with all
8 powers conferred upon members of such system by the
9 terms of the Federal Reserve Act, as amended, as fully as
10 if such powers were specifically granted herein; and all
11 such powers shall be exercised subject to all restrictions
12 and limitations imposed by the Federal Reserve Act, as
13 amended, or by regulations of the federal reserve board
14 made pursuant thereto. Any such banking institution
15 shall continue to be subject to the supervision and exami-
16 nations required by the laws of this state, except that the
17 federal reserve board or the federal deposit insurance
18 corporation shall have the right, if either deems it neces-
19 sary to make examinations; and the commissioner of
20 banking may disclose to the federal reserve board or the
21 federal deposit insurance corporation, or to examiners
22 duly appointed by either, all information in reference to
23 the affairs of any banking institution which has become,
24 or desires to become, a member of the federal reserve
25 system or the federal deposit insurance corporation.

§31A-4-22. Reserves required of banking institutions; reports; penalties.

1 Each state banking institution shall at all times main-
2 tain on hand as a reserve in lawful money of the United

3 States of America an amount equal to at least seven per-
4 cent of the aggregate of all of its deposits which are sub-
5 ject to withdrawal on demand and three percent of its time
6 deposits. Whenever the commissioner of banking shall
7 determine that the maintenance of sound banking prac-
8 tices or the prevention of injurious credit expansion or
9 contraction makes such action advisable, he may by rule
10 or regulation from time to time change such require-
11 ments as to reserves against demand or time deposits, or
12 both, but the reserves so prescribed shall in no event be
13 less than those specified in this section nor more than
14 twice those specified. Whenever such reserve shall fall
15 below that required, the institution shall not thereafter
16 make any new loan or investment until the required re-
17 serve shall be restored. For the purpose of computing
18 such reserve, all deposits requiring notice of thirty days
19 or more for withdrawal and time certificates of deposit
20 and Christmas savings shall be deemed time deposits, and
21 all checking accounts, certified checks, cashier's checks,
22 demand certificates of deposit and balances due other
23 banks shall be deemed demand deposits. But in lieu of
24 lawful money on hand, four fifths of such reserve may
25 consist of balances payable on demand from any national
26 or state bank doing business in this state or solvent bank-
27 ing institutions in other states. The reserve balances re-
28 quired herein shall be computed on the basis of average
29 daily net deposit balances and average daily currency and
30 coin during biweekly periods. The required reserve
31 balance of each bank shall be computed at the close of
32 business each day based upon its net deposit balances and
33 currency and coin at the opening of business on the
34 same day. The biweekly period shall end at the close of
35 business on days to be fixed by the commissioner in his
36 promulgated rules and regulations. When, however, the
37 reserve computation period ends with a nonbusiness day,
38 or two or more consecutive nonbusiness days, such non-
39 business day or days may, at the option of the banking
40 institution, and whether or not it had a deficiency in re-
41 serve balances in such computation period, be included in
42 the next biweekly computation period.

43 The commissioner shall, by rule and regulation, require

44 regular reports from such banking institutions, which re-
45 ports shall be submitted at such times and contain such
46 information as will enable the commissioner to adequate-
47 ly supervise the maintenance of reserves under this sec-
48 tion. Penalties for any deficiencies in the required re-
49 serves of any banking institution shall be assessed month-
50 ly by the commissioner on the basis of average daily
51 deficiencies during each of the computation periods end-
52 ing in the preceding calendar month. Such penalties shall
53 be assessed at a rate of two percent per annum above the
54 lowest rate applicable to borrowings by member banks
55 from the federal reserve bank of the district in which
56 such deficient institution is located on the first day of the
57 calendar month in which the deficiencies occurred. Such
58 penalties shall be paid by the commissioner into the
59 treasury of the state of West Virginia and credited to
60 the general fund.

61 Compliance on the part of any such banking institu-
62 tion which is a member of the federal reserve system with
63 the reserve requirements of the Federal Reserve Act, as
64 amended, shall be full compliance with the provisions
65 hereof. No such member bank shall be required to carry
66 or maintain a reserve other than such as required under
67 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, redis-
2 count any of its notes, or borrow bonds for the use of
3 the bank in order to meet any emergency that may arise.
4 The books and accounts of such banking institutions shall
5 at all times show the amount of such borrowed money,
6 bonds or rediscounts. No officer, director or employee of
7 any such banking institution shall issue the note of such
8 banking institution for borrowed money, or rediscount any
9 note or pledge any of the assets of such banking institution
10 except when authorized by resolution of the board of
11 directors of such banking institution.

12 A banking institution, when authorized by resolution of
13 the board of directors thereof, may borrow money from

14 and contract with any federal agency or instrumentality
15 created and existing pursuant to an act of the Congress of
16 the United States, or any other person or persons, and may
17 pledge, hypothecate, assign or rediscount to any such fed-
18 eral agency or instrumentality, or to any other person or
19 persons, any assets or securities belonging to the banking
20 institution in such manner or form as may be approved by
21 its board of directors, and subject to any terms or condi-
22 tions imposed in connection therewith, as collateral secur-
23 ity for the payment of any and all such loans. An accurate
24 record of all securities and exact copies of all notes with-
25 drawn from the files of such banking institutions, to be
26 pledged as collateral for borrowed money or other pur-
27 poses, shall be kept in the files of such banking institution
28 at all times.

29 It shall be unlawful for any such banking institution to
30 issue its certificate of deposit for purposes of borrowing
31 money or to pledge or hypothecate more than two dollars
32 of the book value of any of its assets for each one dollar
33 of borrowed money.

34 In addition to applicable penalties provided in article
35 eight of this chapter for any such violations, the commis-
36 sioner of banking may act administratively or through
37 judicial proceedings in a court of competent jurisdiction
38 to correct and prevent any such violations.

**§31A-4-24. Capital notes and debentures; retirement; not sub-
ject to assessment.**

1 With the written approval of the commissioner of bank-
2 ing and with the approval of its board of directors and
3 stockholders, any banking institution may at any time is-
4 sue and sell either its nonconvertible capital notes or non-
5 convertible debentures or both its nonconvertible capital
6 notes and nonconvertible debentures. In connection with
7 his approval or disapproval of the issuance of the notes or
8 debentures, the commissioner of banking shall take into
9 consideration the financial condition of the banking insti-
10 tution, the need of expanded banking capital in the town,
11 city or community in which the banking institution is lo-
12 cated, the objects and purposes to be accomplished by is-
13 suance of the notes or debentures, and such other econo-

14 mic and monetary factors as he, in his judgment and dis-
15 cretion, may deem to be proper bases for his action.

16 The word "capital," as used in the laws of this state
17 relating to banking, shall be construed to include the
18 amount of outstanding capital notes and debentures
19 legally issued by the banking institution for all purposes.
20 Such capital notes and debentures shall be subordinate
21 and subject to the claims of depositors and may be sub-
22 ordinated and subjected to the claims of other creditors,
23 but shall in no case be subject to any assessment. The
24 holders of such capital notes and debentures shall not
25 be held individually responsible as such holders for any
26 debts, contracts, or engagements of the banking insti-
27 tution, and shall not be held liable for assessments to
28 restore any impairments in the institution's capital. The
29 capital stock of the banking institution shall not be
30 considered to be impaired when the amount of such
31 capital notes and debentures as represented by cash or
32 sound assets exceeds any impairment found by the com-
33 missioner of banking. If any such impairment in the
34 institution's capital be found by the commissioner of
35 banking, before any such capital notes or debentures are
36 retired or paid by the bank, any existing deficiency of
37 the bank's capital, disregarding the notes or debentures,
38 must be paid in cash, to the end that the sound capital
39 assets shall at least equal the capital stock of the bank-
40 ing institution.

§31A-4-25. Dividends; limitations; penal provisions.

1 The directors of any banking institution may declare
2 and pay cash dividends. Before the declaration of any
3 such dividend, at least one-tenth part of the net profits
4 of the preceding calendar year shall be carried to its
5 surplus fund until the same shall equal fifty percent of
6 the amount of its capital stock. No such dividend shall
7 be declared, except from earnings remaining after de-
8 ducting all losses, all sums due for expenses, and all
9 overdue debts upon which no interest has been paid for
10 a period of six months, unless the same are well secured,
11 and in process of collection and such other items as the
12 commissioner of banking may direct. Any director voting

13 to pay any cash dividend, in violation of the provisions
14 of this section, shall be personally liable to the creditors
15 of such banking institution for any loss occasioned there-
16 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.**

1 The total liabilities to any banking institution of any
2 person, partnership, association or corporation under evi-
3 dences of indebtedness and agreements for the payment
4 of money, including in the liabilities of a partnership the
5 liabilities of the several members thereof, except limited
6 partners, and including in the liabilities of any corpora-
7 tion an investment by such banking institution in the
8 stock of such corporation, shall at no time exceed ten
9 percent of the unimpaired capital and surplus fund of
10 such banking institution. But such limitation of ten per-
11 cent shall be subject to the exceptions hereinafter stated:

12 (a) The following types of obligations shall not be
13 subject to any limitation based upon such capital and
14 surplus fund:

15 (1) The sale of federal funds;

16 (2) Obligations arising out of the discount of com-
17 mercial or business paper actually owned by the person,
18 partnership, association or corporation negotiating the
19 same;

20 (3) Obligations in the form of negotiable drafts or bills
21 of exchange which have been drawn in good faith against
22 actually existing values in connection with the sale of
23 goods and which have been accepted or endorsed;

24 (4) Obligations drawn in good faith against actually
25 existing values and secured by goods or commodities in
26 process of shipment;

27 (5) Obligations in the form of banker's acceptances of
28 other banks of the kind described in section thirteen of
29 the Federal Reserve Act;

30 (6) Obligations of the United States or general obliga-
31 tions of any state or political subdivision thereof, when

32 there has been no default in the payment of interest or
33 principal in respect of the general obligations of any such
34 state or political subdivision within ten years prior to the
35 purchase of such obligations, bonds or obligations issued
36 under authority of the West Virginia bridge commission
37 or the state road commission, commonly known as bridge
38 revenue bonds, or obligations issued under authority of
39 the Federal Farm Loan Act, as amended, or under the
40 authority of the "Farm Credit Act of 1933," as amended,
41 or issued by the Federal National Mortgage Association,
42 Government National Mortgage Association or the Fed-
43 eral Home Loan Bank, or any loans or obligations to the
44 extent that they are secured or covered by guaranties or
45 by commitments or agreements to take over or to purchase
46 the same or to provide funds for the payment thereof,
47 made by any federal reserve bank or by the United States
48 or any department, board, bureau, agency, association,
49 commission or establishment of the United States, includ-
50 ing any corporation wholly owned, directly or indirectly,
51 by the United States;

52 (7) Obligations of a corporation owning the property
53 in which the banking institution is located when the
54 banking institution has an unimpaired capital and surplus
55 of not less than one million dollars, or when approved in
56 writing by the commissioner of banking; and

57 (8) Obligations arising from the sale of property
58 owned by a banking institution, when approved in writing
59 by the commissioner of banking.

60 (b) The following types of obligations shall be subject
61 to the following limitations:

62 (1) Obligations in the form of notes, secured by not
63 less than a like amount of bonds or notes of the United
64 States issued since April twenty-fourth, one thousand
65 nine hundred seventeen, or certificates of indebtedness
66 of the United States, treasury bills of the United States,
67 or obligations fully guaranteed both as to principal and
68 interest by the United States, shall be subject under this
69 section to a limitation of thirty-five percent of such un-
70 impaired capital and surplus fund, in addition to such
71 ten percent of such capital and surplus fund;

72 (2) Obligations in the form of notes, secured by not
73 less than a like amount of cash surrender value of life
74 insurance policies shall be subject to a limitation of fifteen
75 percent of such unimpaired capital and surplus fund, in
76 addition to such ten percent of such capital and surplus
77 fund; and

78 (3) Obligations in the form of notes or drafts secured
79 by shipping documents, warehouse receipts or other such
80 documents transferring or securing titles covering readily
81 marketable, nonperishable staples when such property is
82 fully covered by insurance, if it is customary to insure
83 such staples, shall be subject to a limitation of ten percent
84 of the unimpaired capital and surplus fund, in addition
85 to such ten percent of such capital and surplus fund, when
86 the market value of such staples securing such obligations
87 is not at any time less than one hundred fifteen percent
88 of the face amount of such obligations; and such limita-
89 tions may be increased up to thirty-five percent of such
90 unimpaired capital and surplus fund, in addition to such
91 ten percent thereof, with a corresponding increase in
92 market value of such staples securing such obligations up
93 to not less than one hundred forty percent of the face
94 amount of such additional obligations, but this exception
95 shall not apply to obligations of any one person, partner-
96 ship, association, or corporation arising from the same
97 transaction or secured upon the identical staples for more
98 than ten months.

99 No officer, director, clerk or other employee of any
100 banking institution or the commissioner of banking or
101 any employee of the department of banking shall borrow,
102 directly or indirectly, from the banking institution with
103 which he is connected, or which is subject to examination
104 by the commissioner of banking, any sum of money with-
105 out the approval of a majority of the board of directors
106 or discount committee of the banking institution, or of
107 any duly constituted committee whose duties include
108 those usually performed by a discount committee, em-
109 bodied in a resolution adopted by a majority vote of
110 such board or committee, exclusive of the director to
111 whom the loan is made. If any officer, clerk or other em-

112 ployee of any bank shall own or control a majority of the
113 stock of any other corporation, a loan to such corporation
114 shall, for the purpose of this section, constitute a loan to
115 such officer, clerk or other employee.

116 Securities purchased by a banking institution shall be
117 entered upon the books of the bank at actual cost. For the
118 purpose of calculating the undivided profits applicable to
119 the payment of dividends, securities shall not be valued
120 at a valuation exceeding their present cost as determined
121 by amortization, that is, by deducting from the cost of a
122 security purchased at a premium, and charging to profit
123 and loss a sum sufficient to bring it to par at maturity.

§31A-4-27. Loans eligible for federal insurance or guaranty.

1 Banking institutions are authorized:

2 (a) To make such loans and advances of credit and
3 purchases of obligations representing loans and advances
4 of credit as are eligible for insurance or guaranty by the
5 federal housing commissioner or United States admini-
6 strator of veterans' affairs, or by any other officer, depart-
7 ment, agency or instrumentality of the United States for
8 the purpose of financing alterations, repairs and improve-
9 ments upon real property, and to obtain such insurance or
10 guaranty; and

11 (b) To make such loans secured by real property or
12 leasehold as the federal housing commissioner or ad-
13 ministrator of veterans' affairs or any other officer, depart-
14 ment, board, bureau, commission, agency or instrumental-
15 ity of the United States insures or guarantees or makes
16 a commitment to insure or guarantee and to obtain such
17 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.**

1 It shall be lawful for banking institutions to invest
2 their funds and the moneys in their custody or possession
3 eligible for investment, in notes, bonds or other obliga-
4 tions secured by mortgages or deeds of trust insured or

5 guaranteed by the federal housing commissioner or United
6 State administrator of veterans' affairs or by any other
7 officer, department, agency or instrumentality of the
8 United States and in notes, bonds, debentures and other
9 obligations and securities issued by, insured by, or guar-
10 anteed by the federal housing commissioner, federal na-
11 tional mortgage association or government national
12 mortgage association or in other federal agencies securi-
13 ties.

14 Wherever, by statute of this state, collateral is re-
15 quired as security for the deposit of public or other funds;
16 or deposits are required to be made with any public
17 official or department; or an investment of capital or
18 surplus, or a reserve or other fund, is required to
19 be maintained consisting of designated securities, such
20 notes and bonds, debentures, obligations and federal
21 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.**

1 No law of this state prescribing the security upon which
2 loans or investments may be made or the nature, amount,
3 or form of such security, or prescribing or limiting the
4 period for which loans or investments may be made shall
5 be deemed to apply to loans or investments made pur-
6 suant to the provisions of the two preceding sections of
7 this article by banking institutions or by any person pur-
8 suant to the provisions of section five, article one of this
9 chapter; and no law limiting interest rates upon loans
10 or investments shall be deemed to apply to any such
11 loans or investments.

**§31A-4-30. Charges and interest allowed in certain cases; nego-
tiability of installment notes.**

1 In addition to the interest rate provided in article six
2 of chapter forty-seven of this code and elsewhere by law,
3 a banking institution may charge and collect a reason-
4 able amount to cover the expenses incurred in procuring
5 reports and information respecting loans and the value
6 of and title to property offered as security therefor,
7 and a charge of three dollars may be made for any loan or

8 forbearance of money or other thing where the interest
9 at the rate of six percent per annum would not amount
10 to that sum and the same shall not be a usurious charge
11 or rate of interest. Any banking institution authorized to
12 do, and doing business in this state, may contract for and
13 charge for a secured or unsecured loan, repayable in in-
14 stallments, not in excess of six percent per annum upon
15 the face amount of the instrument or instruments evi-
16 dencing the obligation to repay the loan, for the entire
17 period of the loan, and deduct such charge in advance
18 or add the same to the principal amount of the loan. But
19 if the entire unpaid balance outstanding on the loan is
20 paid on any installment date, prior to maturity, the bank
21 shall make a refund or rebate of such charge in an amount
22 computed on the aggregate installments not due, at the
23 original contract rate of charge; and any note evidencing
24 any such installment loan may provide that the entire un-
25 paid balance thereof at the option of the holder shall
26 become due and payable upon default in the payment of
27 any stipulated installment without impairing the negoti-
28 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.**

1 Notwithstanding any provision of any law, ordinance,
2 order, rule, regulation or resolution requiring depository
3 bonds of banking institutions covering state, county
4 and municipal deposits or the deposits of any state,
5 county, municipality or other political subdivision agency,
6 bureau, department, instrumentality or officer or public
7 corporation to be renewed annually or periodically, all
8 such depository bonds may be uniform in content and
9 continuing in nature and need not be renewed annually
10 or periodically, but it shall be the responsibility of
11 any such depositor to review the bonds covering its
12 deposits from time to time, and at least once each year
13 on or about the anniversary date of each one thereof,
14 to ascertain and verify that the coverage and sureties are
15 adequate and sufficient in all particulars and that such

16 bonds comply with all lawful requirements. In the event
17 any bond is found to be inadequate or insufficient, written
18 notice of the inadequacy or insufficiency shall be given
19 to the banking institution, and it shall be the responsi-
20 bility of the banking institution to act promptly to correct
21 the same by executing a new bond or enlarging and
22 correcting the coverage of the existing bond, or by taking
23 such other action as may be required.

24 The commissioner of banking, with the approval of
25 the attorney general, shall prescribe the form of the
26 uniform and continuing type of depository bonds as
27 authorized by this section.

28 Notwithstanding any provision of any such law, ordi-
29 nance, order, rule, regulation or resolution requiring se-
30 curity for such deposits in the form of collateral, surety
31 bond or other assets or documents, security for such
32 deposits shall not be required to the extent such deposits
33 are insured by the federal deposit insurance corporation.

**§31A-4-32. Adverse claims to deposits and property held in
safe deposit.**

1 (a) A banking institution shall not be required, in
2 the absence of a court order or indemnity required by
3 this section, to recognize any claim to, or any claim of
4 authority to exercise control over, a deposit account or
5 property held in safe deposit (whether by the institution
6 or in a safe-deposit box or other receptacle leased to a
7 customer) made by a person or persons other than:

8 (1) The customer in whose name the account or
9 property is held by the institution, or

10 (2) An individual or group of individuals who are
11 authorized to draw on or control the account or property
12 pursuant to a certified corporate resolution or other writ-
13 ten arrangement with the customer, currently on file
14 with the institution, which:

15 (A) Has not been revoked by valid corporate action
16 in the case of a corporation, or by a valid agreement or
17 other valid action appropriate for the form of legal or-
18 ganization of any other customer, of which the institu-
19 tion 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,

18 shall be held for the exclusive use of the persons so
19 named, and may be paid to any one of them during
20 the lifetime of them, or to the survivor or survivors after
21 the death of any of them; and such payment and the re-
22 ceipt or the acquittance of the one to whom such pay-
23 ment is made shall be a valid and sufficient release and
24 discharge for all payments made on account of such
25 deposit, prior to the receipt by the banking institution of
26 notice in writing, signed by any one of such joint tenants
27 not to pay such deposit in accordance with the terms
28 thereof.

§31A-4-34. Payment of deposits to minors.

1 Whenever any minor shall make, or have credit for,
2 a deposit in any banking institution, in his or her name,
3 the money so deposited may be paid out on the check or
4 order of such depositor the same as in case of a depositor
5 of legal age, and such payment shall be in all respects
6 valid, except when such banking institution has been
7 specifically directed in writing by the parent or guardian
8 of such minor not to make such payment.

**§31A-4-35. Reproduction of checks and other records; admissi-
bility of copies in evidence; disposition of origi-
nals.**

1 Any banking institution may cause to be copied or
2 reproduced by any photographic, photostatic, micro-
3 photographic or other miniature photographic process,
4 all or any number of its checks, and all or any part of its
5 documents, books, records, correspondence and all other
6 instruments, papers and writings, in any manner relating
7 to the operation of its business, other than its notes, bonds,
8 mortgages and other securities and investments, and may
9 substitute such copies or reproductions either in positive
10 or negative form for the originals thereof. Thereafter, such
11 copy or reproduction in the form of a positive print there-
12 of, shall be deemed for all purposes to be an original
13 counterpart of and shall have the same force and effect
14 as the original thereof and shall be admissible in evidence
15 in all courts and administrative agencies in this state, to
16 the same extent, and for the same purposes as the origi-

17 nal thereof, and the banking institution may destroy or
18 otherwise dispose of the original. But every banking
19 institution shall retain either the originals or such copies
20 or reproductions of its records of final entry, including,
21 without limiting the generality of the foregoing, cards
22 used under the card system and deposit tickets for de-
23 posits made, for a period of at least six years from the
24 date of the last entry on such books or the date of making
25 of such deposit tickets and card records, or, in the case
26 of a banking institution exercising trust or fiduciary pow-
27 ers, until the expiration of six years from the date of
28 termination of any trust or fiduciary relationship by a
29 final accounting, release, court decree or other proper
30 means of termination.

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

38 Any device used to copy or reproduce such documents
39 and records shall be one which correctly and accurately
40 reproduces the original thereof in all details and film
41 used therein shall be of durable material.

§31A-4-36. Statement of account to customers; duties of customers; limitations.

1 When a banking institution makes a statement of ac-
2 count available to its customer in the manner provided
3 in section four hundred six, article four, chapter forty-
4 six of this code, such customer shall, with respect to errors
5 in said account, have the same duties and shall be bound
6 by the same rules, preclusions and limitations as are
7 provided in said section four hundred six with respect
8 to any alteration of an item.

§31A-4-37. Sale of machine operations and services.

1 Any state banking institution or institutions, or institu-
2 tion or institutions jointly with a national banking asso-
3 ciation or associations, owning, leasing or renting, directly

4 or through a subsidiary corporation wholly owned by it
5 or them, computer, bookkeeping, or other like or similar
6 machines or equipment for its or their own business opera-
7 tions, may contract for the sale of and sell the services,
8 use and products of the machines or equipment to other
9 financial institutions and businesses, upon such terms and
10 conditions as may be the subject of agreement between
11 the parties, but only when the use and services of the
12 machines and equipment are not employed in the orderly
13 operations of such banking institution, institutions, asso-
14 ciation or associations.

§31A-4-38. Direct leasing of personal property.

1 Banking institutions may, subject to rules and regula-
2 tions promulgated by the commissioner of banking, ac-
3 quire and lease personal property pursuant to a binding
4 arrangement for the leasing of such property to any per-
5 son upon terms requiring payment to the institution, dur-
6 ing the minimum period of the lease, of rentals which in
7 the aggregate will exceed a reasonable estimate of the
8 total expenditures to be made by the institution for or in
9 connection with the acquisition, ownership, maintenance
10 and protection of the property.

§31A-4-39. Transactions on legal holidays and Sundays.

1 No act or transaction of any banking institution shall
2 be void or voidable because done on a legal holiday or a
3 Sunday. But this section shall not be construed to require
4 of any such institution the doing of any act on a legal
5 holiday or a Sunday.

**§31A-4-40. Permissive closing on fixed weekday or portions
of weekdays; emergency closings; procedures.**

1 (a) In addition to Sundays and legal holidays any
2 banking institution may remain closed on any one fixed
3 weekday or portion of such day in each calendar week,
4 or on any one fixed weekday and a portion of another
5 weekday in each calendar week, or on portions of two
6 weekdays in each calendar week, which day and/or por-
7 tion or portions of the day or days when the institution is
8 to remain closed shall be designated by a resolution

9 adopted by the board of directors thereof. Not less than
10 fifteen nor more than thirty days in advance of closing on
11 and such weekday and/or portion of one or more week-
12 days, such banking institution shall post a notice in a
13 conspicuous place in its banking room stating that on or
14 after a day certain and until further notice given in like
15 manner, such banking institution will remain closed on a
16 fixed weekday and/or portion of one or more weekdays.
17 Concurrently with the posting of such notice, such bank-
18 ing institution shall cause a notice to be published as a
19 Class II legal advertisement in compliance with the pro-
20 visions of article three, chapter fifty-nine of this code,
21 and the publication area for such publication shall be the
22 county in which the principal office of such bank is
23 located. Such notice shall set forth the time or times on
24 which said bank will remain closed and the date when
25 such closing becomes effective. A certified copy of such
26 resolution certified by the cashier or secretary of such
27 banking institution, together with an affidavit of posting
28 and proof of publication of the notice herein required
29 shall be filed with the commissioner of banking.

30 (b) The commissioner may permit any banking insti-
31 tution to close, without notice, during any period of actual
32 or threatened enemy attack affecting the community in
33 which such banking institution is located or during any
34 period of other emergency including, but not limited to,
35 fire, flood, hurricane, riot or civil commotion.

36 (c) Any fixed weekday and/or portion of one or more
37 weekdays on which any banking institution shall elect to
38 close and any period during which the commissioner may
39 permit it to close pursuant to the authority of this section
40 shall constitute a legal holiday with respect to such bank-
41 ing institution and not a business day or banking day
42 for the purposes of the law relating to negotiable instru-
43 ments, and any act or contract authorized, required or per-
44 mitted to be carried out or performed at, by or with re-
45 spect to such banking institution may be performed on
46 the next business or banking day, and no liability or loss
47 of rights on the part of any person or banking institu-
48 tion 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,
2 nor, permit or require any state bank or any number or all
3 of such banks to:

4 (1) Operate and do business in such manner and under
5 such limitations and regulations as the board, with the
6 approval of the governor, may prescribe, or

7 (2) Cease business for such period of time as the board,
8 with the approval of the governor, may direct, in which
9 case the period of such cessation shall be held to be a legal
10 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
2 authorized to conduct a banking business in this state
3 under the laws of the United States of America and
4 having their principal places of business in this state, and
5 state banking institutions which hold a permit, license
6 or certificate to engage in such business issued by the
7 commissioner under the provisions of section five, article two of this chapter, shall engage in the business of
8 banking or the trust business in the state of West Virginia, or shall receive or accept deposits of money, or
9 borrow money by receiving and giving credits for deposits, or by issuing certificates of deposits or certificates
10 of indebtedness, or by making and negotiating any writing purporting to be a bond, contract, or other obligation,
11 the performance of which requires the holder or other party to make deposits of money with the issuer, or
12 receive or accept deposits by means of any other plan, pretext, scheme, shift or device.

13 Nothing contained in this section shall affect the rights,
14 privileges, objects or purposes delegated to other corporations by the general corporation law or other laws
15 of this state.

16 Any corporation or individual who violates any of the
17 provisions of this section shall be guilty of a misdemeanor,
18

25 and, upon conviction, shall be fined not more than five
26 thousand dollars, and, in addition to such penalty, every
27 corporation so offending shall forfeit its corporate fran-
28 chise, and every individual so offending shall be subject
29 to a further penalty by confinement in jail for not more
30 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
2 services such as check and deposit sorting and posting,
3 computation and posting of interest and other credits
4 and charges, preparation and mailing of checks, state-
5 ments, notices and similar items, or any other clerical,
6 bookkeeping, accounting, statistical, or similar functions
7 performed for a state bank or a national banking associa-
8 tion and the sale of the services, use and products of
9 machines and equipment as permitted by section thirty-
10 seven, article four of this chapter; "bank service corpora-
11 tion" means a corporation organized under the laws of
12 this state to perform bank services for two or more
13 banking institutions, each of which owns part of the
14 capital stock of such corporation, and the sale of the
15 services, use and products of machines and equipment as
16 permitted by section thirty-seven, article four of this
17 chapter; and "invest" means any advance of funds to a
18 bank service corporation, whether by the purchase of
19 stock, the making of a loan, or otherwise, except the
20 payment for rent earned, goods sold and delivered, or
21 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
2 bank is hereby authorized to invest not more than ten

3 percent of its paid-in and unimpaired capital and unim-
4 paired surplus in a bank service corporation. If stock in
5 a bank service corporation has been held by two state
6 banks, or by one such bank and one national banking
7 association and one state bank or such association ceases
8 to utilize the services of the corporation and ceases to
9 hold stock in it, and leaves a state bank as the sole stock-
10 holder, the bank service corporation may nevertheless
11 continue to function as such and such state bank may
12 continue to hold stock in such corporation.

**§31A-5-3. Extension of bank services to competing banking in-
stitutions and associations.**

1 Whenever a state bank or a national banking association
2 applies for bank services for itself (hereinafter referred
3 to in this section as "an applying bank") from a bank
4 service corporation which supplies the same type of bank
5 services to one or more other state banks or national
6 banking associations, or both, and the applying bank
7 is competitive with any state bank or national banking
8 association which holds stock in such corporation (re-
9 ferred to in this section as a "stockholding bank"), the
10 corporation must offer to supply such services by either:

11 (a) Issuing stock to the applying bank and furnishing
12 bank services to it on the same basis as to the stock-
13 holding banks, or

14 (b) Furnishing bank services to the applying bank at
15 rates no higher than necessary to reflect fairly the cost
16 of such services, including the reasonable cost of the
17 capital provided to the corporation by the stockholding
18 banks, at the corporation's option, unless comparable
19 services at competitive overall costs are available to the
20 applying bank from another source, or unless the fur-
21 nishing of the services sought by the applying bank would
22 be beyond the practical capacity of the bank service cor-
23 poration. In any action or proceeding to enforce the
24 duty imposed by this section or for damages for the
25 breach thereof, the burden shall be upon the bank
26 service corporation to show the availability of such com-
27 parable services or that the furnishing of such services

28 would be beyond the practical capacity of the bank
29 service corporation.

§31A-5-4. Bank service corporation activities limited.

1 No bank service corporation may engage in any ac-
2 tivity 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
2 or otherwise, any bank services for itself, whether on or
3 off its premises, unless written assurances satisfactory
4 to the commissioner of banking are furnished to him
5 by both the state bank and the party performing such
6 services that the performance thereof will be subject
7 to regulation and examination by the commissioner and
8 any federal supervisory agency to the same extent as if
9 such services were being performed by the state bank
10 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
2 the laws of this state, which holds in a fiduciary capacity
3 any stock, bond, debenture, note, warrant, certificate or
4 other security evidencing ownership or interest, either
5 whole or fractional, in fully paid and nonassessable in-
6 tangible personal property, may cause such security or
7 evidence of ownership, to be registered and held in the
8 name of a nominee or nominees of such bank, or in its
9 own name, without disclosing the fiduciary relationship,
10 but, where such bank is acting jointly with some other
11 individual or individuals, it shall first secure the written
12 consent of such individual fiduciary or fiduciaries thereto,
13 which consent such individual fiduciary or fiduciaries are
14 hereby authorized to give.

15 The placing of property in the name of a nominee,
16 nominees, or in the name of the bank, without disclosure
17 of the fiduciary capacity, shall be deemed to be nominee
18 registration under this article and every such registra-
19 tion shall ipso facto constitute a declaration of trust upon
20 the part of the registered owner so far as the fiduciary
21 and the beneficiaries of the fiduciary status are concerned.

§31A-6-2. Duties of bank making use of nominee registration.

1 Every such bank making use of nominee registration as
2 provided in this article shall:

3 (a) At all times maintain such records as may be
4 necessary to show the actual beneficial ownership of the
5 property so held;

6 (b) At all times retain possession and control of such
7 securities or other evidences of ownership which shall
8 be kept separate and apart from the assets of such bank
9 and assets held in other fiduciary capacities;

10 (c) Secure from such nominee or nominees such en-
11 dorsements, assignments or other writings as may be
12 necessary to effect retransfer of the securities or other
13 evidences of ownership without notice, and such en-
14 dorsements, assignments or other writings shall be valid
15 and effective as of the date of delivery thereof whether
16 the nominee die before transfer is perfected, or not;

17 (d) Enter into such contracts or agreements with its
18 nominee or nominees as may be necessary to afford full
19 protection to the ownership of its fiduciary account and
20 the beneficiaries thereof;

21 (e) Clearly show in all of its reports and accounts the
22 form of registration under which such securities or evi-
23 dences of ownership are held.

§31A-6-3. Civil liabilities and criminal penalties.

1 Any such bank which places property in nominee reg-
2 istration under this article shall be absolutely liable in
3 civil actions or suits for any or all loss or damage to its
4 fiduciary account or the beneficiaries thereof occasioned
5 by the acts of any of its nominees, or any of its agents,
6 employees, or other persons acting for it with respect to
7 such property, including reasonable attorney fees.

8 Any bank or its officers, employees, nominees or agents
9 placing property in nominee registration in violation of
10 any of the provisions of this article shall be guilty of a
11 misdemeanor, and, in addition to civil liability for resti-
12 tution, shall be punished by a fine of not less than fifty
13 dollars nor more than one thousand dollars.

§31A-6-4. Limitations on liability in transfers and changes of registration.

1 No liability for any loss caused by the acts of the nomi-
2 nee of a bank shall attach to any transfer agent, registrar,
3 corporation, officer or agent of a corporation, or other per-
4 son, who, in compliance with the directions of any such
5 bank acting under the provisions of this article, trans-
6 fers or changes the registration of any such property.
7 The certification of the bank that it has complied with
8 the provisions of this article shall be prima facie evidence
9 of its compliance so far as any such transfer agent, regis-
10 trar, corporation, officer or agent of a corporation, or
11 other person, is concerned.

§31A-6-5. Registration of property to evade taxes prohibited.

1 No bank shall cause or permit the use of its name or
2 the name of its nominee or nominees for the purpose of
3 registering property to evade, avoid, minimize or relieve
4 itself or any other person, firm or corporation, or the
5 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-7-1. Appointment, powers and duties of conservators; termination of conservatorship by commissioner; deposits and withdrawals during conservatorship; reorganization of bank.

1 (a) Whenever the commissioner of banking shall deem
2 it necessary, in order to conserve the assets of any state
3 bank for the benefit of the depositors and other creditors
4 thereof, he may appoint a conservator for such state
5 bank. The conservator may be an employee of the de-
6 partment of banking, and shall be required to give such
7 bond and security as the commissioner deems proper.

8 (b) The conservator, under the direction of the com-
9 missioner of banking, shall take possession of the papers,
10 books, records and assets of every description of such
11 state bank and take such action as may be necessary to
12 conserve such assets pending further disposition of the
13 business of such institution.

14 (c) The conservator shall have all the rights, powers
15 and privileges now possessed by or hereafter given re-
16 ceivers of state banks and shall be subject to all the
17 liabilities, obligations and penalties, not inconsistent with
18 the provisions of this article, to which receivers are now
19 or may hereafter become subject.

20 (d) During the period that such conservator remains
21 in possession of such state bank, the legal relations of
22 all parties with respect thereto shall, subject to the other
23 provisions of this section, be the same as if a receiver had
24 been appointed therefor.

25 (e) All expenses of any such conservatorship shall be
26 paid out of the assets of such state bank and shall be
27 a lien thereon, which shall be prior to any other lien. The
28 conservator shall receive a reasonable compensation for
29 his services to be fixed by the commissioner of banking,
30 but in no event shall such compensation exceed that paid
31 to employees of the department of banking for similar
32 services.

33 (f) Immediately upon taking charge of such state bank,
34 the conservator in conjunction with a representative of
35 the bank designated by the directors thereof shall make
36 in triplicate a complete inventory of all assets and an

37 itemized list of all liabilities of such institution. The
38 original and two copies of such list shall be subscribed
39 and sworn to by the persons making the same and the
40 original shall be filed with the commissioner as soon as
41 practicable, and one copy shall be furnished to such in-
42 stitution and one copy retained by the conservator.

43 (g) If the commissioner of banking becomes satisfied
44 that such a course of action may be pursued safely and
45 that it will be in the public interest, he may, in his
46 discretion, terminate the conservatorship and permit such
47 bank to resume the transaction of its business subject to
48 such terms, conditions, restrictions, and limitations as he
49 may prescribe.

50 (h) While such state bank is in the hands of the
51 conservator, the commissioner of banking may require
52 such conservator to set aside and make available for
53 withdrawal by depositors and payment to other creditors,
54 on a ratable basis, such amounts as in the opinion of the
55 commissioner may be used safely for this purpose, sub-
56 ject to such priorities and preferences as are provided by
57 law. The commissioner may, in his discretion, permit the
58 conservator to receive deposits. Such deposits shall not
59 be subject to any limitation as to payment or withdrawal.
60 The deposits shall be segregated and shall not be used
61 either to liquidate any indebtedness of such banking in-
62 stitution existing at the time that a conservator was
63 appointed for it or any subsequent indebtedness incurred
64 for the purpose of liquidating any indebtedness of such
65 banking institution existing at the time such conservator
66 was appointed.

67 (i) Deposits received while the state bank is in the
68 hands of a conservator shall: (1) Be kept on hand in
69 cash, or (2) be deposited with a federal reserve bank or
70 deposited with such banking institution as the commis-
71 sioner of banking may, in his discretion, designate, or (3)
72 be invested in the direct obligations of the United States
73 or the state of West Virginia or the funded obligations of
74 any political subdivision of this state approved by the
75 commissioner of banking.

76 (j) In any reorganization of any state bank under a

77 plan of a kind which, by its own terms or under existing
78 law, requires the consent, as the case may be, of deposi-
79 tors and other creditors, or of stockholders, or of both
80 depositors and other creditors, and stockholders, such re-
81 organization shall become effective only when the com-
82 missioner of banking shall be satisfied that the plan of
83 reorganization is fair and equitable to all depositors,
84 other creditors and stockholders, and that the plan is in
85 the public interest and shall have approved the plan sub-
86 ject to such conditions, restrictions and limitations as
87 he may prescribe; and when, after reasonable notice
88 of such reorganization, as the case may require, deposi-
89 tors and other creditors of such banking institution rep-
90 resenting at least seventy-five percent in amount of its
91 total deposits and other liabilities; or stockholders own-
92 ing at least two thirds in amount of its outstanding capi-
93 tal stock; or both depositors and other creditors repre-
94 senting at least seventy-five percent in amount of the
95 total deposits and other liabilities and stockholders own-
96 ing at least two thirds in amount of its outstanding capital
97 stock, shall have consented in writing to the plan of re-
98 organization. Claims of depositors or other creditors
99 which will be satisfied in full under the plan of reorgani-
100 zation shall not be included among the total deposits and
101 other liabilities of said banking institution in determining
102 the seventy-five percent thereof as above provided.

103 (k) When such reorganization becomes effective, all
104 books, records, and assets of the bank shall be disposed
105 of in accordance with the provisions of the plan and the
106 affairs of the bank shall be conducted by its board of
107 directors in the manner provided by the plan and under
108 the conditions, restrictions and limitations which may
109 have been prescribed by the banking commissioner. In
110 any reorganization which shall have been approved and
111 shall have become effective as provided herein, all de-
112 positors and other creditors and stockholders of such
113 bank, whether or not they shall have consented to such
114 plan of reorganization, shall be fully and in all respects
115 subject to and bound by its provisions, and claims of
116 all depositors and other creditors shall be treated as if
117 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

6 source that any such financial institution is insolvent, he
7 shall have authority to appoint an employee of the de-
8 partment of banking receiver thereof to take charge of
9 the papers, books, records, moneys and assets of every
10 description of such institution; and immediately upon
11 taking charge of any such institution, the commissioner
12 of banking and a representative of such institution desig-
13 nated by the directors thereof shall make in triplicate a
14 complete inventory of all assets and an itemized list of
15 all liabilities of such institution. The original and two
16 copies of such list shall be subscribed and sworn to by
17 the persons making the same and the original shall be
18 retained by the commissioner and one copy shall be fur-
19 nished such receiver and one copy to such institution, and
20 such receiver, upon assuming office, shall open and keep
21 such books and records as are prescribed by the commis-
22 sioner of banking.

23 In addition to all other powers vested in him, such re-
24 ceiver shall have all the powers vested in special receiv-
25 ers by general law. The receiver, with the approval of
26 the commissioner of banking, shall institute and prosecute
27 any action or actions necessary to obtain possession of any
28 property and to sell and dispose of the same and to collect
29 all obligations due such institution and wind up the affairs
30 of such institution. The receiver in such action, or by
31 separate actions, with the approval of the commissioner
32 of banking, shall enforce against the officers, directors
33 and stockholders any liability incurred by them and exist-
34 ing in favor of the creditors of such institution, and collect
35 from such officers, directors and stockholders any sums
36 for which they are liable as aforesaid. He shall also
37 defend any actions brought against such institution.

38 If it shall appear that the assets of any such insolvent
39 financial institution are not sufficient to pay in full all of
40 its creditors and depositors, without waiting to administer
41 the assets of such institution, or delaying for any other
42 cause, the receiver, with the approval of the commis-
43 sioner, shall forthwith institute any action or actions
44 necessary to collect from each of the several stockholders
45 of such institution all sums for which they are severally

46 liable to such institution, for the benefit of its creditors.
47 Any action or proceeding instituted by the receiver under
48 this or any other section of this article may be instituted
49 in the receiver's name, the name of the commissioner of
50 banking or the name of the financial institution, as the
51 commissioner may direct.

52 In connection with the administration of the assets of
53 any such institution, any such receiver may bring an
54 action in the circuit court of the county where such insti-
55 tution is located, to ascertain the several depositors and
56 creditors of such institution and the amounts and priorities
57 of their respective claims. In any such action instituted
58 by a receiver the financial institution and all the stock-
59 holders thereof and all of the creditors and depositors
60 thereof, or a representative number of such creditors and
61 depositors determined in accordance with the provisions
62 of Rule 23 of the West Virginia Rules of Civil Procedure,
63 shall be made parties defendant and all persons who
64 theretofore filed proofs of claims against such institution
65 with the commissioner of banking or receiver or there-
66 after file such proofs of claim in such action shall be
67 deemed defendants as though they had been specifically
68 named as defendants therein. The court shall refer the
69 cause to a commissioner of that court who shall thereupon
70 cause to be published a notice to all depositors and credi-
71 tors of such financial institution requiring them to present
72 their claims to such court commissioner for allowance.
73 Such notice shall be published as a Class II legal adver-
74 tisement in compliance with the provisions of article
75 three, chapter fifty-nine of this code, and the publication
76 area for such publication shall be the county wherein the
77 suit is pending. After publication of such notice is com-
78 pleted, such court commissioner shall proceed as promptly
79 as possible to ascertain and report the several depositors
80 and creditors of such institution and the amounts and
81 priorities of their respective claims, proven before him.
82 All claims as shall have been duly proved and allowed
83 by the receiver or the commissioner of banking, before
84 the decree of reference, may be allowed and reported by
85 the court commissioner without further proof, unless the

86 same shall be contested and disallowed for proper cause.
87 The court commissioner shall also ascertain and report
88 what funds and assets of such institution have come into
89 the hands of the receiver, what disposition has been made
90 of such assets, and what dividends, if any, have been paid.
91 The court shall enter such orders and decrees and take
92 such proceedings as are proper to ascertain the several
93 depositors and creditors of such financial institution, and
94 adjudicate their respective rights and direct the distribu-
95 tion of the assets and funds in the hands of the receiver
96 and confirm any distribution made under orders of the
97 commissioner of banking, and may confirm any and all
98 sales made by such receiver of property and assets of
99 such financial institution and settle the accounts of
100 such receiver. Any creditor whose claim is not pre-
101 sented and allowed before any decree of distribution
102 becomes final shall be forever barred from partici-
103 pating in the funds distributed under such decree, or
104 theretofore distributed and confirmed by such decree,
105 and shall have no claim by reason of such distribution
106 against any creditor sharing therein or against the com-
107 missioner of banking, the receiver, or any surety upon
108 the receiver's bond. Any claim which shall have been
109 proved and allowed after any dividend or distribution
110 has been made by the receiver shall be paid dividends
111 equal or proportionate in amount to those already re-
112 ceived by the other creditors of the same rank and
113 priority, if the funds and assets in the hands of the re-
114 ceiver are sufficient therefor, before such other creditors
115 receive any further dividend or distribution.

116 In any such action brought by the receiver for the pur-
117 pose of ascertaining the several depositors and creditors
118 of such institution, as hereinbefore provided, the receiver
119 may also proceed against the officers, directors and stock-
120 holders of the institution to enforce their individual lia-
121 bilities as hereinabove provided, or for the adjudication of
122 any other pertinent matter involved in the administra-
123 tion of the assets and affairs of such institution.

124 All of the assets of any such insolvent institution shall
125 be administered under, applied and paid out through the

126 orders of the commissioner of banking or a court of
127 competent jurisdiction, as herein provided. The costs and
128 expenses of the receivership and of any action or actions
129 brought by the receiver under the direction of the com-
130 missioner of banking shall be entitled to priority of pay-
131 ment out of the assets of such institution.

132 The receiver shall, by proper proceedings, ascertain the
133 several creditors and the amounts and priorities of their
134 respective claims against such institution and shall, from
135 time to time, as the assets of the institution are reduced to
136 possession, and converted into cash, pay the same to the
137 several creditors in the order and the manner in which
138 they are respectively entitled to payment, but, without
139 regard to priority, the receiver may at any time pay in
140 full the claim of any creditor which is less than five
141 dollars.

142 If the assets of any such institution, including any sums
143 collected from the stockholders, shall more than suffice
144 to pay all of the creditors of the institution who have
145 presented and proved, or caused to be allowed, their
146 several demands, the surplus shall be disbursed as fol-
147 lows: First in the case of a banking institution, to the
148 stockholders, who have paid in any sums upon their
149 extraordinary liability as stockholders, pro rata up to
150 the respective amounts paid by each of them. Second,
151 if anything shall remain thereafter it shall be paid to the
152 stockholders of the institution in proportion to the num-
153 ber of shares owned by them respectively.

154 The salary of such receiver for the time devoted to such
155 receivership and all expenses incurred by such receiver
156 in the discharge of his duties, including reasonable fees
157 paid for legal services, shall be paid out of the assets of
158 such institution as a part of the costs of the receivership.
159 No other compensation shall be paid to such officer for
160 acting as receiver of such institution.

161 The receiver of any such financial institution, before
162 entering upon the discharge of his duties, or receiving
163 into his possession any of the assets of such institution,

164 shall enter into bond in favor of the state of West Vir-
165 ginia, in a penalty fixed by and with corporate surety
166 authorized to transact business in this state, approved by
167 the commissioner, conditioned for the faithful discharge
168 of his duties as receiver, and for accounting for and pay-
169 ing over, as required by law, all properties, moneys and
170 funds which shall come into the hands of such receiver,
171 his agents, attorneys or representatives. The bond and
172 certificate of appointment of such receiver shall be re-
173 corded in the office of the clerk of the county court of the
174 county in which such institution is situated, and a certi-
175 fied copy thereof shall be forthwith transmitted by the
176 receiver to the commissioner of banking.

177 Upon the appointment of a receiver for a banking insti-
178 tution engaged in business in this state and authorized to
179 exercise trust powers, such trust powers and authority
180 shall end, and for every case where such banking institu-
181 tion has acted as fiduciary, such receiver shall immedi-
182 ately make a final settlement before the court in which
183 such banking institution qualified as such fiduciary, which
184 settlement shall cover all matters not included in a prior
185 settlement, if any. Thereupon, such court shall proceed
186 as is provided in section six, article five, chapter forty-
187 four of this code, and no formal revoking or annulling
188 order shall be necessary.

189 Nothing in this section shall impair the right of any
190 court in any action, on a proper showing, to appoint a
191 receiver for any such institution, in cases where the com-
192 missioner of banking has failed, refused or neglected
193 to act.

194 In the administration of the assets of banking institu-
195 tions by receivers appointed pursuant to this article, hav-
196 ing deposits of money belonging to the state of West Vir-
197 ginia, no greater rate of interest, notwithstanding the pro-
198 visions of the contracts relative to interest between such
199 banking institutions and the state of West Virginia, shall
200 be paid on such deposits than that paid for the same period
201 or periods on the same class or classes of such deposits

202 by banking institutions operating in the usual course of
203 business.

§31A-7-3. Appraisal of assets of institutions under conservator or receiver; procedure; publication; costs.

1 Within sixty days after the filing of the inventory of
2 the assets of a state banking institution in conservatorship
3 or receivership its assets shall be appraised in the man-
4 ner herein provided and a copy filed with the commis-
5 sioner of banking. The commissioner shall not approve
6 or consent to the reorganization, consolidation, merger
7 or sale of the business of such banking institution in
8 conservatorship or receivership until an appraisal shall
9 have been made and published as provided in this sec-
10 tion. Appraisal shall be made on the basis of present true
11 and actual value by three appraisers one of whom shall
12 be the conservator or receiver, one a representative of
13 such banking institution designated by its board of di-
14 rectors, and the third a representative of the depositors,
15 who was a depositor at the time the conservator or re-
16 ceiver was appointed and shall not have disposed of
17 his claim, to be designated by the commissioner of bank-
18 ing upon the nomination in writing of a majority in
19 amount of depositors or assigns if such nomination is filed
20 with the commissioner not later than two weeks after
21 the filing of the inventory in the receivership or con-
22 servatorship. If no such nomination is made, the com-
23 missioner shall designate the depositors' representative
24 in his discretion. In the event of disagreement as to a
25 valuation the determination of any two of the appraisers
26 shall be final. A copy or a summary of the completed
27 appraisal shall be published, in form approved by the
28 commissioner of banking, as a Class I legal advertisement
29 in compliance with the provisions of article three, chapter
30 fifty-nine of this code, and the publication area for such
31 publication shall be the county in which the banking
32 institution is located. The expense of appraisal and pub-
33 lication shall be deemed part of the cost of the con-
34 servatorship or receivership and shall include reasonable
35 compensation allowed the appraisers, other than a con-
36 servator or receiver, by the commissioner of banking.

§31A-7-4. Receivers may borrow from federal lending agencies and others; procedures.

1 Any receiver of a banking institution, heretofore or
2 hereafter appointed under the provisions of this chapter, if
3 there be no proceeding instituted as authorized by law
4 by such receiver in any court in this state against such
5 banking institution and its stockholders, with the consent
6 in writing of the commissioner of banking, and if there
7 be a proceeding instituted as authorized by law by such
8 receiver in any court in this state against such banking
9 institution and its stockholders, with the consent in writ-
10 ing of the commissioner of banking and the approval
11 of the court, and any receiver of a banking institution
12 heretofore or hereafter appointed by any court in this
13 state in connection with any proceeding in such court
14 against such banking institution, with the consent in writ-
15 ing of the commissioner of banking and the approval of
16 the court, is hereby authorized and empowered to borrow
17 money from and contract for loans with any federal
18 finance or lending agency, created and existing under
19 any act of the Congress of the United States, or any
20 other agencies or persons, for the purpose of furnishing
21 immediate relief to or aiding in the reorganization or
22 liquidation or reopening of such banking institution, pro-
23 tecting and preserving the assets in charge of the re-
24 ceiver, expediting the making of distributions and the
25 payment of dividends to depositors and other creditors
26 of the institution, providing for the expenses of adminis-
27 tration and liquidation or its merger or consolidation
28 with another banking institution, and paying the claims
29 of secured creditors where the security is deemed by
30 the receiver and the commissioner of banking to be of
31 a value in excess of the debt so secured and to be for the
32 preservation of the assets of such banking institution;
33 and to pledge, hypothecate, assign or transfer to any
34 such agency or other person any assets or securities be-
35 longing to the banking institution as collateral security
36 for the payment of any and all such loans, subject to
37 terms and conditions imposed and agreed upon between
38 the parties.

39 All acts of the receiver or commissioner of banking
40 hereunder are hereby declared to be legal, valid and
41 binding and effective to transfer to any such agencies
42 or persons, their respective successors and assigns, assets
43 and securities in accordance with the terms of the con-
44 tract of pledge, transfer or assignment.

45 The commissioner of banking and receiver of any such
46 banking institution shall be under no personal obliga-
47 tion to repay any such loans so made and shall have
48 power to take any and all action necessary or proper
49 to consummate such loans and to provide for the repay-
50 ment thereof and to give bond, when required, for the
51 faithful performance of all undertakings in connection
52 therewith.

53 The authority herein conferred on a receiver of a bank-
54 ing institution for the procuring and obtaining of such
55 loans includes authority to renew the same from time to
56 time, with the consent in writing of the commissioner
57 of banking.

58 An accurate record of all securities and exact copies
59 of all notes withdrawn from the files of such banking
60 institution, to be pledged as aforesaid as collateral for
61 borrowed money, shall be kept in the files of such
62 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.**

1 In any voluntary or compulsory proceeding to liqui-
2 date a state banking institution, such banking institution,
3 if the proceeding be not in court, with the consent in
4 writing of the commissioner of banking, and if the pro-
5 ceeding be in court with the consent in writing of the
6 commissioner of banking and the approval of the court,
7 may reorganize, reclaim possession of its assets, and con-
8 tinue in business.

9 Any state banking institution may at any time, with the
10 approval of the board, purchase the business and assets
11 and assume the liabilities of, or merge or consolidate with,
12 another state banking institution, the terms and condi-
13 tions of any such purchase, merger or consolidation to be

14 first approved by the board. With the approval of the
15 board and compliance with all applicable laws of this
16 state and the United States, any state banking institution
17 may purchase the business and assets and assume the
18 liabilities of a national banking association, or merge or
19 consolidate with a national banking association to form
20 a resulting state bank, the terms and conditions of any
21 such purchase, merger or consolidation to be first ap-
22 proved by the board. With the approval of the board and
23 compliance with all applicable laws of this state and the
24 United States a national banking association may con-
25 vert into a state bank. After any such purchase, merger
26 or consolidation, no other corporation shall be allowed
27 to take or use the name of any institution participating
28 in such purchase, merger or consolidation.

29 Unless in conflict with a law of the United States of
30 America, at the completion of any purchase, merger or
31 consolidation, whether heretofore or hereafter effected
32 under any past, present or future law of this state or of
33 the United States of America, and whether such bank-
34 ing institution be organized under the provisions of the
35 laws of this state or of the United States of America,
36 or both, the purchasing, merged or consolidated banking
37 institution shall be deemed to have been substituted by
38 operation of law in the place and stead of each of the
39 participating institutions in all fiduciary relationships, and
40 all and singular the titles, properties, offices, appoint-
41 ments, rights, powers, duties, obligations and liabilities
42 of each participating institution as trustee, agent, ex-
43 ecutor, administrator, guardian, depository, registrar,
44 transfer agent or other fiduciary or in any other capacity,
45 office or position shall be deemed to have become vested
46 in and devolved upon the purchasing, merged or con-
47 solidated institution, and such purchasing, merged or con-
48 solidated institution shall be entitled to take, receive, ac-
49 cept, hold, administer and discharge any and all grants,
50 gifts, bequests, devises, conveyances, trusts, powers and
51 appointments made by deed, deed of trust, will, agree-
52 ment, order of court or otherwise to, in favor of, or in
53 the name of, any such participating institution, whether
54 made, executed or entered before or after such purchase,

55 merger or consolidation, and whether to vest or become
56 effective before or after such purchase, merger or con-
57 solidation, as fully and to the same effect as if the pur-
58 chasing, merged or consolidated institution had been
59 named in such deed, deed of trust, will, agreement, order
60 or other instrument instead of another participating in-
61 stitution; and all acts heretofore taken or performed in
62 its own name or in the name of, or in behalf of, any in-
63 stitution participating in any such purchase, merger or
64 consolidation by any purchasing, merged or consolidated
65 institution as trustee, agent, executor, administrator,
66 guardian, depository, registrar, transfer agent, or other
67 fiduciary shall be as good, valid, and effectual as if this
68 section had been in force at the time of the taking or per-
69 formance of such acts.

70 Any banking institution may, after thirty days' notice
71 to the commissioner of banking, cease to transact business
72 and go into voluntary liquidation and convert its assets
73 into money and pay the same to the persons entitled there-
74 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-
2 cate of authority, permit or license of any financial insti-
3 tution other than a state bank, or if the board shall revoke
4 such certificate, permit or license of a state bank and any
5 such financial institution or state bank shall, within a
6 reasonable time, fail to comply with the laws of the state
7 and the requirements of the commissioner or board, and
8 thereby fail to secure a new certificate of authority, per-
9 mit or license to continue in business, it shall be the duty
10 of the commissioner of banking to compel any such offend-
11 ing financial institution or state bank to go into liquida-
12 tion, wind up its affairs and surrender its charter. In any
13 such case the attorney general, at the request of the com-
14 missioner of banking, shall institute an action in the
15 circuit court of the county in which the business of the
16 offending financial institution or state bank is located,
17 in the name of the state of West Virginia, to wind up the

18 affairs and dissolve such financial institution or state
19 bank, and such court shall have jurisdiction to make and
20 enter all necessary and proper orders and to wind up the
21 affairs and dissolve the financial institution or state bank
22 as in the case of insolvent corporations.

23 If any such financial institution or state bank shall,
24 within a reasonable time after the revocation of its
25 certificate of authority, license or permit to transact busi-
26 ness in this state, fail to comply with the laws of the
27 state and the requirements of the department of banking
28 and thereby fail to secure a new certificate of authority,
29 permit or license to continue in business, it shall be the
30 duty of the commissioner of banking to cause the assets
31 of such offending financial institution located in the state
32 of West Virginia to be liquidated, and to compel such
33 financial institution to cease to transact business in the
34 state of West Virginia. At the request of the commissioner
35 of banking, the attorney general shall institute and prose-
36 cute any action or actions in the circuit court of the
37 county in which any of the assets of the offending finan-
38 cial institution may be located, in the name of the state
39 of West Virginia, to accomplish the purposes of this
40 section.

**§31A-7-7. Federal deposit insurance corporation or other fed-
eral agency as receiver or liquidator; subrogation
of federal deposit insurance corporation to rights
of depositors.**

1 The federal deposit insurance corporation, or a suc-
2 cessor federal agency or instrumentality in lieu thereof,
3 is hereby authorized and empowered to be and act with-
4 out bond as receiver or liquidator of any state banking
5 institution, the deposits in which are to any extent in-
6 sured by said corporation, and which shall have been
7 closed on account of inability to meet the demands of its
8 depositors.

9 In the event of such closing the commissioner of bank-
10 ing may tender to such corporation the appointment as
11 receiver or liquidator of such banking institution, and, if
12 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 receiver 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 Deposit Insurance Act and amendments thereto, but the rights of depositors and other creditors of the closed institution shall be determined in accordance with the applicable 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; JUDICIAL REVIEW; UNLAWFUL ACTS; PENALTIES.

- §31A-8-1. Hearings before commissioner or hearing examiner; procedure, 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 insolvency.
- §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.

1 (a) Any person who is adversely affected by any
2 order, demand, action, refusal, failure to act, denial or
3 requirement of the commissioner (other than the pro-
4 mulgation of rules and regulations which promulgation
5 shall be in accordance with the provisions of article three,
6 chapter twenty-nine-a of this code) shall be entitled
7 to a hearing thereon before the commissioner or a hearing
8 examiner appointed by him, if such person files with the
9 commissioner a written demand for such hearing within
10 ten days after receiving written notice of such order, de-
11 mand, action, refusal, failure to act, denial or requirement
12 or within ten days after receiving knowledge thereof
13 through the application or implementation thereof or by
14 any other means, whichever event shall first occur.

15 (b) Upon receipt of a demand for such hearing the
16 commissioner shall set a time and place therefor not less
17 than ten and not more than thirty days thereafter. Said
18 hearing may be continued by the commissioner upon
19 his own motion or for good cause shown by the person
20 demanding the same.

21 (c) All of the pertinent provisions of article five,
22 chapter twenty-nine-a of this code shall apply to and
23 govern the hearing and the administrative procedures in
24 connection with and following such hearing.

25 (d) Any such hearings shall be conducted by the com-
26 missioner or a hearing examiner appointed by him. For
27 the purpose of conducting such hearings the commissioner
28 or such hearing examiner shall have the power and
29 authority to issue subpoenas and subpoenas duces tecum

30 which shall be issued and served within the time, for the
31 fees and shall be enforced and governed as provided in
32 section one, article five of said chapter twenty-nine-a.

33 (e) The person demanding such hearing may rep-
34 resent himself thereat or be represented by an attorney
35 at law admitted to practice before any circuit court of
36 this state.

37 (f) After any such hearing and consideration of all
38 of the testimony, evidence and record in the case, the
39 commissioner shall render his decision in writing affirm-
40 ing, modifying or reversing the order, demand, action,
41 refusal, failure to act, denial or requirement with respect
42 to which such hearing was demanded, which decision
43 shall be accompanied by findings of fact and conclusions
44 of law as specified in section three, article five, chapter
45 twenty-nine-a of this code, and a copy of such decision
46 and accompanying findings and conclusions shall be
47 served upon the person demanding such hearing, and his
48 attorney of record, if any.

§31A-8-2. Judicial review; appeals to supreme court of appeals.

1 (a) Any person adversely affected by any decision
2 of the commissioner made and entered after a hearing as
3 provided in section one of this article shall be entitled to
4 judicial review thereof in the manner provided in sec-
5 tion four, article five, chapter twenty-nine-a of this code.

6 (b) Any person adversely affected by a final judg-
7 ment of a circuit court following judicial review as pro-
8 vided in subsection (a) of this section may seek review
9 thereof by appeal to the supreme court of appeals in the
10 manner provided in article six, chapter twenty-nine-a of
11 this code.

**§31A-8-3. Certain practices by affiliates, officers, etc., of corpor-
ate financial institutions forbidden; penalties.**

1 (a) It shall be unlawful for an affiliate of any corporate
2 financial institution or for an officer, director or employee
3 of any corporate financial institution or affiliate thereof:

4 (1) To solicit, accept or agree to accept, directly or
5 indirectly, from any person other than such institution,
6 any gratuity, compensation or other personal benefit for

7 any action taken or omitted by such institution or for
8 endeavoring to procure the same; or

9 (2) To have any interest, directly or indirectly, in the
10 proceeds of a purchase or sale made by such institution,
11 unless such purchase or sale is expressly authorized by
12 provisions of this chapter and is approved in advance by
13 vote of a majority of all directors of such institution, any
14 interested director taking no part in such vote; or

15 (3) To have any interest, direct or indirect, in the
16 purchase at less than its face value of any evidence of
17 indebtedness issued by the institution.

18 (b) For purposes of this section the term "affiliate"
19 shall include:

20 (1) Any person who holds a majority of the stock of
21 such corporate financial institution or has been deter-
22 mined by the commissioner of banking to hold a con-
23 trolling interest therein, or any other corporation in
24 which such person owns a majority of the stock, or any
25 partnership in which he has an interest;

26 (2) Any corporation in which the institution or an
27 officer, director or employee thereof holds a majority of
28 the stock or any partnership in which such institution or
29 any officer, director or employee thereof has an interest;
30 and

31 (3) Any corporation of which a majority of the di-
32 rectors are officers, directors or employees of the cor-
33 porate financial institution or any corporation of which
34 officers, directors or employees thereof constitute a ma-
35 jority of the directors of the corporate financial institu-
36 tion.

37 (c) Any person who violates any provision of this
38 section shall be guilty of a misdemeanor and be sub-
39 ject to the penalties provided in section fifteen of this
40 article.

**§31A-8-4. Change in control of banking institution; loans on
bank stocks; required procedures; prohibitions;
penalties.**

1 (a) Whenever a change occurs with respect to the
2 outstanding voting stock of any banking institution

3 which will result in control or in a change in the con-
4 trol of such banking institution, the president or other
5 chief executive officer of such bank shall promptly re-
6 port such facts to the commissioner of banking upon ob-
7 taining knowledge of such change. As used in this sub-
8 section, the term "control" means the power to directly
9 or indirectly direct or cause the direction of the man-
10 agement or policies of the banking institution. A change
11 in ownership of voting stock which would result in di-
12 rect or indirect ownership by a stockholder or an affli-
13 ated group of stockholders of less than ten percent
14 of the outstanding voting stock shall not be considered
15 a change of control. If there is any doubt as to whether
16 a change with respect to the outstanding voting stock
17 is sufficient to result in control thereof or to effect a
18 change in the control thereof, such doubt shall be re-
19 solved in favor of reporting the facts to the commis-
20 sioner.

21 (b) Whenever a banking institution makes a loan or
22 loans, secured, or to be secured, by twenty-five percent
23 or more of the outstanding voting stock of another bank-
24 ing institution, the president or other chief executive
25 officer of the lending bank shall promptly report such
26 fact to the commissioner of banking upon obtaining
27 knowledge of such loan or loans, except that no report
28 need be made in those cases where the borrower has
29 been the owner of record of the stock for a period of
30 one year or more, or the stock is that of a newly organ-
31 ized bank prior to its opening.

32 (c) The reports required by this section shall contain
33 the following information to the extent that it is known
34 by the person making the report: (1) the number of shares
35 involved, (2) the names and addresses of the sellers (or
36 transferors), (3) the names and addresses of the pur-
37 chasers (or transferees), (4) the names and addresses
38 of the beneficial owners if the shares are registered in
39 another name, (5) the purchase price, (6) the total
40 number of shares owned by the sellers (or transferors),
41 the purchasers (or transferees) and the beneficial own-
42 ers both immediately before and after the transaction,

43 and in the case of a loan, (7) the name and address of
44 the borrower, (8) the amount of the loan, and (9) the
45 name of the banking institution issuing the stock secur-
46 ing the loan and the number of shares securing the
47 loan. In addition to the foregoing, such reports shall
48 contain such other information as may be available to
49 inform the commissioner of the effect of the transaction
50 upon control of the bank whose stock is involved.

51 (d) Whenever such a change as described in sub-
52 section (a) of this section occurs, such banking insti-
53 tution shall report promptly to the commissioner any
54 changes or replacements of its chief executive officer
55 or of any director which occur in the next twelve-
56 month period, including in its report a statement of the
57 past and current business and professional affiliations of
58 the new chief executive officer or directors thereof.

59 (e) It shall be unlawful for any person to purchase
60 or acquire the stock in any banking institution for pur-
61 poses of transferring, selling, lending, investing or other-
62 wise disposing of properties, funds, securities or other
63 assets of the institution in any manner jeopardizing or
64 imperiling the institution's financial condition.

65 (f) Any person who violates any provision of this
66 section shall be guilty of a misdemeanor and be subject
67 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 dis-
2 count any obligation on the security of the shares of
3 its own capital stock, or be the purchaser or holder of
4 any such shares, except shares of authorized but un-
5 issued stock provided for by the charter of such bank-
6 ing institution in accordance with the provisions of
7 section four, article four of this chapter unless taken
8 as a pledge or purchased to prevent loss upon a debt
9 previously contracted lawfully and in good faith; and
10 all shares of its stock, purchased or held in such man-
11 ner, shall, within six months after the time of the pur-
12 chase or pledge, be sold or disposed of at public or pri-
13 vate 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 during 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,

4 transmit or circulate, any false or untrue statement,
5 rumor or suggestion derogatory to the financial condition,
6 solvency or financial standing of any banking institution,
7 or with intent to depress the value of the stocks, bonds
8 or securities of any such banking institution, directly or
9 indirectly, wilfully and knowingly makes or transmits
10 to another, circulates or counsels, aids, procures or
11 induces another to make, transmit or circulate any false
12 or untrue statement, rumor or suggestion derogatory to
13 the financial condition, or with respect to the earnings or
14 management of the business of any banking institution or
15 resorts to any fraudulent means with intent to depress
16 in value the stocks, bonds or securities of any banking
17 institution, shall be guilty of a misdemeanor and subject
18 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.

1 Every officer, director, employee or agent of any finan-
2 cial institution who wilfully misapplies or without au-
3 thority loans any of the money, funds or credits of the
4 institution, or who, without authority from the directors,
5 issues or puts into circulation any of the notes of any
6 financial institution; or who, without authority, issues
7 or puts forth any certificate of deposit, draws any order
8 or bill of exchange, makes any acceptance, assigns any
9 note, bond, draft, bill of exchange, mortgage, deed of
10 trust, judgment or decree; or who makes or causes to be
11 made any false entry in any book, record, document, re-
12 port or statement of any financial institution, or fails to
13 make proper entries therein, with intent, in either case,
14 to injure or defraud the institution or any person, or to
15 deceive any officer of any financial institution or other
16 person, or any agent appointed to examine the affairs of
17 such financial institution, and every person who with
18 like intent, in any way aids or abets any officer, director,
19 employee or agent in the violation of this section, shall
20 be guilty of a felony.

21 Any person who shall wilfully or knowingly make or
22 cause to be made, any false statement, or exhibit any

23 falsified, forged or invalid paper, with intent to deceive
24 any person authorized to examine into the affairs of such
25 financial institution; or shall make, state or publish any
26 false statement of the financial condition of any financial
27 institution, knowing or having reason to believe the same
28 to be false, shall be deemed guilty of a felony.

29 Any officer, director, employee or agent of any financial
30 institution or any other person guilty of any felony offense
31 as provided in this section shall, upon conviction thereof,
32 be imprisoned in the penitentiary not less than one nor
33 more than five years and also, in the discretion of the
34 court, may be fined not to exceed ten thousand dollars.

§31A-8-10. Unlawful activity by bank personnel.

1 It shall be unlawful for an officer, director, employee
2 or agent of a banking institution:

3 (a) To maintain or authorize the maintenance of any
4 account of such institution in a manner which, to his
5 knowledge, does not conform to requirements of the pro-
6 visions of this chapter and any rules and regulations pro-
7 mulgated by the commissioner of banking thereunder;
8 or

9 (b) To obstruct or endeavor to obstruct a lawful
10 examination of such institution by any lawfully au-
11 thorized officer or employee of any state or federal gov-
12 ernmental supervisory department, agency or office.

**§31A-8-11. Failure to make, publish or distribute reports;
penalty.**

1 Every financial institution failing to make and trans-
2 mit to the commissioner any of the reports required by
3 law or any rule and regulation or order thereunder in
4 the form prescribed by the commissioner of banking,
5 or failing to publish or distribute the reports, as so
6 required, shall forthwith be notified by the commissioner
7 of banking and, if such failure continues for ten days
8 after receipt of such notice, such delinquent institution
9 shall be subject to a penalty of one hundred dollars for
10 each day thereafter that such failure continues, such
11 penalty to be recovered by the commissioner of banking

12 and paid into the state treasury to the account of the
13 general fund.

§31A-8-12. Branch banks forbidden; limitation on purchase of bank stock.

1 (a) No banking institution shall:

2 (1) Install or maintain any branch bank; or

3 (2) Engage in business at any place other than at its
4 principal office in this state.

5 (b) It shall be unlawful for any person to purchase
6 and hold stock in any banking institution for the purpose
7 of selling, negotiating or trading participation in the
8 ownership thereof either for the purpose of perfecting
9 control of one or more such banking institutions or for
10 the purpose of inducing other persons, firms or corpora-
11 tions or the general public to become participating own-
12 ers therein. Nothing herein shall prevent the ownership
13 of stock in any such banking institution by any person
14 for investment purposes.

15 (c) Any violation of any provision of this section
16 shall constitute a misdemeanor offense punishable by
17 applicable penalties as provided in section fifteen of
18 article eight of this chapter.

§31A-8-13. Banking institution not to be surety; hypothecation and other dealings with securities and assets limited.

1 No banking institution shall become or be accepted
2 as surety on any bond or undertaking required by the
3 laws or by the courts of this state or any other state, or
4 shall become surety or guarantor of any person for the
5 discharge of any duty in any position or the performance
6 of any contract or undertaking. No banking institution
7 shall pledge, hypothecate or deliver any of its assets of
8 any description whatsoever to any person to indemnify
9 him as surety for such banking institution or as surety
10 for any other person. But a bank may pledge, hypothecate,
11 deliver or deposit securities to guarantee deposits of the
12 United States, or any agency or instrumentality thereof,
13 the state of West Virginia, or any agency or instrumen-
14 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.

1 Consistent with provisions of the federal reserve and

2 federal deposit insurance corporation laws, as enacted
3 and amended by the Congress of the United States, sub-
4 ject to any authority granted by the board pursuant to
5 section two, article three of this chapter, and notwith-
6 standing any provisions of the laws of the state of West
7 Virginia to the contrary, no banking institution shall,
8 directly or indirectly, by any device whatsoever, pay any
9 interest on any deposit which is payable on demand, in-
10 cluding deposits of public funds by any governments or
11 governmental bodies, agencies or activities.

§31A-8-15. General penalties.

1 Upon conviction for any misdemeanor offense under
2 provisions of this chapter, an offending financial institu-
3 tion shall be fined not more than five thousand dollars
4 and may, in the discretion of the court in consideration
5 of the nature of the offense, be required to forfeit its cor-
6 porate charter and franchise. Upon conviction of any in-
7 dividual, whether officer, director, agent, employee or
8 any other person connected or not connected with a
9 financial institution, of any misdemeanor offense under
10 provisions of this chapter, the offending individual shall
11 be fined not more than one thousand dollars and may,
12 in the discretion of the court, be confined in the county
13 jail for not more than twelve months.

§31A-8-16. Misdemeanors and felonies.

1 The failure to perform any duty required of any finan-
2 cial institution or individual pursuant to provisions of
3 this chapter, or the doing of any act by any financial
4 institution or individual forbidden by the provisions of
5 this chapter, shall constitute a misdemeanor offense, ex-
6 cept any act which is made a felony offense by specific
7 language of this article.

§31A-8-17. Legal representation of commissioner and board.

1 The board and the commissioner shall, upon request,
2 be represented by the attorney general and by his as-
3 sistants in any hearings before them, or either of them,
4 and in any actions, proceedings or appeals to which they,
5 or either of them, may be a party and shall also be repre-

6 sented in any action, proceeding or appeal in any circuit
7 court of this state by the prosecuting attorney of such
8 county, all without additional compensation.

§31A-8-18. References to code provisions.

1 Wherever in the code of West Virginia, in any act, in
2 general law or elsewhere in the law, reference is made to
3 any section, any article, any chapter or any particular
4 provision or term thereof of the code of West Virginia
5 which is repealed by the passage of this new chapter
6 thirty-one-a of the code of West Virginia, as such section,
7 article, chapter, particular provision or term thereof
8 existed immediately prior to the effective date of this
9 new chapter thirty-one-a, such reference shall henceforth
10 be read, construed and understood to mean the compa-
11 rable section, article, chapter, particular provision or term
12 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
2 tax upon all dealers in and of nonintoxicating beer as
3 defined by this article, which license period shall begin
4 on the first day of July of each year and end on the
5 thirtieth day of June of the following year, and if granted
6 for a less period the same shall be computed quarterly
7 in proportion to the remainder of the fiscal year as
8 follows:

9 (a) Retail dealers shall be divided into two classes,
10 Class A and Class B. In the case of a Class A retail dealer
11 the license fee shall be one hundred dollars for each
12 place of business; the license fee for social, fraternal
13 or private clubs not operating for profit, and having
14 been in continuous operation for two years or more
15 immediately preceding the date of application, shall be
16 one hundred dollars; and except that railroads operating
17 in this state may dispense nonintoxicating beer upon
18 payment of an annual license tax of ten dollars for each
19 dining, club, or buffet car in which the same is dispensed.

20 Class A licenses issued for social, fraternal or private
21 clubs and for railroad dining, club or buffet cars, as
22 herein provided, shall authorize the licensee to sell non-
23 intoxicating beer at retail for consumption only on the
24 licensed premises where sold. All other Class A licenses
25 shall authorize the licensee to sell nonintoxicating beer
26 at retail for consumption on or off the licensed premises.

27 In the case of a Class B retailer, there shall be two
28 types of a Class B license, each type to be colored dif-
29 ferently so as to be easily distinguished. The fee for a
30 Class B license authorizing the sale of unchilled beer
31 only shall be fifteen dollars. The fee for a Class B license
32 authorizing the sale of both chilled and unchilled beer
33 shall be one hundred dollars. A Class B license shall
34 authorize the licensee to sell nonintoxicating beer at retail
35 in bottles, cans or other sealed containers only, and only
36 for consumption off the licensed premises. Sales under
37 this license to any person at any one time must be in
38 less quantities than five gallons. Such license may be

39 issued only to the proprietor or owner of a grocery store.
40 For the purpose of this article the term "grocery store"
41 means and includes any retail establishment commonly
42 known as a grocery store or delicatessen, where food or
43 food products are sold for consumption off the premises.

44 (b) In the case of a distributor the license fee shall
45 be two hundred fifty dollars for each place of business.

46 (c) In the case of a brewer with its principal place
47 of business located in this state, the license fee shall be
48 five hundred dollars for each place of manufacture.

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

1 It shall be unlawful:

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

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

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

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

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

42 (f) For any licensee to transport, sell, deliver or pur-
43 chase any nonintoxicating beer or product of the brew-
44 ing industry upon which there shall appear a label or
45 other informative data which in any manner refers to
46 the alcoholic content of such beer or product of the
47 brewing industry, or upon the label of which there
48 appears the word or words "strong," "full strength,"
49 "extra strength," "prewar strength," "high test" or other
50 similar expressions bearing upon the alcoholic content
51 of such product of the brewing industry, or which refers
52 in any manner to the original alcoholic strength, extract
53 or balling proof from which such beverage was produced,
54 except that such label shall contain a statement that the
55 alcoholic content thereof does not exceed three and two-
56 tenths percent by weight;

57 (g) For any licensee to permit in his premises any
58 lewd, immoral or improper entertainment, conduct or
59 practice;

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

66 (i) For any licensee to obstruct the view of the
67 interior of his premises by enclosure, lattice, drapes or
68 any means which would prevent plain view of the patrons

69 occupying such premises. The interior of all licensed
70 premises shall be adequately lighted at all times: *Pro-*
71 *vided*, That provisions of this subdivision shall not apply
72 to the premises of a Class B retailer or to the premises
73 of a private club licensed under the provisions of article
74 seven, chapter sixty of this code;

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

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

91 (l) For any retail licensee to sell or dispense non-
92 intoxicating beer purchased or acquired from any source
93 other than a licensed distributor or brewer under the
94 laws of this state;

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

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

109 (o) For any distributor to sell, possess for sale,
110 transport or distribute nonintoxicating beer except in
111 the original container;

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

115 (q) For any Class B retailer to permit the consumption
116 of nonintoxicating beer upon his licensed premises;

117 (r) For any licensee, his, its or their servants, agents,
118 or employees, or for any licensee by or through such
119 servants, agents or employees, to allow, suffer or permit
120 any person under the age of eighteen years to loiter
121 in or upon any licensed premises; except, however,
122 that the provisions of this subdivision shall not apply
123 where such person under the age of eighteen years, is
124 in, on or upon such premises in the immediate company
125 of his or her parent or parents, or where and while such
126 person under the age of eighteen years is in, on or upon
127 such premises for the purpose of and actually making
128 a lawful purchase of any items or commodities therein
129 sold, or for the purchase of and actually receiving any
130 lawful service therein rendered, including the consump-
131 tion of any item of food, drink or soft drink therein law-
132 fully prepared and served or sold for consumption on
133 such premises.

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

CHAPTER 9

(House Bill No. 877—By Mr. Watson)

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

AN ACT to amend article sixteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section 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 cor-
3 poration engaging in the business of selling nonintoxi-
4 cating beer, ale or other malt beverage to a wholesaler,
5 to discriminate in price, allowance, rebate, refund, com-
6 mission, discount or service between distributors licensed
7 in West Virginia. "Discriminate" as used in this section,
8 shall mean the granting of more favorable prices, allow-
9 ances, rebates, refunds, commissions, discounts or services
10 to one West Virginia distributor than to another.

11 (b) For any brewer, or any other person, firm or cor-
12 poration engaging in the business of selling nonintoxi-
13 cating beer, ale or other malt beverage to a wholesaler,
14 to sell or deliver nonintoxicating beer, ale or other malt
15 beverage to any licensed distributor unless and until such
16 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-1. How article cited.
- §13-2E-2. Definitions.
- §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-7. Authorization for issuance.
- §13-2E-8. Authority for escrow agreement.
- §13-2E-9. Call of revenue bonds for redemption.
- §13-2E-10. Security provisions.
- §13-2E-11. Bonds payable solely from revenues of enterprise.
- §13-2E-12. Tax exemption; exceptions.
- §13-2E-13. Validity of bonds.
- §13-2E-14. Article complete authority for refunding bonds; effect on other laws; liberal construction.
- §13-2E-15. Severability.

§13-2E-1. How article cited.

1 This article may be cited as "Revenue Bond Refunding
2 Act."

§13-2E-2. Definitions.

1 The following terms or words wherever used or referred
2 to in this article shall have the following meaning, unless
3 a different meaning plainly appears from the context:

4 The term "public body" shall mean any city, town,
5 village, county, public service district, sanitary district,
6 political subdivision or any other similar public entity
7 now or hereafter created, and the state of West Virginia
8 acting through any of its agencies, boards, commissions or
9 departments, having power to issue revenue bonds.

10 The term "governing body" shall mean board, council
11 or other body having power to borrow money on behalf
12 of a public body.

13 The term "law" shall mean any act or statutes, general,
14 special or local, of this state, including, without being
15 limited to, the charter of any public body.

16 The term "enterprise" shall mean any work, under-
17 taking, or project which the public body is or may here-
18 after be authorized to acquire or construct and from
19 which the public body has heretofore derived or may
20 hereafter derive revenues, for the refinancing of which
21 enterprise refunding bonds are issued under this article,
22 and such enterprise shall include all improvements,
23 betterments, extensions and replacements thereto, and
24 all appurtenances, facilities, lands, rights in land, water
25 rights, franchises, and structures in connection therewith
26 or incidental thereto.

27 The term "revenues" shall mean all fees, tolls, rates,
28 rentals and charges to be levied and collected in connec-
29 tion with and all other income and receipts of whatever
30 kind or character derived by the public body from the
31 operation of any enterprise or arising from any enterprise,
32 and including earnings derived from investments and
33 bank deposits.

34 The term "revenue bonds" shall mean notes, bonds,
35 certificates or other obligations of a public body hereto-

36 fore or hereafter issued and outstanding under any law
37 and which by their terms are payable from the revenues
38 derived by such public body from the operation of an
39 enterprise.

40 The term "refunding bonds" shall mean notes, bonds,
41 certificates or other obligations of a public body issued
42 pursuant to this article.

43 The term "holder of bonds" or "bondholder" or any
44 similar term shall mean any person who shall be the bear-
45 er of any outstanding refunding bond or refunding bonds
46 registered to bearer or not registered, or the registered
47 owner of any such outstanding refunding bond or re-
48 funding bonds which shall at the time be registered
49 other than to bearer.

50 The words "net interest cost" when referring to an
51 outstanding issue of revenue bonds to be refunded, shall
52 mean the total amount of interest which would accrue on
53 such revenue bonds from the date of the refunding bonds
54 to the respective maturity dates of the outstanding reve-
55 nue bonds to be refunded, without regard to any retained
56 options of redemption.

57 The words "net interest cost" when referring to a pro-
58 posed issue of refunding bonds, shall mean the total
59 amount of interest to accrue on the refunding bonds from
60 their date to their respective maturities, without regard
61 to any retained options of redemption, plus the amount
62 of any discount below par or less the amount of any pre-
63 mium above par at which the bonds may be sold.

64 The words "net effective interest rate" when referring
65 to a proposed issue of refunding bonds, shall mean the
66 net interest cost of said refunding bonds divided by the
67 product obtained by multiplying the aggregate principal
68 amount of such refunding bonds maturing on each
69 maturity date by the number of years from the date of
70 the refunding bonds to their respective maturities, with-
71 out regard to any retained options of redemption.

72 The term "certified public accountant" shall mean an in-
73 dependent certified public accountant or firm of certified
74 public accountants licensed to practice in this state.

75 Words importing the singular number shall include the
76 plural number in each case and vice versa, and words
77 importing persons shall include firms and corporations.

§13-2E-3. Authority to refund.

1 Any public body may issue refunding bonds for the
2 purpose of refunding all or any part of its revenue
3 bonds now or hereafter outstanding, whether or not such
4 revenue bonds are at the time of the refunding due
5 or optional for redemption, under the circumstances and
6 restrictions set forth in this article. Refunding bonds
7 shall be payable from revenues derived from the same
8 enterprise as the revenue bonds to be refunded except
9 where the public body has outstanding revenue bonds
10 payable from the revenues of an enterprise and is au-
11 thorized under any other law to combine and consolidate
12 such enterprise with another enterprise and issue reve-
13 nue bonds payable from the revenues of the combined
14 and consolidated enterprises. An issue of refunding bonds
15 may refund part or all of one or more issues of out-
16 standing revenue bonds: *Provided*, That part or all of
17 two or more issues of outstanding revenue bonds may not
18 be refunded under this article unless either (a) all of
19 the issues of outstanding revenue bonds to be refunded
20 are payable from revenues derived from the same en-
21 terprise, or (b) the public body is authorized under any
22 other law to combine or consolidate the enterprises in
23 question and issue revenue bonds payable from the
24 revenues of the combined or consolidated enterprises.

25 Refunding bonds may be issued hereunder whenever
26 the governing body of the public body deems it ex-
27 pedient.

§13-2E-4. Terms, form and execution of refunding bonds.

1 Refunding bonds authorized under this article may be
2 issued in one or more series, may bear such date or
3 dates, may mature at such time or times, not later than
4 the date of final maturity of the bonds to be refunded
5 and not exceeding the period of usefulness of the enter-
6 prise, as determined by the governing body in its dis-
7 cretion, nor in any event exceeding forty years from

8 their respective dates; may bear interest at such rate
9 or rates; may be in such denomination or denomi-
10 nations; may be in such form either coupon or
11 registered; may carry such registration and con-
12 version privileges; may be executed in such man-
13 ner; may be payable in such medium of payment,
14 at such place or places; may be subject to such
15 terms of redemption, with or without a premium;
16 may be declared or become due before the maturity
17 date; may provide for the replacement of mutilated,
18 destroyed, stolen or lost bonds; may be authenticated
19 in such manner and upon compliance with such condi-
20 tions; and may contain such other terms and covenants,
21 as may be determined by the governing body in the
22 proceedings authorizing the refunding bonds. Notwith-
23 standing the form or tenor thereof, and in the absence
24 of an express recital on the face thereof that the bond
25 is nonnegotiable, all refunding bonds shall at all times
26 be, and shall be treated as, negotiable instruments for
27 all purposes.

§13-2E-5. Issuance of refunding bonds; application of proceeds.

1 Refunding bonds issued under this article may be
2 exchanged for not less than a like principal amount of
3 the revenue bonds to be refunded, or may be sold at
4 public or private sale, or may be exchanged in part and
5 sold in part, in such manner and upon such terms as
6 may be determined by the governing body to be for
7 the best interests of the public body: *Provided, That*
8 such refunding bonds shall not be sold or exchanged
9 at a price lower than a price which will show a net saving
10 to the issuer after deducting all expenses of the refund-
11 ing.

12 If any such refunding bonds are to be sold, they may
13 be issued in such principal amount as may be deter-
14 mined advisable by the governing body including, without
15 limitation, the aggregate principal amount of the revenue
16 bonds to be refunded, interest accrued and to accrue
17 to the date or dates on which the revenue bonds being
18 refunded are scheduled to mature or to be redeemed
19 prior to maturity, any redemption premiums which must

20 be paid in order to refund such outstanding revenue
21 bonds and any costs and expenses of issuing the re-
22 funding bonds and providing for retirement of revenue
23 bonds to be refunded. If sold, the net proceeds shall either
24 be immediately applied to the payment or redemption
25 and retirement of the revenue bonds to be refunded,
26 or the net proceeds of the refunding bonds may be invested
27 at the discretion and under the supervision of the escrow
28 agent in whole, or in part, (a) in direct obligations issued
29 by the United States of America or one of its agencies, (b)
30 in obligations unconditionally guaranteed by the United
31 States of America as to principal and interest, or (c) in cer-
32 tificates of deposit of a banking corporation or association
33 which is a member of the federal deposit insurance corpo-
34 ration, or successor; but any such certificates of deposit
35 must be fully secured as to both principal and interest by
36 pledged collateral consisting of direct obligations of or
37 obligations guaranteed by the United States of America
38 having a market value, excluding accrued interest, at all
39 times at least equal to the amount of the principal of and
40 accrued interest on such certificates of deposit. Any such
41 investments must mature, or be payable in advance of
42 maturity at the option of the holder, and must bear inter-
43 est in such manner as to provide funds which, together
44 with uninvested money placed in the hereinafter men-
45 tioned escrow, will be sufficient to pay when due or called
46 for redemption the revenue bonds refunded, together
47 with interest accrued and to accrue thereon and redemp-
48 tion premiums, if any, and such refunding bond pro-
49 ceeds or obligations so purchased therewith shall, and
50 with other funds legally available to the public body
51 for such purpose may, be deposited in escrow with the
52 state sinking fund commission to be held in trust for
53 the payment and redemption of the revenue bonds re-
54 funded, and such money and obligations and any re-
55 investment thereof shall be held in trust by such escrow
56 agent for the payment of interest on the refunded bonds
57 when due, and principal thereof and applicable redemp-
58 tion premiums, if any, when due, or upon the date or dates
59 for which they shall have been called for redemption, or
60 upon an earlier voluntary surrender at the option of the

61 escrow agent; provided if interest earned by any
62 investment in such escrow are shown to be in excess
63 of the amounts required from time to time for the
64 payment of interest on and principal of the refunded
65 revenue bonds, including applicable redemption premium,
66 then such excess may be withdrawn from escrow and
67 disbursed by the public body as are other revenues of
68 the enterprise. Any moneys in the sinking or reserve
69 funds or other funds maintained for the outstanding
70 revenue bonds to be refunded may be applied in the
71 same manner and for the same purpose as are the net
72 proceeds of refunding bonds or may be deposited in
73 the special fund or any reserve funds established for
74 account of the refunding bonds. The term "net pro-
75 ceeds" as used above shall mean the gross proceeds of
76 the refunding bonds after the deduction therefrom of
77 all accrued interest, costs and expenses incurred in con-
78 nection with the authorization and issuance of the re-
79 funding bonds and the retirement of the outstanding
80 revenue bonds, and including all costs and expenses
81 resulting from price variations to par or otherwise in-
82 curred in the purchase of obligations for escrow and
83 in the disposition of the refunding bonds.

§13-2E-6. Determination of governing body to be conclusive.

1 The determination by the governing body of any public
2 body issuing refunding bonds under this article that the
3 limitations herein imposed upon the issuance of refund-
4 ing bonds have been met, shall be conclusive: *Provided,*
5 *however,* That such public body shall have obtained
6 from an independent certified public accountant a certi-
7 fication that the amount of saving stated to be achieved by
8 the refunding shall in fact be served, based upon his re-
9 view, comparison and analysis of the net interest cost in
10 dollars of the refunding bonds and the net interest cost
11 in dollars of the bonds to be refunded.

§13-2E-7. Authorization for issuance.

1 Refunding bonds and all acts required to be authorized
2 hereunder shall be authorized in the manner in which the
3 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.

§13-2E-9. Call of revenue bonds for redemption.

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.

§13-2E-10. Security provisions.

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

8 be pledged a fixed amount or a fixed proportion of such rev-
9 enues which shall be sufficient to pay the principal of and
10 interest on the refunding bonds as the same become due.

11 In order to assure payment of the principal and in-
12 terest on any refunding bonds it shall be the duty of
13 the governing body of the public body to establish, levy,
14 maintain and collect such fees, tolls, rentals, rates and
15 other charges for the services of such enterprise as shall
16 be necessary to produce revenues sufficient, after making
17 due and reasonable allowance for contingencies and for a
18 margin of error in estimates, to pay at all times principal
19 of and interest on the refunding bonds as the same be-
20 come due, to pay current expenses of operation and
21 maintenance, to provide for depreciation, to provide for
22 reserves for any of the foregoing, to comply in all respects
23 with any contract or agreement with bondholders set
24 forth in the ordinance or resolution authorizing such re-
25 funding bonds, and to meet any other obligations of the
26 public body which by their terms are charges, liens, or
27 encumbrances upon the revenues of such enterprise.

28 The ordinance or resolution authorizing any refunding
29 bonds may contain such covenants with the holders of the
30 refunding bonds as to the efficient management and opera-
31 tion of the enterprise; the collection, keeping and disposition
32 of the revenues of the enterprise; the issuance of additional
33 refunding bonds or revenue bonds; the carrying of in-
34 surance on such enterprise and the disposition of in-
35 surance proceeds; the keeping of books and records and
36 the auditing thereof; the inspection by bondholders at
37 reasonable times of the enterprise and the records, ac-
38 counts and data of the public body relating thereto;
39 limitations upon the sale or other disposition of integral
40 parts of the enterprise; the discontinuance of the services
41 and facilities of the enterprise upon failure to pay for
42 such services and facilities; the appointment and duties
43 of a trustee; the rights, liabilities, powers and duties
44 arising upon the breach by the public body of any cove-
45 nants, conditions or obligations contained in the ordinance
46 or resolution authorizing the issuance of such refunding
47 bonds; remedies of bondholders upon default in the pay-
48 ment of the principal of or interest on any refunding

49 bonds, including the appointment by a court of competent
50 jurisdiction of a receiver for the operation and manage-
51 ment of the enterprise and the collection and disburse-
52 ment of the revenues thereof, but such receiver or any
53 court having jurisdiction in the matter shall not be per-
54 mitted to sell, mortgage or otherwise dispose of any assets
55 of the enterprise and useful in its operation or cause
56 any of such assets to be sold, mortgaged or otherwise
57 disposed of; and any other conditions, acts or pertinent
58 matters as may be deemed necessary or proper by the
59 governing body of the public body to assure efficient
60 operation of the enterprise, payment of the refunding
61 bonds and marketability of the refunding bonds upon
62 favorable terms. Any agreement or covenant contained
63 in the ordinance or resolution authorizing such refunding
64 bonds shall constitute a contract with the holders of such
65 refunding bonds.

66 All refunding bonds of the same issue shall be equally
67 and ratably secured, without priority by reason of num-
68 ber, date or time of sale, execution or delivery, by a
69 lien upon the revenues of the enterprise in accordance with
70 the provisions of this section and the ordinance or reso-
71 lution authorizing the issuance of such refunding bonds.

72 Nothing in this section or in any other section of
73 this article shall be deemed in any way to alter the terms
74 of any agreements made with the holders of any out-
75 standing revenue bonds of the public body, or to authorize
76 the public body to alter the terms of any such agreements,
77 or to impair, or authorize the public body to impair, the
78 rights and remedies of any creditors of the public body.

79 Nothing in this section or in any other section of this
80 article shall be deemed in any way to authorize any
81 public body to do anything in any manner or for any
82 purpose which would result in the creation or incurring
83 of a debt or indebtedness or the issuance of any instru-
84 ment which would constitute a bond or debt within the
85 meaning of any provision, limitation, or restriction of the
86 constitution relating to the creation or incurring of a
87 debt or indebtedness or the issuance of an instrument
88 constituting a bond or a debt.

§13-2E-11. Bonds payable solely from revenues of enterprise.

1 No recourse shall be had for the payment of the refund-
2 ing bonds, or interest thereon, or any part thereof, against
3 the general fund of any public body, nor shall the credit
4 or taxing power of any public body be deemed to be
5 pledged thereto.

6 The refunding bonds, and interest thereon, shall not be
7 a debt of the public body, nor a charge, lien or encum-
8 brance, legal or equitable, upon any property of the public
9 body, nor upon any income, receipts, or revenues of the
10 public body other than such of the revenues of the enter-
11 prise as shall have been pledged to the payment thereof,
12 and every refunding bond shall recite in substance that
13 said bond, including interest thereon, is payable solely
14 from the revenues pledged to the payment thereof and
15 that the public body is under no obligation to pay the
16 same, except from said revenues.

§13-2E-12. Tax exemption; exceptions.

1 The refunding bonds and the income therefrom shall
2 be exempt from taxation, except inheritance, estate and
3 transfer taxes.

§13-2E-13. Validity of bonds.

1 Refunding bonds bearing the signatures of officers of
2 the public body in office on the date of the signing thereof
3 shall be valid and binding obligations of the public body
4 for all purposes, notwithstanding that before the delivery
5 thereof any or all the persons whose signatures appear
6 thereon shall have ceased to be officers of the public body,
7 the same as if such persons had continued to be officers
8 of the public body until after the delivery thereof. The
9 ordinance or resolution authorizing any refunding bonds
10 may provide that such refunding bond may contain a re-
11 cital that such refunding bond is issued pursuant to this
12 article, and any refunding bond containing such recital un-
13 der authority of any such ordinance or resolution shall be
14 conclusively deemed to be valid and to have been issued
15 in conformity with the provisions of this article.

16 Where any refunding bonds have been heretofore
17 authorized by any public body which would have been
18 valid under and in compliance with the provisions of this

19 article had this article been in existence at the time of
20 the authorization of such refunding bonds, such refunding
21 bonds if heretofore issued, and if not yet issued then such
22 refunding bonds when they shall have been issued, and
23 the proceedings authorizing their issuance, are hereby
24 validated, ratified and confirmed and declared to be bind-
25 ing and enforceable obligations in accordance with their
26 terms.

**§13-2E-14. Article complete authority for refunding bonds;
effect on other laws; liberal construction.**

1 This article constitutes full and complete authority
2 for the issuance of refunding bonds. No procedure or
3 proceedings, publications, notices, consents, approvals,
4 orders, acts or things by any governing body of any
5 public body, or any board, officer, commission, depart-
6 ment, agency, or instrumentality of the state or any
7 public body shall be required to issue any refunding
8 bonds or to do any act or perform anything under
9 this article, except as may be prescribed in this article.
10 The powers conferred by this article shall be in addi-
11 tion and supplemental to, and not in substitution for,
12 and the limitations imposed by this article shall not
13 affect, the powers conferred by any other law. This article
14 is remedial in nature and shall be liberally construed.

§13-2E-15. Severability.

1 If any one or more provisions of this article or the
2 applicability thereof to any persons or circumstances are
3 ever held by a final decision of a court of competent
4 jurisdiction to be invalid, such invalidity shall not affect
5 any other provision or provisions, application or appli-
6 cations of this article, and to this end, the provisions of
7 this article are declared to be severable.

— c —

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.**
5. **General Powers and Duties of the Governor, Secretary of State and Attorney General; Board of Public Works; State Building Commission; Social Security Agency; Public Records Management and Preservation Act; Department of Commerce; West Virginia Public Employees Retirement Act; Human Rights Commission; West Virginia Antiquities Commission; Public Employees and Teachers Reciprocal Service Credit Act; White Cane Law.**
- 5A. **Department of Finance and Administration.**
6. **General Provisions Respecting Officers.**
12. **Public Moneys and Securities.**
14. **Claims Due and Against the State.**
15. **Public Safety.**
20. **Natural Resources.**
25. **Commissioner of Public Institutions.**
29. **Miscellaneous Boards and Officers.**

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,
2 shall consider the budget bill, the budget document and
3 matters relating thereto, and following such considera-
4 tion and upon the passage of the budget bill by the
5 Legislature, the Legislature shall prepare a digest or
6 summary of the budget bill containing detailed informa-
7 tion similar to that included in the budget document sub-
8 mitted to the Legislature by the governor but including
9 amendments of legislative committees, and as finally en-
10 acted by the Legislature. Such digest or summary shall
11 be prepared at the direction of and approved by mem-
12 bers of the conferees committee on the budget and shall
13 be included in the journals of the Legislature or printed
14 as a separate document, and copies shall be furnished to
15 the governor, commissioner of finance and administration,

16 and the various state spending units for such use as may
17 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.

1 (a) There is hereby established a special fund to be
2 known as the contribution fund. Such fund shall con-
3 sist of and there shall be deposited in such fund: (1) All
4 contributions, interest, and penalties collected under sec-
5 tions four and five. (2) All moneys appropriated thereto
6 under this article. (3) All moneys paid to the state pur-
7 suant to any agreement entered into under subsection
8 (b) of section three of this article. (4) Any property or
9 securities and earnings thereof acquired through the
10 use of moneys belonging to the fund. (5) Interest earned
11 upon any moneys in the fund. (6) All sums recovered
12 upon the bond of the custodian or otherwise for losses
13 sustained by the fund and all other moneys received for
14 the fund from any other source. All moneys in the
15 fund shall be mingled and undivided. Subject to the
16 provisions of this article, the state agency is vested with
17 full power, authority and jurisdiction over the fund, in-
18 cluding all moneys and property or securities belonging
19 thereto, and may perform any and all acts whether or
20 not specifically designated, which are necessary to the

21 administration thereof consistent with the provisions of
22 this article.

23 (b) The contribution fund shall be established and held
24 separate and apart from any other funds or moneys of
25 the state and shall be used and administered exclusively
26 for the purpose of this article. Withdrawals from such
27 fund shall be made for, and solely for (A) payment of
28 amounts required to be paid to the federal agency pur-
29 suant to an agreement entered into under section three;
30 (B) payment of refunds provided for in subsection (c)
31 of section four of this article; and (C) refunds of over-
32 payments, not otherwise adjustable, made by a political
33 subdivision or instrumentality.

34 (c) From the contribution fund the custodian of the
35 fund shall pay to the federal agency such amounts and
36 at such time or times as may be directed by the state
37 agency in accordance with any agreement entered into
38 under section three, and applicable federal law.

39 (d) The treasurer of the state shall be ex officio treasur-
40 er and custodian of the contribution fund and shall ad-
41 minister such fund in accordance with the provisions of
42 this article and the directions of the state agency and
43 shall pay all warrants drawn upon it in accordance with
44 the provisions of this section and with such regulations
45 as the state agency may prescribe pursuant thereto.

46 (e) (1) There are hereby authorized to be appropriated
47 annually to the contribution fund, in addition to the
48 contributions collected and paid into the contribution
49 fund under sections four and five, to be available for
50 the purposes of subsections (b) and (c) of this section
51 until expended, such additional sums as are found to be
52 necessary' in order to make the payments to the federal
53 agency which the state is obligated to make pursuant to
54 an agreement entered into under section three.

55 (2) The state agency shall submit to the governor, at
56 least ninety days in advance of the beginning of each
57 regular session of the Legislature, an estimate of the
58 amounts authorized to be appropriated to the contribu-
59 tion fund by paragraph (1) of this subsection for the
60 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.**

1 There is hereby established an advisory board for the
2 department of commerce. The board shall be composed
3 of seven members appointed by the governor for terms
4 of four years and until their successors are appointed and
5 qualified. There shall be at least one member appointed
6 from each congressional district, and not more than four
7 members shall be of the same political party. The first
8 two members appointed shall serve for a period of one
9 year; the second two for a period of two years; the next
10 two for a period of three years; and the remaining mem-
11 ber for a period of four years. Thereafter, all such ap-
12 pointments shall be made for a term of four years, except
13 that in case of a vacancy, the appointment shall be made
14 to fill the unexpired term. The members of the board
15 shall be citizens and residents of the state, selected with
16 special reference to their training and experience in rela-
17 tion to the principal activities required of the department
18 of commerce, and for their ability and fitness to perform
19 their duties within the purposes of this article. The board
20 shall serve the department of commerce in an advisory
21 capacity only. It shall have the authority and it shall be
22 its duty:

23 (1) To advise with the commissioner of commerce con-
24 cerning all administrative rules and regulations to be
25 issued by the department.

26 (2) To advise with the commissioner of commerce as
27 to all budget proposals to be submitted to the governor.

28 (3) To advise with the commissioner of commerce
29 concerning such studies of economic conditions, travel
30 promotion and industrial development as it may consider
31 appropriate.

32 (4) To advise with the commissioner of commerce on
33 any other matters applicable to the department of com-
34 merce if requested by the governor.

35 The board shall meet at the call of the commissioner of
36 commerce, and each member of the board shall receive
37 his actual and necessary traveling expenses incurred in
38 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.**

1 (a) The board of trustees shall elect from its own
2 number a chairman and a vice chairman.

3 (b) The board of trustees shall appoint an executive
4 secretary of the retirement system. The executive secre-
5 tary shall be the chief administrative officer of the system;
6 and he shall not be a member of the board. He shall
7 perform such duties as are required of him in this article
8 and as the board shall from time to time delegate to him.
9 The compensation of the executive secretary shall be
10 fixed by the board subject to the approval of the governor.
11 He shall, with the approval of the board of trustees, em-
12 ploy such administrative, technical, and clerical em-
13 ployees as shall be required in the proper operation of
14 the system.

15 (c) The state treasurer shall be treasurer of the retire-
16 ment system and the custodian of its funds. All bonds
17 and other investments purchased according to the pro-
18 visions of this article shall forthwith be deposited with
19 the state treasurer. It shall be his duty to collect the
20 principal thereof and the interest and dividends thereon
21 as the same become due and payable, and when so col-
22 lected deposit same to the credit of the retirement system.
23 All disbursements from the funds of the system shall be
24 made by the state treasurer only upon written certifica-
25 tion duly authorized by a continuing or specific resolution
26 adopted by the board of trustees. He shall furnish the
27 board with a statement of the retirement system securi-
28 ties in his safekeeping as the board shall from time to
29 time request.

30 (d) The attorney general shall be the legal advisor to
31 the board of trustees.

32 (e) The board of trustees shall appoint an actuary who
33 shall be the technical advisor to the board regarding the
34 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-1-2a. Powers and duties of commissioner, division heads and employees.

§5A-1-3. Council of finance and administration.

§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
3 administration and, as used in article two of this chapter,
4 the director of the budget.

5 "Director" means the director of the division referred to
6 in the heading of the article in which the word appears.

7 "Spending unit" means a department, agency or institu-
8 tion of the state government for which an appropriation
9 is requested, or to which an appropriation is made by the
10 Legislature.

11 "Spending officer" means the executive head of a
12 spending unit, or a person designated by him.

13 "Commodities" means supplies, material, equipment,
14 contractual services, and any other articles or things used
15 by or furnished to a department, agency or institution
16 of the state government.

17 "Contractual services" shall include telephone, tele-
18 graph, electric light and power, water and similar serv-
19 ices.

20 "Printing" means printing, binding, ruling, lithograph-
21 ing, engraving and other similar services.

22 "Expendable commodities" means those commodities
23 which, when used in the ordinary course of business,

24 will become consumed or of no market value within the
25 period of one year or less.

26 "Removable property" means any personal property not
27 permanently affixed to or forming a part of real estate.

28 "Nonprofit workshops" means an establishment (a)
29 where any manufacture or handiwork is carried on, and
30 (b) which is operated either by a public agency or by a
31 cooperative or by a nonprofit private corporation or non-
32 profit association, in which no part of the net earnings
33 thereof inures, or may lawfully inure, to the benefit of
34 any private shareholder or individual, and (c) which is
35 operated for the primary purpose of providing remunera-
36 tive employment to blind and severely disabled persons
37 who cannot be absorbed into the competitive labor market,
38 and (d) which shall be approved, as evidenced by a certif-
37 icate of approval, by the state board of vocational educa-
40 tion, division of vocational rehabilitation.

**§5A-1-2a. Powers and duties of commissioner, division heads
and employees.**

1 The commissioner shall have control and supervision
2 of the department of finance and administration and shall
3 be responsible for the work of each of its employees. The
4 commissioner shall have the authority to employ such
5 assistants as may be necessary for the efficient operation
6 of the department. The commissioner, the division heads
7 and the employees of the department shall perform the
8 duties herein specified and shall also perform such other
9 duties as the governor may prescribe.

§5A-1-3. Council of finance and administration.

1 The council of finance and administration is hereby
2 created and shall be composed of ten members, four of
3 whom shall serve ex officio and six of whom shall be
4 appointed as herein provided. The ex officio members
5 shall be the governor, attorney general, the state treasurer
6 and the state auditor. From the membership of the Legis-
7 lature, the president of the Senate shall appoint three
8 senators as members of the council, not more than two of
9 whom shall be members of the same political party, and
10 the speaker of the House shall appoint three delegates

11 as members of the council, not more than two of whom
12 shall be members of the same political party. Members
13 of the council appointed by the president of the Senate
14 and the speaker of the House shall serve at the will and
15 pleasure of the officer making their appointment. The
16 commissioner of finance and administration shall serve as
17 chairman of the council. Meetings of the council shall be
18 upon call of the chairman or a majority of the members
19 thereof.

20 The council shall serve the department of finance and
21 administration in an advisory capacity only, and shall
22 have the following duties:

23 (1) To advise with the commissioner as to all budget
24 proposals to be submitted to the governor;

25 (2) At the time of the submission of the proposed
26 budget to the governor, to report to the governor its con-
27 clusions concerning the proposed budget and any addi-
28 tions, modifications or adjustments that it may care to
29 suggest;

30 (3) To advise with the commissioner concerning such
31 studies of government and administration as it may con-
32 sider appropriate;

33 (4) To advise with the commissioner in the prepara-
34 tion of studies designed to provide long-term capital
35 planning and finance for state institutions and agencies.
36 Members of the council shall be paid all necessary ex-
37 penses incurred in the discharge of their duties.

§5A-1-4. Reports by commissioner.

1 The commissioner shall make an annual report to the
2 governor concerning the conduct of the department and
3 the administration of the state finances. He shall also
4 make such other reports as the governor may require.

§5A-1-5. Oath and bond of commissioner; bonds for directors and employees.

1 The commissioner, before entering upon the duties of
2 his office, shall take and subscribe to the oath prescribed
3 by section 5, article IV of the constitution. He shall exe-
4 cute a bond in the penalty of twenty-five thousand
5 dollars, approved by the governor, in form prescribed by

6 the attorney general and conditioned upon the faithful
7 performance of his duties and the accounting for all
8 money and property coming into his hands by virtue of
9 his office. The oath and bond shall be filed with the secre-
10 tary of state. The division heads and all other employees
11 shall be covered by bonds in cases where the commis-
12 sioner thinks it necessary, which bonds shall be in the
13 penalty prescribed by the commissioner and shall be filed
14 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-2-13. Reports on revenue collections.

§5A-2-16. Reserves for emergencies.

§5A-2-17. Requests for quarterly allotments; approval or reduction by governor.

§5A-2-18. Limitation on expenditures.

§5A-2-19. Transfers between items of appropriation prohibited.

§5A-2-20. Expenditure of excess in collections; notices to auditor and treasurer.

§5A-2-22. Reduction of appropriations—Powers of governor.

§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-2-25. Same—Reduction after classification of appropriations.

§5A-2-27. Management accounting.

§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
2 governor in the exercise of his powers and duties under
3 section 51, article VI of the state constitution, and shall
4 exercise and perform the other powers and duties con-
5 ferred upon it by this article.

§5A-2-2. General powers and duties of commissioner as director of budget.

1 The commissioner, under the immediate supervision of
2 the governor, shall have the power and duty to:

3 (1) Exercise general supervision of, and make rules
4 and regulations for, the government of this division;

5 (2) Prepare, in accordance with this article, requests for
6 appropriations, estimates of cost and the contents of the
7 state budget into a tentative budget for submission to the
8 governor;

9 (3) Administer the budget in accordance with this
10 article;

11 (4) Serve as staff agency to the governor in the con-
12 sideration of requests for appropriations and the prepara-
13 tion of the budget document;

14 (5) Make such investigations and submit such reports
15 as the governor may require;

16 (6) Make a continuous study of state expenditures and
17 make such recommendations to the governor for the more
18 economical use of state funds as he shall find practicable;

19 (7) Render assistance to spending officers with respect
20 to the fiscal affairs of spending units;

21 (8) Exercise such other powers as are vested in him by
22 this article, or which may be appropriate to the discharge
23 of his duties.

**§5A-2-10. Preparation of tentative budget and submission to
governor.**

1 The commissioner shall prepare for the consideration
2 of the governor a tentative budget for the fiscal year next
3 ensuing. The budget shall state actual receipts and ex-
4 penditures for the fiscal year next preceding, estimated
5 receipts and expenditures for the current fiscal year,
6 recommended expenditures for the current fiscal year
7 as shown in the legislative digest, and it shall state also
8 the requested amounts, or estimates, for the fiscal year
9 next ensuing with respect to:

10 (1) Appropriations requested by each spending unit
11 and requested general appropriations;

12 (2) The amount of the total of each appropriation to
13 be paid out of collections;

14 (3) Amounts and purposes of appropriations requested
15 other than for spending units of the state;

16 (4) Revenue of each of the funds of the state;

17 (5) A summary statement of requests and revenues
18 showing the amount of an anticipated surplus or deficit;

19 (6) Balances carried forward to July first from fiscal
20 year next preceding on all reappropriated accounts from
21 general revenue fund and general school fund;

22 (7) Percentage of increase or decrease by comparison
23 of recommended appropriation for next ensuing year
24 with current fiscal year.

25 On or before November fifteenth, the commissioner
26 shall submit the tentative budgets to the governor. The
27 commissioner shall convey to the governor all explana-
28 tory and justification statements and statements of per-
29 sonnel requirements of spending units as reported and
30 filed in his office.

§5A-2-13. Reports on revenue collections.

1 The commissioner shall ascertain the collection of the
2 revenue of the state, and shall determine each quarter of
3 the fiscal year the proportion which the amount actually
4 collected bears to the collection estimated for that period.
5 The commissioner shall certify to the governor and the
6 legislative auditor, as soon as possible after the close of
7 each quarter, and at such other times as the governor
8 may request, the condition of the state revenues and of
9 the several funds of the state. For the purposes of this
10 section, the commissioner shall have the authority to
11 require all necessary estimates and reports from any
12 spending unit of the state government.

§5A-2-16. Reserves for emergencies.

1 The commissioner, with the approval of the governor,
2 may require that an expenditure schedule provide for
3 a reserve for emergencies out of the total amount appro-
4 priated to the spending unit. The amount of the reserve
5 shall be determined by the commissioner in consulta-
6 tion with the spending officer.

**§5A-2-17. Requests for quarterly allotments; approval or re-
duction by governor.**

1 At least thirty days prior to the beginning of each
2 quarter of the fiscal year, each spending officer shall sub-
3 mit to the commissioner a request for an allotment of
4 public funds sufficient to operate the unit during the

5 ensuing quarter in accordance with the approved ex-
6 penditure schedule.

7 The commissioner shall examine the requests and, if
8 he finds that the amounts requested are in accordance
9 with the approved expenditure schedules and are in ac-
10 cordance with sound fiscal policy, he shall submit the
11 requests to the governor. The commissioner shall also sub-
12 mit a summary statement showing the amounts expend-
13 ed under the budget for each preceding quarter of the
14 fiscal year and the total amount requested for allotment
15 during the ensuing quarter.

16 The governor shall consider the amount of requests for
17 allotment and the collection of revenues. If the governor
18 finds that the collection of revenue warrants the expendi-
19 ture of the amount requested in the allotment, he shall
20 approve the allotment of funds for the ensuing quarter
21 and send copies of the requests to the legislative auditor
22 after approval. If the governor finds that the collection
23 of revenue does not warrant the allotment of the re-
24 quested amount, he may reduce the amount of allotments
25 pending the collection of sufficient revenue.

§5A-2-18. Limitation on expenditures.

1 The expenditures of a spending unit during a quarter
2 of the fiscal year shall not exceed the amount of the
3 approved allotment, unless the governor approves the
4 expenditure of a larger amount. Any amounts remain-
5 ing unexpended at the close of the quarter shall be
6 available for reallocation and expenditure during any
7 succeeding quarter of the same fiscal year.

§5A-2-19. Transfers between items of appropriation prohibited.

1 Notwithstanding any other provision of law to the con-
2 trary, there shall be no transfer of amounts between items
3 of appropriation, and moneys appropriated for any par-
4 ticular purpose shall not be spent by a spending unit for
5 any other purpose.

**§5A-2-20. Expenditure of excess in collections; notices to audi-
tor and treasurer.**

1 If the amount actually collected by a spending unit
2 exceeds the amount which it is authorized to expend from

3 collections, the excess in collections shall be set aside in
4 a special surplus fund for the spending unit. Expendi-
5 tures from this fund shall be made only in accordance
6 with the following procedure:

7 The spending officer shall submit to the commissioner:

8 (1) A plan of expenditure showing the purposes for
9 which the surplus is to be expended, and

10 (2) A justification statement showing the reasons why
11 the expenditure is necessary and desirable.

12 The commissioner shall submit the request to the gov-
13 ernor with his recommendation.

14 If the governor approves the plan of expenditure and
15 justification statement, and is satisfied that the expendi-
16 ture is required to defray the additional cost of the serv-
17 ice or activity of the spending unit, and that the expendi-
18 ture is in accordance with sound fiscal policy, he may
19 authorize the use of the surplus during the current fiscal
20 year. Notices of such authorization shall be sent to the
21 state auditor, the state treasurer and the legislative
22 auditor.

23 An expenditure from a special surplus fund without
24 the authorization of the governor, or other than in ac-
25 cordance with this section, shall be an unlawful use of
26 public funds.

§5A-2-22. Reduction of appropriations—Powers of governor.

1 The governor may reduce appropriations according to
2 any of the methods set forth in sections twenty-three,
3 twenty-four and twenty-five of this article.

§5A-2-23. Same—Pro rata reduction of appropriations from general revenue.

1 If the governor determines that the amounts, or parts
2 thereof, appropriated from the general revenue cannot be
3 expended without creating an overdraft or deficit in the
4 general fund, he may instruct the commissioner to reduce
5 equally and pro rata all appropriations out of general
6 revenue in such a degree as may be necessary to prevent
7 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-
2 three may reduce appropriations from:

3 (1) Funds supported by designated taxes or fees;

4 (2) Fees or other collections set aside for the support
5 of designated activities or services.

6 Each fund and each fee or collection account shall be
7 treated separately, but appropriations from the same fund
8 or account shall be treated equally and reduced pro rata.

§5A-2-25. Same—Reduction after classification of appropriations.

1 If the governor determines that the reductions autho-
2 rized in sections twenty-three and twenty-four will dan-
3 gerously impair the existence of the essential services of
4 government, he may instruct the commissioner to reduce
5 the amount to be expended from separate appropriations
6 in accordance with the following method:

7 (1) The commissioner shall first classify appropria-
8 tions as follows:

9 Class One: For agencies collecting revenue and ad-
10 ministering the fiscal operations of government, including
11 the offices and departments of the tax commissioner,
12 auditor, treasurer, and sinking fund commission;

13 Class Two: For agencies vested with the supervision,
14 control, and direction of executive policy and law en-
15 forcement, including the governor's office, the attorney
16 general's office, the department of finance and adminis-
17 tration, and the department of public safety;

18 Class Three: For state institutions, educational, chari-
19 table and corrective;

20 Class Four: For other departments and services of the
21 state government;

22 Class Five: For transfers from the general fund.

23 (2) The commissioner shall first reduce the appropria-
24 tions from Class Five and then, if necessary, for the other
25 classes in descending numerical order as follows:

26 Class Four, Class Three, Class Two, Class One. All
27 reductions shall be in multiples of five percent, but a
28 fixed relationship shall be maintained between the classes
29 which shall be measured by a difference of five percent
30 in the rate of reduction. The maximum reduction shall
31 not exceed twenty-five percent in Class Five and in the
32 other classes it shall be proportioned according to the
33 following table:

34	Classes	Five	Four	Three	Two	One
35	Percent	5%				
36	of reductions	10%	5%			
37	from	15%	10%	5%		
38	total	20%	15%	10%	5%	
39	appropriations	25%	20%	15%	10%	5%.

§5A-2-27. Management accounting.

1 The commissioner shall formulate the requirements of
2 a system of management accounting for the planning,
3 management, reporting, and control of state expenditures.
4 The requirements shall include methods for recording
5 the collection of all income, amounts available for ex-
6 penditure, obligations, encumbrances and disbursements
7 for each spending unit, and publication of a detailed
8 statement of receipts and expenditures of state moneys.
9 The system shall include the accounts to be kept by the
10 commissioner, the auditor, and the treasurer. The com-
11 missioner shall, after the system has been approved by
12 the governor, require its use by all spending units.

13 The governor is hereby authorized to direct by execu-
14 tive order, not inconsistent with the provisions of this
15 article, the transfer of such records, equipment, per-
16 sonnel, and appropriations between the departments of
17 finance and administration, the auditor, and the treasurer
18 as may be necessary to effectuate the purposes of central
19 accounting and reporting.

**§5A-2-34. Personnel classification of offices and employments
in state government and agencies.**

1 With the exception of those institutions under the con-
2 trol of the state board of education and the board of
3 governors of West Virginia University, and with the ex-

4 ception of classified service positions and pay provided
5 for in section eight, article six, chapter twenty-nine of
6 this code, the commissioner, with the approval of the
7 governor, shall classify the offices and employments in
8 the state government and its agencies, into a personnel
9 classification which reflects the differences in training,
10 experience, ability and responsibility required for differ-
11 ent types or kinds of service or employment, and shall
12 establish uniform salary and wage scales within each
13 class.

14 The governor shall require the state board of educa-
15 tion and the board of governors of West Virginia Univer-
16 sity to prepare and apply personnel classifications to the
17 institutions under their control.

ARTICLE 3. PURCHASING DIVISION.

§5A-3-18. Special fund; purposes; how composed.

1 There is hereby created a special revenue fund to be
2 administered by the director to finance and facilitate the
3 following functions of the director:

4 (1) Purchase in volume and for maintenance of stocks
5 and commodities to supply the needs of state depart-
6 ments;

7 (2) Performance of state departments of all mimeo-
8 graphing, photostating, microfilming, multilithing, multi-
9 graphing, and other work as provided by section thirty-
10 three of this article.

11 The amount of the fund may be fixed and changed by
12 the governor upon the recommendation of the com-
13 missioner. If at the end of each fiscal year the cash balance
14 plus value of commodity inventories on hand exceeds the
15 amount so fixed, the excess in cash shall be transferred
16 by the governor upon recommendation of the commis-
17 sioner to the general revenue fund and become a part
18 of the general revenue of the state. The fund shall be
19 composed of the following:

20 (1) The cash balance and inventories of the fund here-
21 tofore established by this section;

22 (2) Charges made by the director for commodities sold
23 and services rendered to the state departments as herein

24 described: *Provided*, That charges shall not exceed total
25 cost to the fund, which total cost shall include storage,
26 supplies, equipment and salaries and wages of employees
27 necessary to supply commodities and services in addition
28 to purchase price of commodities.

ARTICLE 4. GENERAL SERVICES 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 responsi-
2 bility for the care, control and custody of the capitol
3 buildings and in this connection he shall:

4 (1) Furnish janitors for the capitol buildings and
5 grounds, together with all the departments therein, or
6 connected therewith, regardless of the budget or bud-
7 gets, departmental or otherwise, from which such jani-
8 tors are paid, and shall furnish janitorial supplies, light,
9 heat and ventilation for all the rooms and corridors
10 of the buildings. Under the direction of the president
11 of the Senate and speaker of the House of Delegates,
12 the director shall have charge of the halls and com-
13 mittee rooms of the two houses and any other quarters
14 at the state capitol provided for the use of the Legislature
15 or its staff, and keep the same properly cleaned, warmed
16 and in good order, and shall do and perform such other
17 duties in relation thereto as either house may require;

18 (2) Furnish messenger service to the various state
19 departments. Department heads shall be consulted with
20 reference to the amount of messenger service required
21 for their departments. Janitor-messengers, or messen-
22 gers, shall receive from the director compensation for
23 total services in the same manner as other employees
24 are paid;

25 (3) Have immediate control and direction of the
26 switchboard telephone service for the various depart-
27 ments of the state capitol. Changes in telephone instru-
28 ments or equipment in the various departments of the
29 state capitol shall be referred to the director, and pay-

30 ment for any such changes will not be honored unless
31 such changes have been approved by the director. A
32 simple accounting system shall be installed and main-
33 tained by the director for all telephone service to the
34 state departments;

35 (4) Landscape and take care of the lawns and gardens;

36 (5) Direct the making of all minor repairs to and
37 alterations of the capitol buildings and governor's man-
38 sion and the grounds of such buildings and mansion.
39 Major repairs and alterations shall be made under the
40 supervision of the director, subject to the direction of
41 the governor.

42 The offices of the assistants and employees appointed
43 to perform these duties shall be located where designated
44 by the governor, except that they shall not be located
45 in any of the legislative chambers, offices, rooms or halls.
46 Office hours shall be so arranged that emergency or
47 telephone service shall be available at all times. The
48 hours of employment shall be so arranged that janitorial
49 service shall not interfere with other employment during
50 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

3 amount deemed necessary to provide each of the officers
4 mentioned in section two of this article with sufficient
5 clerical and office assistance, stationery and equipment
6 for the proper discharge of the duties of the office, and,
7 where offices are not furnished in the capitol building,
8 with proper offices and light, heat and janitor's services
9 for the same; and where any such officer is required in
10 the proper discharge of the duties of his office to travel
11 or journey from place to place, the amount necessary to
12 provide for such purpose; and, where the circumstances
13 may warrant it, the amount necessary to provide for a
14 contingent fund to cover stationery, blank books, blanks,
15 advertising, printing, fuel, lights, postage, express charges,
16 office supplies, furniture, and any other necessary article
17 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.

1 The governor shall promulgate rules and regulations
2 concerning out-of-state travel by state officials and em-
3 ployees, except those in the legislative and judicial branch-
4 es of state government and except for the attorney gen-
5 eral, auditor, secretary of state, treasurer and commis-
6 sioner of agriculture and their employees. The Legislature,
7 the supreme court of appeals and the attorney general,
8 auditor, secretary of state, treasurer and commissioner of
9 agriculture shall promulgate rules and regulations con-
10 cerning out-of-state travel for their respective branches
11 and departments of state government. Copies of such rules
12 and regulations shall be filed with the auditor, and the
13 secretary of state. It shall be unlawful for the auditor to
14 issue a warrant in payment of any claim for out-of-state
15 travel expenses incurred by a state officer or employee
16 unless such claim meets all the requirements of the rules
17 and regulations so filed.

18 Payment for dues or membership in annual or other
19 voluntary organizations shall be made from the proper

20 item or appropriation after an itemized schedule of such
21 organizations, together with the amount of such dues or
22 membership, has been submitted to the budget director
23 and approved by the governor.

24 It shall be lawful for the governing board of any state
25 institution of higher education to authorize the payment
26 of traveling expenses incurred by any person invited
27 to visit the campus or other facilities of such institution to
28 be interviewed concerning his possible employment by
29 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.

1 The clerk shall certify to the director of the budget,
2 on or before the twentieth day of November of each year,
3 a list of all awards recommended by the court to the
4 Legislature for appropriation. The clerk may certify sup-
5 plementary lists to the governor to include subsequent
6 awards made by the court. The governor shall include all
7 awards so certified in his proposed budget bill transmitted
8 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.

1 The superintendent shall appoint, from the enlisted
2 membership of the department, an inspector with the
3 rank of lieutenant colonel who shall be next in authority
4 to the superintendent, and for the purpose of operating
5 and maintaining the executive offices, training school,
6 scientific laboratory, keeping records relating to crimes
7 and criminals, coordinating traffic safety activities and
8 maintaining a system of supplies and accounting and
9 carrying on other necessary services, he shall appoint
10 not more than one major, one captain, four lieutenants,
11 two master sergeants, four sergeants, three corporals and
12 six troopers. In addition the superintendent may appoint,

13 from the enlisted membership of the department, not
14 more than four other lieutenants for duties consisting
15 of technical or scientific examination of evidence in
16 criminal cases, but no member shall be appointed to fill
17 these vacancies in the grade of lieutenant unless (1)
18 he shall have completed four years' study at an ac-
19 credited college or university and hold a bachelor's degree
20 from such college or university and (2) such member
21 shall have actually conducted numerous examinations
22 of physical evidence in criminal cases and have been
23 qualified in a court of record of this state to testify as an
24 expert witness with respect thereto.

25 The superintendent shall appoint such civilian em-
26 ployees as may be necessary.

27 The inspector, major, captains, lieutenants, master ser-
28 geants, sergeants, corporals and troopers shall be en-
29 rolled and enlisted as members of the department of
30 public safety and shall be entitled to wear the insignia
31 of rank as provided by law or authorized by department
32 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
2 division of the department of finance and administration
3 for adequate office space, accommodations and facilities
4 for the department of natural resources in the state
5 capitol offices. The department of finance and adminis-
6 tration shall make such office accommodations and facili-
7 ties available and shall provide for orderly servicing and
8 maintenance thereof. The offices of the director and of
9 the department shall be opened and staffed for business
10 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-
2 ties granted and assigned to the director in this chapter

3 and elsewhere by law, the director is hereby authorized
4 and empowered to:

5 (1) With the advice of the commission, prepare and
6 administer, through the various divisions created by
7 this chapter, a long-range comprehensive program for
8 the conservation of the natural resources of the state
9 which best effectuates the purpose of this chapter and
10 which makes adequate provisions for the natural re-
11 sources laws of the state;

12 (2) Sign and execute in the name of the state by the
13 "department of natural resources" any contract or agree-
14 ment with the federal government or its departments or
15 agencies, subdivisions of the state, corporations, associa-
16 tions, partnerships or individuals;

17 (3) Conduct research in improved conservation
18 methods and disseminate information matters to the resi-
19 dents of the state;

20 (4) Conduct a continuous study and investigation of
21 the habits of wildlife, and for purposes of control and
22 protection to classify by regulation the various species
23 into such categories as may be established as necessary;

24 (5) Prescribe the locality in which the manner and
25 method by which the various species of wildlife may be
26 taken, or chased, unless otherwise specified by this
27 chapter;

28 (6) Fix by regulation the open seasons and the bag,
29 creel, size, age, weight and sex limits with respect to wild-
30 life in this state;

31 (7) Hold at least six meetings each year at such times
32 and at such points within the state, as in the discretion
33 of the director may appear to be necessary and proper
34 for the purpose of giving interested persons in the various
35 sections of the state an opportunity to be heard concern-
36 ing open seasons for their respective areas, before such
37 seasons and bag limits are fixed;

38 (8) Suspend open hunting seasons upon any or all
39 wildlife in any or all counties of the state with the prior
40 approval of the governor in case of an emergency such as
41 a drought, forest fire hazard or epizootic of disease among

42 wildlife. The suspension shall continue during the exist-
43 ence of the emergency and until rescinded by the direc-
44 tor. Suspension, or reopening after such suspension, of
45 open seasons may be made upon twenty-four hours' notice
46 by delivery of a copy of the order of suspension or re-
47 opening to the wire press agencies at the state capitol;

48 (9) Supervise the fiscal affairs and responsibilities of
49 the department;

50 (10) Designate such localities as he shall determine to
51 be necessary and desirable for the perpetuation of any
52 species of wildlife;

53 (11) Enter private lands to make surveys or inspec-
54 tions for conservation purposes, to investigate for viola-
55 tions of provisions of this chapter, to serve and execute
56 warrants and processes, to make arrests and to otherwise
57 effectively enforce the provisions of this chapter;

58 (12) Acquire for the state in the name of the "depart-
59 ment of natural resources" by purchase, condemnation,
60 lease or agreement, or accept or reject for the state, in the
61 name of the department of natural resources, gifts, dona-
62 tions, contributions, bequests or devises of money, secur-
63 ity or property, both real and personal, and any interest
64 in such property, including lands and waters, which he
65 deems suitable for the following purposes:

66 (a) For state forests for the purpose of growing timber,
67 demonstrating forestry, furnishing or protecting water-
68 sheds or providing public recreation;

69 (b) For state parks or recreation areas for the purpose
70 of preserving scenic, esthetic, scientific, cultural, archaeo-
71 logical or historical values or natural wonders, or provid-
72 ing public recreation;

73 (c) For public hunting, trapping, or fishing grounds
74 or waters for the purpose of providing areas in which the
75 public may hunt, trap or fish, as permitted by the pro-
76 visions of this chapter, and the rules and regulations
77 issued hereunder;

78 (d) For fish hatcheries, game farms, wildlife research
79 areas and feeding stations;

80 (e) For the extension and consolidation of lands or

81 waters suitable for the above purposes by exchange of
82 other lands or waters under his supervision;

83 (f) For such other purposes as may be necessary to
84 carry out the provisions of this chapter;

85 (13) Capture, propagate, transport, sell or exchange
86 any species of wildlife as may be necessary to carry out
87 the provisions of this chapter;

88 (14) Sell, with the approval in writing of the governor,
89 timber for not less than the value thereof, as appraised
90 by a qualified appraiser appointed by the director, from
91 all lands under the jurisdiction and control of the director,
92 except those lands that are designated as state parks.
93 The appraisal shall be made within a reasonable time
94 prior to any sale, reduced to writing, filed in the office of
95 the director and shall be available for public inspection.
96 When the appraised value of the timber to be sold is more
97 than five hundred dollars, the director, before making
98 sale thereof, shall receive sealed bids therefor, after
99 notice by publication as a Class II legal advertisement in
100 compliance with the provisions of article three, chapter
101 fifty-nine of this code, and the publication area for such
102 publication shall be each county in which the timber is
103 located. The timber so advertised shall be sold at not less
104 than the appraised value to the highest responsible
105 bidder, who shall give bond for the proper performance
106 of the sales contract as the director shall designate; but
107 the director shall have the right to reject any and all
108 bids and to readvertise for bids. If the foregoing provi-
109 sions of this section have been complied with, and no
110 bid equal to or in excess of the appraised value of the
111 timber is received, the director may, at any time, during
112 a period of six months after the opening of the bids, sell
113 the timber in such manner as he deems appropriate, but
114 the sale price shall not be less than the appraised value
115 of the timber advertised. No contract for sale of timber
116 made pursuant to this section shall extend for a period
117 of more than ten years. And all contracts heretofore
118 entered into by the state for the sale of timber shall not
119 be validated by this section if the same be otherwise in-
120 valid. The proceeds arising from the sale of the timber

121 so sold, shall be paid to the treasurer of the state of West
122 Virginia, and shall be credited to the department and
123 used exclusively for the purposes of this chapter;

124 (15) Sell or lease, with the approval in writing of the
125 governor, coal, oil, gas, sand, gravel and any other min-
126 erals that may be found in the lands under the jurisdiction
127 and control of the director, except those lands that are
128 designated as state parks. The director, before making
129 sale or lease thereof, shall receive sealed bids therefor,
130 after notice by publication as a Class II legal advertise-
131 ment in compliance with the provisions of article three,
132 chapter fifty-nine of this code, and the publication area
133 for such publication shall be each county in which such
134 lands are located. The minerals so advertised shall be
135 sold or leased to the highest responsible bidder, who shall
136 give bond for the proper performances of the sales con-
137 tract or lease as the director shall designate; but the di-
138 rector shall have the right to reject any and all bids and
139 to readvertise the bids. The proceeds arising from any
140 such sale or lease shall be paid to the treasurer of the
141 state of West Virginia and shall be credited to the depart-
142 ment and used exclusively for the purposes of this chapter;

143 (16) Exercise the powers granted by this chapter for
144 the protection of forests, and regulate fires and smoking
145 in the woods or in their proximity at such times and in
146 such localities as may be necessary to reduce the danger
147 of forest fires;

148 (17) Cooperate with departments and agencies of
149 state, local and federal governments in the conservation
150 of natural resources and the beautification of the state;

151 (18) Report to the governor each year all information
152 relative to the operation and functions of his department
153 and he shall make such other reports and recommenda-
154 tions as may be required by the governor, including an
155 annual financial report covering all receipts and dis-
156 bursements of the department of each fiscal year, and he
157 shall deliver such report to the governor on or before the
158 first day of December next after the end of the fiscal year
159 so covered. A copy of such report shall be delivered to

160 each house of the Legislature when convened in January
161 next following;

162 (19) Keep a complete and accurate record of all pro-
163 ceedings, record and file all bonds and contracts taken or
164 entered into, and assume responsibility for the custody
165 and preservation of all papers and documents pertaining
166 to his office, except as otherwise provided by law;

167 (20) Offer and pay, in his discretion, rewards for in-
168 formation respecting the violation, or for the apprehen-
169 sion and conviction of any violators, of any of the pro-
170 visions of this chapter;

171 (21) Require such reports as he may deem to be neces-
172 sary from any person issued a license or permit under
173 the provisions of this chapter, but no person shall be re-
174 quired to disclose secret processes or confidential data of
175 competitive significance;

176 (22) Purchase as provided by law all equipment neces-
177 sary for the conduct of his department;

178 (23) Conduct and encourage research designed to
179 further new and more extensive uses of the natural re-
180 sources of this state and to publicize the findings of such
181 research;

182 (24) Encourage and cooperate with other public and
183 private organizations or groups in their efforts to publicize
184 the attractions of the state;

185 (25) Accept and expend, without the necessity of ap-
186 propriation by the Legislature, any gift or grant of money
187 made to the department for any and all purposes specified
188 in this chapter, and he shall account for and report on all
189 such receipts and expenditures to the governor;

190 (26) Cooperate with the state historian and other appro-
191 priate state agencies in conducting research with refer-
192 ence to the establishment of state parks and monuments
193 of historic, scenic and recreational value, and to take such
194 steps as may be necessary in establishing such monuments
195 or parks as he deems advisable;

196 (27) Maintain in his office at all times, properly in-
197 dexed by subject matter, and also, in chronological
198 sequence, all rules and regulations made or issued

199 under the authority of this chapter. Such records
200 shall be available for public inspection on all
201 business days during the business hours of working
202 days;

203 (28) Delegate the powers and duties of his office, ex-
204 cept the power to execute contracts, to appointees and
205 employees of the department, who shall act under the
206 direction and supervision of the director and for whose
207 acts he shall be responsible;

208 (29) Conduct schools, institutes and other educational
209 programs, apart from or in cooperation with other gov-
210 ernmental agencies, for instruction and training in all
211 phases of the natural resources programs of the state; and

212 (30) Promulgate rules and regulations, in accordance
213 with the provisions of chapter twenty-nine-a of this code,
214 to implement and make effective the powers and duties
215 vested in him by the provisions of this chapter and take
216 such other steps as may be necessary in his discretion for
217 the proper and effective enforcement of the provisions
218 of this chapter: *Provided*, That all rules and regulations
219 relating to articles five and five-a of this chapter shall be
220 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 regis- tration fee; creation of special capital improve- ments fund; revenue bonds.

1 In addition to all other fees imposed by the governing
2 boards of state institutions of higher education, there
3 is hereby imposed and the governing board of each state
4 institution of higher education is hereby directed to pro-
5 vide for the collection of an additional registration fee
6 from all students in the amounts as hereinafter provided.

7 For full-time students at each state institution of high-
8 er education, the additional registration fee shall be fifty
9 dollars per semester. The board of governors of West Vir-

*See Clerk's note to §18-24-4, Chapter 139

10 ginia University and the West Virginia board of edu-
11 cation shall have authority to increase such additional
12 registration fee at any institution of higher education
13 under their respective control for students who are non-
14 residents of this state. For all part-time students and for
15 all summer school students, the respective governing
16 boards shall impose and collect such fee in proportion to,
17 but not exceeding, that paid by full-time students.

18 The fee imposed by this section shall be in addition to
19 the maximum fees allowed to be collected under the
20 provisions of section one of this article and shall not be
21 limited thereby. Refunds of such fee may be made in
22 the same manner as any other fee collected at state in-
23 stitutions of higher education.

24 There is hereby created in the state treasury a special
25 capital improvements fund, to be expended by the board
26 of governors of West Virginia University for the benefit
27 of West Virginia University and Potomac State College
28 of West Virginia University, as provided in this section.
29 On and after the first day of July, one thousand nine
30 hundred sixty-three, there shall be paid into such
31 special fund all proceeds of the additional registration
32 fees collected from students at West Virginia University
33 and at Potomac State College.

34 There is hereby created in the state treasury a special
35 capital improvements fund, to be expended by the West
36 Virginia board of education for the benefit of the state in-
37 stitutions of higher education under its control, as pro-
38 vided in this section. On and after the first day of July,
39 one thousand nine hundred sixty-three, there shall be
40 paid into such special fund all proceeds of the additional
41 registration fees collected from students at such institu-
42 tions.

43 The respective boards may make expenditures from
44 such special capital improvements funds at the various
45 state institutions of higher education under their control
46 to finance in whole or in part, together with any federal,
47 state or other grants or contributions, any one or more
48 of the following purposes: (1) The acquisition of land or
49 any rights or interest therein. (2) The construction or

50 acquisition of new buildings. (3) The renovation or con-
51 struction of additions to existing buildings. (4) The ac-
52 quisition of furnishings and equipment for any such
53 buildings. (5) The construction or acquisition of any other
54 capital improvements or capital educational facilities
55 at such state institutions of higher education, includ-
56 ing any roads, utilities or other properties, real or per-
57 sonal, or for other purposes necessary, appurtenant or
58 incidental to the construction, acquisition, financing and
59 placing in operation of such buildings, capital improve-
60 ments or capital educational facilities.

61 The respective boards, at their discretion, may use the
62 moneys in such special capital improvements funds to
63 finance the costs of the above purposes on a cash basis,
64 or may from time to time issue revenue bonds of the
65 state as provided in this section to finance all or part of
66 such purposes and pledge all or any part of the moneys
67 in such special funds for the payment of the principal of
68 and interest on such revenue bonds, and for reserves
69 therefor. Any pledge of such special funds for such reve-
70 nue bonds shall be a prior and superior charge on such
71 special funds over the use of any of the moneys in such
72 funds to pay for the cost of any of such purposes on
73 a cash basis: *Provided*, That any expenditures from such
74 special funds, other than for the retirement of revenue
75 bonds, may only be made by the board of governors of
76 West Virginia University and the West Virginia board of
77 education to meet the cost of a predetermined capital
78 improvements program for one or more of the state in-
79 stitutions of higher education under their control, in
80 such order of priority as shall have been agreed upon by
81 the respective boards and presented to the governor for
82 inclusion in the annual budget bill, and only with the ap-
83 proval of the Legislature as indicated by direct appro-
84 priation for the purpose.

85 Such revenue bonds may be authorized and issued from
86 time to time by the respective boards to finance in whole
87 or in part the purposes provided in this section in an
88 aggregate principal amount not exceeding the amount
89 which the respective boards shall determine can be paid
90 as to both principal and interest and reasonable margins

91 for a reserve therefor from the moneys in such special
92 funds.

93 The issuance of such revenue bonds shall be authorized
94 by a resolution adopted by the respective board, and such
95 revenue bonds shall bear such date or dates, mature at
96 such time or times not exceeding forty years from their
97 respective dates; bear interest at such rate or rates not
98 exceeding five per centum per annum; be in such form
99 either coupon or registered, with such exchangeability
100 and interchangeability privileges; be payable in such
101 medium of payment and at such place or places, within
102 or without the state; be subject to such terms of prior
103 redemption at such prices not exceeding one hundred five
104 per centum of the principal amount thereof; and shall
105 have such other terms and provisions as such respective
106 board shall determine. Such revenue bonds shall be
107 signed by the governor and by the president of the
108 respective board authorizing the issuance thereof, under
109 the great seal of the state, attested by the secretary of
110 state, and the coupons attached thereto shall bear the
111 facsimile signature of the president of such respective
112 board. Such revenue bonds shall be sold in such manner
113 as the respective board may determine to be for the best
114 interests of the state, such sale to be made at a price not
115 lower than a price which will show a net return of not
116 more than six per centum per annum to the purchaser
117 upon the amount paid therefor computed to the stated
118 maturity dates of such revenue bonds without regard to
119 any right of prior redemption.

120 Such respective board may enter into trust agreements
121 with banks or trust companies, within or without the
122 state, and in such trust agreements or the resolutions
123 authorizing the issuance of such bonds may enter into
124 valid and legally binding covenants with the holders of
125 such revenue bonds as to the custody, safeguarding and
126 disposition of the proceeds of such revenue bonds, the
127 moneys in such special funds, sinking funds, reserve
128 funds, or any other moneys or funds; as to the rank
129 and priority, if any, of different issues of revenue bonds
130 by the same board under the provisions of this section;
131 as to the maintenance or revision of the amounts of such

132 additional registration fees, and the terms and condi-
133 tions, if any, under which such additional registration
134 fees may be reduced; and as to any other matters or pro-
135 visions which are deemed necessary and advisable by
136 such respective board in the best interest of the state and
137 to enhance the marketability of such revenue bonds.

138 After the issuance of any of such revenue bonds, the
139 additional registration fees at the state institutions of
140 higher education under the control of the board which
141 issued the bonds shall not be reduced as long as any of
142 such revenue bonds are outstanding and unpaid except
143 under such terms, provisions and conditions as shall be
144 contained in the resolution, trust agreement or other
145 proceedings under which such revenue bonds were issued.

146 Such revenue bonds shall be and constitute negotiable
147 instruments under the law merchant and the Negotiable
148 Instruments Law of the state; shall, together with the
149 interest thereon, be exempt from all taxation by the state
150 of West Virginia, or by any county, school district, munic-
151 ipality or political subdivision thereof; and such revenue
152 bonds shall not be deemed to be obligations or debts of
153 the state, and the credit or taxing power of the state
154 shall not be pledged therefor, but such revenue bonds
155 shall be payable only from the revenue pledged there-
156 for 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.

1 After its citizen members have been appointed by the
2 governor, the commission shall appoint a director who
3 shall act as the chief administrative officer of the com-
4 mission. He shall be a person who is professionally quali-
5 fied by experience and training to assume the responsi-
6 bilities of the position. The director's annual salary shall,
7 within the limits of funds available, be fixed by the
8 governor, and he may be reimbursed for travel and other
9 necessary expenses actually incurred in the perform-

10 ance of his official duties. Requisition for such expenses
11 shall be accompanied by a sworn and itemized statement
12 which shall be filed with the auditor.

§29-14-6. Personnel.

1 The director shall, with the advice and consent of the
2 commission, appoint such other personnel as the com-
3 mission deems to be necessary for the efficient perform-
4 ance of the duties prescribed by this article. Within the
5 limits of funds available, and with the approval of the
6 governor, the commission may fix the compensation of
7 such other personnel, and may incur other expenses nec-
8 essary 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.

1 (a) Building and loan associations organized and
2 existing under the laws of this state shall have all of
3 the rights, powers, privileges and benefits to accept sav-
4 ings accounts and to issue to each holder of its savings
5 accounts an account book, or a separate certificate, evi-
6 dencing the ownership of the account and the interest
7 of the holder thereof in the capital of such association,
8 and to pay dividends and to distribute earnings thereon,
9 all upon the same terms and conditions and subject to
10 the same limitations and restrictions as were provided
11 on the first day of July, one thousand nine hundred sixty-
12 eight, for federal savings and loan associations whose
13 home offices are located in this state, under the "Rules
14 and Regulations for the Federal Savings and Loan Sys-
15 tem" issued by the federal home loan bank board, and
16 under the "Rules and Regulations for Insurance of Ac-
17 counts", issued by the federal savings and loan insurance
18 corporation: *Provided*, That whenever and wherever
19 amendments to the charter or bylaws of said federal
20 savings and loan associations were at said date permitted
21 or required, as a prerequisite to the exercise of any such
22 right, power, privilege or benefit, such amendments may
23 be adopted to the charter, constitution and bylaws of
24 building and loan associations organized under the laws
25 of this state: *Provided, however*, That whenever and
26 wherever action by the board of directors of said federal
27 savings and loan associations was at said date permitted
28 or required as a prerequisite of the exercise of such right,
29 power, privilege or benefit, such action may be taken by
30 the board of directors of building and loan associations
31 organized under the laws of this state.

32 (b) This statute shall not grant to any building and
33 loan association organized under the laws of this state,
34 permission or authority to install or maintain any branch
35 or to engage in business at any place other than its
36 principal office in this state.

CHAPTER 15

(Senate Bill No. 294—By Mr. Moreland)

[Passed March 6, 1969; in effect ninety days from passage. Approved by the Governor.]

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:
- 2 1. To sue and be sued, plead and be impleaded;
- 3 2. To have a seal and alter the same at pleasure;
- 4 3. To contract to acquire and to acquire, in the name
- 5 of the commission or of the state, by purchase or other-
- 6 wise, real property or rights or easements necessary or
- 7 convenient for its corporate purposes and to exercise the
- 8 power of eminent domain to accomplish such purposes;
- 9 4. To acquire, hold and dispose of personal property
- 10 for its corporate purposes;
- 11 5. To make bylaws for the management and regulation
- 12 of its affairs;
- 13 6. With the consent of the attorney general of the state
- 14 of West Virginia to use the facilities of his office, assist-
- 15 ants and employees in all legal matters relating to or
- 16 pertaining to the commission;
- 17 7. To appoint officers, agents and employees, and fix
- 18 their compensation;

19 8. To make contracts, and to execute all instruments
20 necessary or convenient to effectuate the intent of, and to
21 exercise the powers granted to it by, this article;

22 9. To renegotiate all contracts entered into by it when-
23 ever, due to a change in situation, it appears to the com-
24 mission that its interest will be best served;

25 10. To construct a building or buildings on real prop-
26 erty, which it may acquire, or which may be owned by
27 the state of West Virginia, in the city of Charleston, as
28 convenient as may be to the capitol building, together
29 with incidental approaches, structures and facilities, sub-
30 ject to such consent and approval of the city of Charleston
31 in any case as may be necessary; and, in addition, to
32 acquire or construct a warehouse, including office space
33 therein, in Kanawha county for the West Virginia alcohol
34 beverage control commissioner, and equip and furnish
35 the same; and to acquire or construct buildings and addi-
36 tions to buildings (and equip and furnish the same), in-
37 cluding remodeling, renovation and repair, as may be re-
38 quired for the safety and care of patients, guests and
39 inmates at hospitals under the jurisdiction and super-
40 vision of the department of mental health and at institu-
41 tions under the jurisdiction and supervision of the com-
42 missioner of public institutions; and to formulate and
43 program plans for the orderly and timely capital improve-
44 ment of all of said hospitals and institutions and the state
45 capitol buildings; and to construct a building or buildings
46 in Kanawha county to be used as a general headquarters
47 by the department of public safety to accommodate that
48 department's executive staff, clerical offices, technical
49 services, supply facilities and dormitory accommodations;
50 and to establish one or more systems or complexes of
51 buildings and projects under control of the commission
52 and, subject to prior agreements with holders of bonds
53 previously issued, to change the same from time to time,
54 in order to facilitate the issuance and sale of bonds of
55 different series on a parity with each other or having such
56 priorities between series as the commission may deter-
57 mine; and to acquire by purchase, eminent domain or
58 otherwise all real property or interests therein necessary

59 or convenient to accomplish the purposes of this sub-
60 division;

61 11. To maintain, construct and operate a project au-
62 thorized hereunder;

63 12. To charge rentals for the use of all or any part of a
64 project or building at any time financed, constructed,
65 acquired or improved in whole or in part with the pro-
66 ceeds of sale of bonds issued pursuant to this article,
67 subject to and in accordance with such agreements with
68 bondholders as may be made as hereinafter provided;

69 13. To issue negotiable bonds and to provide for the
70 rights of the holders thereof;

71 14. To enter on any lands and premises for the purpose
72 of making surveys, soundings and examinations;

73 15. To invest in United States government obligations,
74 on a short-term basis, any surplus funds which the com-
75 mission may have on hand pending the completion of
76 any project or projects;

77 16. To do all things necessary or convenient to carry
78 out the powers given in this article.

79 The rights and powers set forth in subdivision ten of
80 this section shall not be construed as in derogation of any
81 rights and powers now vested in the West Virginia alcohol
82 beverage control commissioner, the department of mental
83 health or the commissioner of public institutions.

CHAPTER 16

(House Bill No. 958—By Mr. Kincaid and Mr. Buck)

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

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

Be it enacted by the Legislature of West Virginia:

§1. Finding and declaring certain claims against the state road commission; 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.

1 The Legislature has considered the findings of fact and
2 recommendations reported to it by the court of claims
3 concerning various claims against the state and agencies
4 thereof, and in respect to each of the following claims
5 the Legislature adopts those findings of fact as its own,
6 and hereby declares it to be the moral obligation of the
7 state to pay each such claim in the amount specified below,
8 and directs the auditor to issue warrants for the payment
9 thereof out of any fund appropriated and available for
10 the purpose.

11 (a) Claims versus the State Road Commission:

12	(1) Everett Lee Akers.....	\$ 25.00
13	(2) Acie W. Albert	88.07
14	(3) The Baker & Hickey Company	11,151.12
15	(4) Henry A. Beasley	100.00
16	(5) Walter L. Blankenship	68.61
17	(6) Central Asphalt Paving Company	16,483.75
18	(7) Central Asphalt Paving Company ...	10,600.00
19	(8) Warren Chamberlain and	
20	Justine Chamberlain	110.16
21	(9) Peter Chapman	73.24
22	(10) Charleston Concrete Floor Company	9,713.78
23	(11) Charleston Construction Inc.	1,245.95
24	(12) Katharine Chatfield	247.07
25	(13) Chesapeake & Ohio Railway	
26	Company	212.01
27	(14) William Curry and Mary E. Curry...	2,106.71
28	(15) Thornton Deskins	100.00
29	(16) C. L. Dotson	23.00

30	(17)	Federal Insurance Company and	
31		Raymond T. Dalton	677.33
32	(18)	Doran Frame, d/b/a Doran Frame	
33		Electrical Contractors	3,801.73
34	(19)	W. E. Gano, Sr.	16.48
35	(20)	Richard Gordon	646.77
36	(21)	S. J. Groves & Sons	17,583.06
37	(22)	J. I. Hass	23,108.00
38	(23)	Haynes Construction Company	144,349.53
39	(24)	J. C. Haynes	4,033.76
40	(25)	Kenneth G. Keith	52.53
41	(26)	Charles J. Kucera and Josephine	
42		Ann Kucera	75.00
43	(27)	Laird Office Equipment Company	1,026.54
44	(28)	Vincent Lopez	804.09
45	(29)	Shirley McKinney	94.35
46	(30)	James L. Matheny	240.00
47	(31)	W. E. Medley	2,500.00
48	(32)	National Rubber & Leather	
49		Company	1,016.41
50	(33)	Martha J. Nickell and Stonewall	
51		Casualty Company	104.31
52	(34)	Robert C. Owens	681.73
53	(35)	James and Norma Robison	202.62
54	(36)	Lois Shinn	435.00
55	(37)	Raymond R. Smith	2,400.00
56	(38)	Southern Coals Corporation	5,401.31
57	(39)	George B. Southern, Jr.	316.08
58	(40)	State Construction Company	87,823.61
59	(41)	State Farm Mutual Automobile	
60		Insurance Company	148.01
61	(42)	State Farm Mutual Automobile	
62		Insurance Company	36.05
63	(43)	Robert Vincent	181.08
64	(44)	C. E. Wetherall, d/b/a C. E. Wetherall	
65		Company	5,506.55
66	(45)	Prince A. Williams	88.20
67	(46)	Donald L. Wisecarver	45.00
68	(47)	Marilyn Stollings	10,000.00

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

108	(3) Otis Elevator Company	426.61
109	(4) United Airlines, Inc.	512.91
110	(k) Claims versus State Road Commission	
111	and Department of Finance and	
112	Administration:	
113	(1) J. E. Greene	6,008.45
114	(l) Claims versus Workmen's Com-	
115	pensation Fund:	
116	(1) Mountain State Consultants, Inc.....	7,200.00.
117	The Legislature finds that the above moral obligations	
118	and the appropriations made in satisfaction thereof shall	
119	be the full compensation for all claimants, and that prior	
120	to the payment to any claimant provided for in this bill,	
121	the court of claims shall receive a release from said	
122	claimant releasing any and all claims for moral obliga-	
123	tions arising from the matters considered by the Legis-	
124	lature in the finding of the moral obligations and the	
125	making of the appropriation for said claimant. The court	
126	of claims shall deliver all releases obtained from claim-	
127	ants to the department against which the claim was	
128	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
2 three, chapter five-a of the code or let by the state board
3 of education, West Virginia board of regents, state
4 armory board, or by any other board, agency or commis-
5 sion of the state, entered into on and after March one, one
6 thousand nine hundred sixty-nine, except the state road
7 commissioner, shall contain the following paragraph:

8 "Within ninety days after the completion of this con-
9 tract is certified by the approving authority to be complete
10 in accordance with terms of the plans or specifications, or
11 both where appropriate, or is accepted by the authorized
12 spending officer as complete, or is occupied by the owner,
13 or is dedicated for public use by the owner, whichever
14 occurs first, the balance due the contractor herein shall
15 be paid in full. Should such payment be delayed for more
16 than ninety days beyond the day the completion of this
17 contract is certified by the authorized spending officer or
18 is accepted by the owner as complete, or is occupied by
19 the owner, or is dedicated for public use by the owner,
20 said contractor shall be paid interest, beginning on the
21 ninety-first day, at the rate of six per centum per annum
22 on any unpaid balance: *Provided*, That whenever the
23 approving authority reasonably determines that delay
24 in completing the contract or in accepting payment for
25 the contract is the fault of the contractor herein, the
26 approving authority may accept and use the commodities
27 or printing or the project may be occupied by the owner
28 or dedicated for public use by the owner without pay-
29 ment of any interest on amounts withheld past the ninety-
30 day limit."

31 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 ginning 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.

CHAPTER 18

(Com. Sub. for House Bill No. 555—By Mr. Ours and Mr. Hawse)

[Passed February 26, 1969; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article 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-2. Definitions.
- §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-8. Permission to undertake emergency project without compliance with §29-28-7.
- §29-2B-9. Records and reports.
- §29-2B-10. Research projects; safety.
- §29-2B-11. Enforcement of article.
- §29-2B-12. Suspensions or revocations of license.
- §29-2B-13. Compensation for damage.
- §29-2B-14. Acts not authorized.
- §29-2B-15. Offenses and penalties.

§29-2B-1. Declaration of policy.

- 1 The public interest, health, safety, welfare and neces-
- 2 sity require that scientific experimentation in the field
- 3 of artificial nucleation, and that scientific efforts to de-
- 4 velop and increase natural precipitation of rain, snow,
- 5 moisture, or water in any form contained in the atmos-
- 6 phere, within the state, be encouraged in order to de-
- 7 velop, conserve, and protect the natural water resources
- 8 of the state and to safeguard life and property.

§29-2B-2. Definitions.

1 As used in this article:

2 (a) "Director" means the director of aeronautics.

3 (b) "Commission" means the West Virginia aeronau-
4 tics commission.

5 (c) "Operation" means the performance of weather
6 modification and control activities pursuant to a single
7 contract entered into for the purpose of producing, or
8 attempting to produce, a certain modifying effect within
9 one geographical area over one continuing time interval
10 not exceeding one year, or, if the performance of weather
11 modification and control activities is to be undertaken
12 individually or jointly by a person or persons to be bene-
13 fited and not undertaken pursuant to a contract, "opera-
14 tion" means the performance of weather modification
15 and control activities entered into for the purpose of
16 producing, or attempting to produce, a certain modifying
17 effect within one geographical area over one continuing
18 time interval not exceeding one year.

19 (d) "Person" means any individual, firm, association,
20 organization, partnership, company, corporation, private
21 or public, political subdivision, or other public agency.

22 (e) "Research and development" means theoretical
23 analysis, exploration and experimentation and the ex-
24 tension of investigative findings and theories of a scien-
25 tific or technical nature into practical application for ex-
26 perimental and demonstration purposes, including the ex-
27 perimental production and testing of models, devices,
28 equipment, materials and processes.

29 (f) "Weather modification and control" means chang-
30 ing or controlling, or attempting to change or control,
31 by artificial methods the natural development of any or
32 all atmospheric cloud forms and precipitation forms
33 which occur in the troposphere.

§29-2B-3. Administration by director and commission.

1 The director shall administer this article under the
2 supervision of the commission.

§29-2B-4. When license and registration of equipment required.

1 (a) No person, without first securing a license from
2 the commission, shall cause or attempt to cause conden-
3 sation or precipitation of rain, snow, moisture, or water
4 in any form contained in the atmosphere.

5 (b) No person without registering with the commis-
6 sion shall have in his possession any cloud seeding equip-
7 ment unless he is an employee of or under contract with
8 a person conducting a weather modification and control
9 operation who has been granted a license by the com-
10 mission.

§29-2B-5. Application for license.

1 (a) Any person desiring to do any of the acts specified
2 in section four may file with the director an application
3 in writing for a license. Each application shall be accom-
4 panied by a filing fee fixed by the commission but not to
5 exceed one hundred dollars, and shall be on a form to be
6 supplied for such purpose by the director.

7 (b) Every application shall set forth all of the fol-
8 lowing:

9 (1) The name and post-office address of the ap-
10 plicant.

11 (2) The previous education, experience, and
12 qualifications of the applicant, or, if the applicant is other
13 than an individual, the previous education, experience,
14 and qualifications of the persons who will be in control
15 of and charged with the operations of the applicant. Pre-
16 vious experience includes subcontracting or counseling
17 services.

18 (3) A general description of the operations which
19 the applicant intends to conduct and the method and type
20 of equipment including all nucleating agents, that the
21 applicant proposes to use. Aircraft must be listed by
22 numbers and pilots' names.

23 (4) A statement listing all employees, who are
24 residents of West Virginia or who will be directly em-
25 ployed in the intended operation, or both.

26 (5) A bond or insurance covering any damage the
27 licensee may cause through his operations in an amount

28 of fifteen thousand dollars or other evidence of financial
29 responsibility shall be furnished and executed at the time
30 of the grant of the license: *Provided, however,* That no
31 bond shall be required of any person who shall cause or
32 attempt to cause condensation or precipitation of rain,
33 snow, moisture or water in any form contained in the
34 atmosphere over any landing strip or runway of any
35 airport, or any approach thereto, in an effort to improve
36 the visibility above the landing strip, runway, or ap-
37 proach thereto.

38 (6) Every applicant shall have a resident agent
39 within this state.

40 (c) Upon the filing of the application upon a form
41 supplied by the director and containing the information
42 prescribed by this article and accompanied by the re-
43 quired filing fee and bond or insurance, the director may
44 issue a license to the applicant entitling the applicant to
45 conduct the operations described in the application for
46 the calendar year for which the license is issued, unless
47 the license is sooner revoked or suspended or modified.

48 (d) A license may be renewed annually upon ap-
49 plication to the director, accompanied by a renewal fee
50 fixed by the commission but not to exceed one hundred
51 dollars, on or before the last day of January of the
52 calendar year for which the license is renewed.

§29-2B-6. Registration of equipment.

1 Every person not desiring a license who owns or pos-
2 sesses cloud seeding equipment shall promptly register
3 the same with the director on a form furnished by him.

§29-2B-7. Publication of notice of intention to undertake operation.

1 (a) Prior to undertaking any operation authorized
2 by the license, the licensee shall file with the director
3 and cause to be published a notice of intention. The
4 licensee shall then confine his activities for that operation
5 substantially within the time and area limits set forth
6 in the notice of intention.

7 (b) The notice of intention shall set forth all of the
8 following:

- 9 (1) The name and address of the licensee.
- 10 (2) The nature and object of the intended opera-
11 tion and the person or persons on whose behalf it is to
12 be conducted.
- 13 (3) The area in which and the approximate time
14 during which the operation will be conducted.
- 15 (4) The area which will be affected by the opera-
16 tion as near as the same may be determined in advance.
- 17 (c) The notice of intention required by this section
18 shall be published as a Class III legal advertisement and
19 the publication area shall be the county wherein the opera-
20 tion is to be conducted and in which the affected area is
21 located, or, if the operation is to be conducted in more
22 than one county or if the affected area is located in more
23 than one county or is located in a county other than the
24 one in which the operation is to be conducted, then such
25 notice shall be published in like manner in a newspaper
26 having a general circulation within each of such counties.
- 27 (d) Proof of publication shall be filed by the licensee
28 with the director within fifteen days from the date of
29 the last publication of the notice. Proof of publication
30 shall be by copy of the notice as published, attached to
31 and made a part of the affidavit of the publisher or fore-
32 man of the newspaper publishing the notice.

**§29-2B-8. Permission to undertake emergency project without
compliance with §29-28-7.**

- 1 (a) Notwithstanding any provision of this article to
2 the contrary, the director may grant a licensee permission
3 to undertake an emergency nucleation project, without
4 prior compliance by the licensee with the provisions of
5 section seven, subsection (a), if the same appears to the
6 commissioner to be necessary or desirable in aid of ex-
7 tinguishment of fires.
- 8 (b) Notwithstanding any provision of this article to
9 the contrary, upon request of the county commissioners
10 of a county or of the governing body of a city, borough,
11 town or township, and upon the submission of such sup-
12 porting evidence as the commission may require, the com-

13 mission may grant a licensee permission to undertake a
14 nucleation project for the purpose of alleviating a drought
15 emergency, without prior compliance by the licensee with
16 the provisions of section seven, subsection (a), requiring
17 publication of notice of intention, if such project appears
18 to the department to be necessary or desirable.

19 (c) Nothing contained in this section shall be con-
20 strued as to relieve the licensee in the cases set forth in
21 subsection (a) or (b) of this section from compliance
22 with the provisions of section seven requiring publication
23 of notice of intention and filing of proof of such publica-
24 tion, as soon after the granting of permission by the
25 director as is practicable. In lieu thereof the licensee
26 may furnish equivalent transmission of notice of inten-
27 tion by radio or television, and proof thereof, as soon
28 after the granting of permission by the director as is
29 practicable.

§29-2B-9. Records and reports.

1 (a) Every licensee shall keep and maintain a record
2 of all operations conducted by him pursuant to his license
3 showing the method employed, the type of equipment
4 used, the times and places of operation of the equipment,
5 the name and post-office address of each person partici-
6 pating or assisting in the operation other than the licensee,
7 and such other information as may be required by the
8 commission, and shall report the same to the director
9 immediately upon the completion of each operation.

10 (b) Each licensee shall further prepare and maintain
11 an evaluation statement for each operation which shall
12 include a report as to estimated precipitation, defining
13 the gain or loss occurring from nucleation activities,
14 together with supporting data therefor. This statement,
15 together with such other pertinent information as the
16 commission may require, shall be sent to the commission
17 upon completion and be available to inspection by the
18 commission or director at all times on the licensee's
19 premises.

20 (c) The commission shall require written reports con-
21 cerning each operation conducted by a licensee under
22 this article.

23 (d) All information on an operation shall be sub-
24 mitted to the commission before any information on
25 such operation may be released to the public.

26 (e) The reports and records in the custody of the
27 commission shall be open for public examination as pub-
28 lic documents.

§29-2B-10. Research projects; safety.

1 (a) Research work within the province of this statute
2 shall be permitted only when authorized by the com-
3 mission.

4 (b) Government and armed forces projects within the
5 province of this statute must meet all the requirements
6 of this article.

7 (c) No nucleating agent may be used in concentra-
8 tions dangerous to man or causes environmental pollu-
9 tion as determined by the state department of health.

§29-2B-11. Enforcement of article.

1 In order to enforce the provisions of this article, the
2 West Virginia state police shall, on request of the com-
3 mission, assign at least one trooper and one investigator
4 to an area where unlawful cloud seeding is suspected.
5 If such police request the same, the commission shall
6 assign an airplane and pilot. Air samples shall be taken
7 by the West Virginia air pollution control commission
8 if requested by the state police or the commission. For
9 such enforcement purposes, the state department of health
10 shall furnish such technical services as the commission
11 or director may request.

§29-2B-12. Suspensions or revocations of license.

1 Any license may be revoked, suspended or modified if
2 the commission finds, after due notice to the licensee and
3 a hearing thereon, that the licensee has failed or refused
4 to comply with any of the provisions of this article. The
5 proceedings herein referred to shall be conducted in
6 accordance with the provisions of article one, chapter
7 twenty-nine-a of the code of West Virginia, one thousand
8 nine hundred thirty-one, as amended, known as the "West
9 Virginia Administrative Procedures Act" and the com-
10 mission shall have all the powers granted therein.

§29-2B-13. Compensation for damage.

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.

§29-2B-14. Acts not authorized.

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.

§29-2B-15. Offenses and penalties.

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-

24 sand dollars, or imprisoned in the county jail not more
25 than one year, or both fined and imprisoned.

CHAPTER 19

(Com. Sub. for House Bill No. 539—By Mr. Myles)

[Passed February 28, 1969; in effect ninety days from passage. Approved by the Governor.]

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
2 provisions of this chapter, or existing under the laws of
3 this state, for the purpose of carrying on any kind of busi-
4 ness, may consolidate or merge into a single corporation
5 which may be any one of such constituent corporations
6 or a new corporation to be formed by means of such
7 consolidation or merger as shall be specified in the agree-
8 ment hereinafter required. The directors, or a majority
9 of them, of such corporations as desire to consolidate or
10 merge, may enter into an agreement signed by them and

11 under the corporate seals of the respective corporations,
12 prescribing the terms and conditions of consolidation or
13 merger, the mode of carrying the same into effect, and
14 stating such other facts required or permitted by the pro-
15 visions of this article to be set out in an agreement of
16 incorporation, as can be stated in the case of a consolida-
17 tion or merger, stated in such altered form as the circum-
18 stances of the case require, as well as the manner of
19 converting the shares of each of the constituent corpo-
20 rations into shares of the consolidated or merged corpo-
21 ration, with such other details and provisions as are
22 deemed necessary.

23 Such agreement shall be submitted to the stockholders
24 of each constituent corporation, at a meeting thereof,
25 called separately for the purpose of taking the same into
26 consideration; of the time, place and object of which
27 meeting due notice shall be given by publication as a
28 Class II legal advertisement in compliance with the pro-
29 visions of article three, chapter fifty-nine of this code,
30 and the publication area for such publication shall be
31 the county wherein each such corporation either has its
32 principal office or conducts its business. A copy of such
33 notice shall also be mailed to the last known post-office
34 address of each stockholder of each such corporation, at
35 least twenty days prior to the date of such meeting:
36 *Provided, however,* That in the consolidation or merger
37 of banking institutions as defined in this chapter, in the
38 case of emergency, and upon the order of the commis-
39 sioner of banking, the meeting may be held upon at least
40 twelve hours' notice sent by mail or telegraph to the
41 last known post-office address of each stockholder, and
42 without publication.

43 At any such stockholders' meeting of any corporation
44 said agreement shall be considered and a vote by ballot,
45 in person or by proxy, taken for the adoption or rejection
46 of the same, each share entitling the holder thereof to
47 one vote; and if the votes of stockholders of each such
48 corporation representing two thirds of the total number
49 of shares of its capital stock then issued and outstanding
50 shall be for the adoption of such agreement, then that
51 fact shall be certified on such agreement by the secretary

52 of each such corporation under the seal thereof; and the
53 agreement so adopted and certified shall be signed by the
54 president and secretary of each of such corporations un-
55 der the corporate seals thereof and acknowledged by the
56 president of each of such corporations before any officer
57 authorized by the laws of this state to take acknowledg-
58 ments of deeds to be the respective act, deed and agree-
59 ment of each of such corporations, and the agreement
60 so certified and acknowledged shall be filed in the office
61 of the secretary of state, and shall thence be taken and
62 deemed to be the agreement and act of consolidation
63 or merger of the said corporations; and a copy of such
64 agreement and act of consolidation or merger, duly cer-
65 tified by the secretary of state under the seal of his office,
66 shall also be recorded in the offices of the clerks of the
67 county courts of the counties of this state in which the
68 respective corporations so consolidating or merging shall
69 have their original certificates of incorporation recorded,
70 if any, or if any of the corporations shall have been
71 specially created by a public act of the Legislature, then
72 such agreement shall be recorded in the county where
73 such corporation shall have had its principal place of
74 business, if any, and such record, or a certified copy
75 thereof, shall be evidence of the agreement and act of
76 consolidation or merger of such corporations, and of the
77 observance and performance of all acts and conditions
78 necessary to have been observed and performed precedent
79 to such consolidation or merger.

80 On such date as shall be specified in such agreement,
81 or if no effective date is specified in such agreement, on
82 the date such certified copy of said agreement is issued
83 by the secretary of state, for all purposes of the laws
84 of this state, the separate existence of all the constituent
85 corporations, parties to said agreement, or of all such
86 constituent corporations except the one into which the
87 other or others of such constituent corporations have
88 been merged, or consolidated, as the case may be,
89 shall cease and the constituent corporations shall be-
90 come a new corporation, or be merged into one of such
91 corporations, as the case may be, in accordance with the
92 provisions of said agreement, possessing all the rights,

93 privileges, powers, franchises and trust and fiduciary
94 duties, powers and obligations, as well of a public as of
95 a private nature, and being subject to all the restrictions,
96 disabilities and duties of each of such corporations so
97 consolidated or merged, and all and singular the
98 rights, privileges, powers, franchises, and trust and
99 fiduciary rights, powers, duties and obligations, of each
100 of said corporations; and all property, real, personal and
101 mixed, and all debts due to any of said constituent corpo-
102 rations on whatever account, as well for stock sub-
103 scriptions as all other things in action or belonging to
104 each of such corporations shall be vested in the corpora-
105 tion resulting from or surviving such consolidation or
106 merger; and all property, rights, privileges, powers, and
107 franchises, and all and every other interest shall be
108 thereafter as effectually the property of the resulting
109 or surviving corporation as they were of the several
110 and respective constituent corporations; and the title
111 to any real estate, whether vested by deed or otherwise,
112 under the laws of this state, vested in any of such con-
113 stituent corporations, shall not revert or be in any way
114 impaired by reason of this chapter: *Provided, however,*
115 That all rights of creditors and all liens upon any prop-
116 erty of any of said constituent corporations shall be
117 preserved unimpaired, and all debts, liabilities and duties
118 of the respective constituent corporations shall thence-
119 forth attach to said resulting or surviving corporation,
120 and may be enforced against it to the same extent as if
121 said debts, liabilities and duties had been incurred or
122 contracted by it.

§31-1-63a. Consolidation or merger of domestic with foreign corporations.

1 Any one or more corporations organized under the
2 provisions of this chapter, or existing under the laws of
3 this state, may consolidate or merge with one or more
4 other corporations organized under the laws of any
5 other state or states of the United States of America, if
6 the laws under which said other corporation or corpo-
7 rations are formed shall permit such consolidation or
8 merger. The constituent corporations may merge into
9 a single corporation, which may be any one of said con-

10 stituent corporations, or they may consolidate to form
11 a new corporation, which may be a corporation of the
12 state of incorporation of any one of said constituent
13 corporations as shall be specified in the agreement here-
14 inafter required. All the constituent corporations shall
15 enter into an agreement in writing which shall pre-
16 scribe the terms and conditions of the consolidation or
17 merger, the mode of carrying the same into effect, the
18 manner of converting the shares of each of said con-
19 stituent corporations into shares or other securities of
20 the corporation resulting from or surviving such con-
21 solidation or merger if such corporations have shares,
22 and such other details and provisions as shall be deemed
23 necessary or proper. There shall also be set forth in
24 said agreement such other facts as shall then be required
25 to be set forth in certificates of incorporation by the laws
26 of the state, which are stated in said agreement to be the
27 laws that shall govern said resulting or surviving corpo-
28 ration and that can be stated in the case of a consolidation
29 or merger. Said agreement shall be authorized, adopted,
30 approved, signed and acknowledged by each of said
31 constituent corporations in accordance with the laws
32 under which it is formed and, in the case of a West
33 Virginia corporation, in the manner provided in section
34 sixty-three of this article. The agreement so authorized,
35 adopted, approved, signed and acknowledged shall be
36 filed in the office of the secretary of state and a copy
37 thereof, certified by the secretary of state, shall be
38 recorded as provided in section sixty-three of this article
39 with respect to the consolidation or merger of corpora-
40 tions of this state; and said agreement shall become
41 effective on such date as shall be specified in such agree-
42 ment, or if no effective date is specified in such agree-
43 ment, on the date such certified copy of said agreement
44 is issued by the secretary of state, and shall thenceforth
45 be taken and deemed to be the agreement and act of
46 consolidation or merger of said constituent corporations
47 for all purposes of the laws of this state.

48 Wherever the laws of another state than West Vir-
49 ginia are selected as the laws which shall govern the
50 merged or consolidated corporation, such surviving cor-

51 poration shall comply with the provisions of section
52 seventy-nine, article one, of chapter thirty-one, as last
53 amended, before it holds property or transacts business
54 in this state, and thereafter shall comply with the laws
55 of this state with respect to foreign corporations holding
56 property or transacting business in this state.

§31-1-63al. Merger of domestic parent corporation and wholly owned subsidiary.

1 In addition to the method of merger and consolidation
2 provided in section sixty-three of this article, any cor-
3 poration now or hereafter organized under the provisions
4 of this chapter or existing under the laws of this state,
5 for the purpose of carrying on any kind of business,
6 owning all the stock of any other corporation now or
7 hereafter organized under the provisions of this chapter
8 or existing under the laws of this state, or now or here-
9 after organized under the laws of any other state of the
10 United States of America, if the laws under which said
11 other corporation is formed shall permit a merger as
12 herein provided, may file in the office of the secretary of
13 state a certificate of such ownership in its name and
14 under its corporate seal, signed by its president or a
15 vice president, and its secretary or treasurer or assistant
16 secretary or assistant treasurer, and setting forth a copy
17 of the resolution of its board of directors to merge such
18 other corporation, and to assume all of its obligations,
19 and the date of the adoption thereof; and a certified copy
20 of said certificate shall be recorded in the office of the
21 clerk of the county court of the county in which the
22 principal place of business of the parent corporation is
23 located, and if the other corporation is also a West Vir-
24 ginia corporation and its principal place of business is
25 located in a different county, another certified copy of
26 said certificate shall be recorded in the office of the
27 clerk of the county court of such other county. On such
28 date as shall be specified in such resolution, or if no
29 effective date is specified in such resolution, on the date
30 such certified copy of said certificate is issued by the
31 secretary of state, all of the estate, property, rights,
32 privileges and franchises of such other corporation shall

33 vest in and be held and enjoyed by such parent corpo-
34 ration as fully and entirely and without change or diminu-
35 tion as the same were before held and enjoyed by such
36 other corporation, and be managed and controlled by
37 such parent corporation, and except as hereinafter in
38 this section provided, in its name, but subject to all lia-
39 bilities and obligations of such other corporation and
40 the rights of all creditors thereof. The parent corpora-
41 tion shall not thereby acquire power to engage in any
42 business, or to exercise any right, privilege or franchise,
43 of a kind which it could not lawfully engage in or
44 exercise under the provisions of the law by or pursuant
45 to which such parent corporation is organized. The
46 parent corporation shall be deemed to have assumed all
47 the liabilities and obligations of the merged corporation,
48 and shall be liable in the same manner as if it had itself
49 incurred such liability and obligations. Any plan of
50 consolidation or merger which requires or contemplates
51 any changes other than those herein specifically autho-
52 rized with respect to the parent corporation, shall be
53 accomplished under the provisions of section sixty-
54 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 corporations; 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

33 process may be made in this state for and upon every
34 such corporation in any action or proceeding described
35 in the next following paragraph of this section. No act
36 of such corporation appointing the auditor such attorney
37 in fact shall be necessary. Immediately after being
38 served with or accepting any such process or notice, of
39 which process or notice two copies for each defendant
40 shall be furnished the auditor with the original notice
41 or process, together with a fee of two dollars, the auditor
42 shall file in his office a copy of such process or notice,
43 with a note thereon endorsed of the time of service or
44 acceptance, as the case may be, and transmit one copy
45 of such process or notice by registered mail, return re-
46 ceipt requested, to such corporation at the address of its
47 principal place of business, which address shall be stated
48 in such process or notice. Such service or acceptance
49 of such process or notice shall be sufficient: *Provided*,
50 That such return receipt shall be signed by an agent
51 or employee of such corporation, or the registered mail
52 so sent by said auditor is refused by the addressee and
53 the registered mail is returned to said auditor, or to his
54 office, showing thereon the stamp of the post office
55 department that delivery thereof has been refused, and
56 such return receipt or registered mail is appended to
57 the original process or notice and filed therewith in the
58 clerk's office of the court from which such process or
59 notice was issued. But no such process or notice shall
60 be served on the auditor or accepted by him less than
61 ten days before the return date thereof. The court may
62 order such continuances as may be reasonable to afford
63 each defendant opportunity to defend the action or
64 proceeding.

65 For the purposes of this section, a foreign corporation
66 not authorized to do business in this state pursuant to
67 the provisions of section seventy-nine of this article
68 shall nevertheless be deemed to be doing business here-
69 in (a) if such corporation makes a contract to be per-
70 formed, in whole or in part, by any party thereto, in
71 this state, (b) if such corporation commits a tort in
72 whole or in part in this state, or, (c) if such corporation
73 manufactures, sells, offers for sale or supplies any

74 product in a defective condition and such product causes
75 injury to any person or property within this state not-
76 withstanding the fact that such corporation had no
77 agents, servants or employees or contacts within this
78 state at the time of said injury. The making of such
79 contract, the committing of such tort or the manufacture
80 or sale, offer of sale or supply of such defective product
81 as hereinabove described shall be deemed to be the
82 agreement of such corporation that any notice or process
83 served upon, or accepted by, the auditor pursuant to
84 the next preceding paragraph of this section in any ac-
85 tion or proceeding against such corporation arising from,
86 or growing out of, such contract, tort, or manufacture
87 or sale, offer of sale or supply of such defective product
88 shall be of the same legal force and validity as process
89 duly served on such corporation in this state.

90 For the purpose of all suits or proceedings instituted
91 for the collection of license taxes due the state, pursuant
92 to the provisions of section eighty-six, article twelve, chap-
93 ter eleven of this code, as amended, and for the purpose
94 of all other cases where it is the duty of the auditor to
95 collect a debt or claim due the state from corporations,
96 the secretary of state, in lieu of the auditor, is hereby
97 constituted the attorney in fact for such corporations.
98 No act of any such corporation appointing the secretary
99 of state such attorney in fact shall be necessary. All
100 provisions in this section relating to the service of proc-
101 ess on, or acceptance of process by, the auditor, and
102 the duties imposed upon the auditor, shall apply to the
103 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
2 four, chapter twenty-eight, all of the code of West Vir-
3 ginia, one thousand nine hundred thirty-one, as amended,
4 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,
2 article three, chapter twenty-eight of the code of West

- 3 Virginia, one thousand nine hundred thirty-one, as
4 amended, are hereby repealed.

§2. Repeal of article relating to apprentices.

- 1 Article six, chapter forty-eight of the code of West Vir-
2 ginia, one thousand nine hundred thirty-one, as amended,
3 is hereby repealed.

CHAPTER 23

(House Bill No. 884—By Mr. Rogerson and Mr. Polen)

[Passed February 28, 1969; 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.

- 1 The prosecuting attorney of any county, with the ap-
2 proval of the county court, or of the governor, or of the
3 court of the county vested with authority to try crim-
4 inal offenses, or of the judge thereof in vacation, may,
5 within his discretion, offer rewards for the apprehension
6 of persons charged with crime, or may expend money
7 for the detection of crime. Any money expended under
8 this section shall, when approved by the prosecuting
9 attorney, be paid out of the county fund, in the same

10 manner as other county expenses are paid. The county
11 court may also offer reasonable bounties and rewards
12 for the destruction of noxious animals, birds of prey,
13 or weeds in the county, payable out of the county
14 treasury: *Provided, however,* That nothing herein shall
15 permit or give to the prosecuting attorney of any county,
16 having a population according to the last official census
17 of sixty thousand or less, the right to appoint a
18 full-time investigator or detector of crime, or to expend
19 any money for the investigation of any crime committed
20 in his county beyond the actual expenses of the
21 investigation of said crime, except in the county of
22 Wyoming, the prosecuting attorney with the consent of
23 the circuit judge and the county court therein, may
24 appoint an investigator of crime to be paid an annual
25 salary of not less than one thousand two hundred
26 dollars nor more than twenty-four hundred dollars, and
27 actual expenses, the salary to be fixed within these
28 limits by the county court; except further in the county
29 of Wayne, the prosecuting attorney may appoint an
30 investigator of crime to be paid an annual salary of
31 not less than thirty-six hundred dollars nor more than
32 forty-eight hundred dollars, and actual expenses, the
33 salary within these limits to be fixed by the county
34 court; except further in the county of Lincoln, the prose-
35 cuting attorney may appoint an investigator of crime
36 to be paid an annual salary of not less than one thou-
37 sand two hundred dollars nor more than two thousand
38 four hundred dollars, and actual expenses, the salary
39 within these limits to be fixed by the prosecuting attorney;
40 except further in the county of Mason, the prosecuting
41 attorney with the consent of the county court or the
42 circuit judge, may appoint an investigator of crime to
43 be paid a salary of not less than one hundred dollars
44 nor more than two thousand four hundred dollars and
45 actual expenses, the salary to be fixed within these
46 limits by the county court; except further in the county
47 of Marshall, the prosecuting attorney may appoint an
48 investigator of crime to be paid an annual salary to be
49 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,
2 according to the last official census, of one hundred thou-
3 sand or more shall have authority to employ such legal
4 counsel as it may deem necessary for the purpose of
5 advising such county court touching all matters of a
6 civil character and to conduct any litigation of a civil
7 character to which the county is a party. The county
8 court shall also have the authority to fix the compen-
9 sation of any counsel so employed, and to pay the same
10 out of the county treasury. Any such counsel so em-
11 ployed may be removed at the pleasure of the county
12 court.

3

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
2 plenary power and authority to negotiate for, secure and
3 adopt for the officers and regular employees thereof,
4 other than provisional, temporary, emergency and inter-
5 mittent employees, who are in officer or employee status
6 with such county on and after the effective date of this
7 section, a policy or policies of group insurance written by
8 a carrier or carriers chartered under the laws of any state
9 and duly licensed to do business in this state and cover-
10 ing life; health; hospital care; surgical or medical diag-
11 nosis, care and treatment; drugs and medicines; remedial
12 care; other medical supplies and services; or any other
13 combination of these; and any other policy or policies
14 of group insurance which in the discretion of the county
15 court bear a reasonable relationship to the foregoing
16 coverages. The provisions and terms of any such group
17 plan or plans of insurance shall be approved in writing
18 by the insurance commissioner of this state as to form,
19 rate and benefits.

20 For said group policy or policies, the county court is
21 hereby authorized and empowered to pay up to a maxi-
22 mum county payment of eighteen dollars per month for
23 each participating officer or employee. Whenever the
24 above described officers or regular employees shall indi-
25 cate in writing that they have subscribed to any of the
26 aforesaid insurance plans on a group basis and the entire
27 cost thereof is not paid by the county court, the county
28 court is hereby authorized and empowered to make
29 periodic premium deductions of the amount of the contri-

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 salaries of assistants, stenographers and clerks for prosecuting 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
- 2 thousand dollars; one stenographer, three thousand dol-
- 3 lars.

§7-7-6(3). Same—Boone county.

- 1 For the county of Boone, one assistant attorney, four
- 2 thousand five hundred dollars; one stenographer at four
- 3 thousand five hundred dollars.

§7-7-6(5). Same—Brooke county.

- 1 For the county of Brooke, one assistant attorney, three
- 2 thousand eight hundred dollars; one stenographer, three
- 3 thousand five hundred dollars.

§7-7-6(7). Same—Calhoun county.

- 1 For the county of Calhoun, one assistant attorney,
- 2 three hundred dollars; one stenographer, at not more
- 3 than two thousand five hundred dollars.

§7-7-6(15). Same—Hancock county.

1 For the county of Hancock, first assistant attorney, five
2 thousand four hundred dollars; second assistant attorney,
3 four thousand nine hundred fifty dollars; one stenog-
4 rapher, not less than three thousand six hundred nor
5 more than four thousand two hundred dollars.

§7-7-6(18). Same—Jackson county.

1 For the county of Jackson, one assistant attorney, one
2 thousand eight hundred dollars; one stenographer, not
3 more than three thousand dollars.

§7-7-6(19). Same—Jefferson county.

1 For the county of Jefferson, one stenographer, not less
2 than one thousand eight hundred dollars nor more than
3 five thousand dollars.

§7-7-6(25). Same—Marshall county.

1 For the county of Marshall, one assistant attorney, one
2 stenographer or clerk, at reasonable salaries to be fixed
3 and paid by the county court.

§7-7-6(28). Same—Mercer county.

1 For the county of Mercer, one assistant attorney; one
2 stenographer or clerk.

§7-7-6(30). Same—Mingo county.

1 For the county of Mingo, one assistant attorney, not
2 more than six thousand dollars; one stenographer, not
3 more than four thousand two hundred dollars.

§7-7-6(32). Same—Monroe county.

1 For the county of Monroe, one assistant attorney; one
2 stenographer, not more than one thousand eight hundred
3 dollars.

§7-7-6(34). Same—Nicholas county.

1 For the county of Nicholas, one investigative assistant;
2 not more than two stenographers.

§7-7-6(36). Same—Pendleton county.

1 For the county of Pendleton, one assistant attorney,
2 two thousand four hundred dollars; one stenographer or
3 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.

CHAPTER 27

(House Bill No. 985—By Mr. Speaker, Mr. Boiarsky,
and Mr. Kopelman)

[Passed March 6, 1969; in effect from passage. Approved by the Governor.]

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
2 in excess of two hundred thousand persons is hereby
3 authorized and empowered, by order entered of record,
4 to create a county parks and recreation commission for
5 the purpose of establishing, improving, developing, ad-
6 ministering, operating and maintaining a county public
7 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
2 county court pursuant to the authority of this article
3 shall be a public corporate body with perpetual exist-
4 ence and a corporate seal. It shall be known as the
5 (name of county) county parks and recreation com-
6 mission. Any board of park and recreation commis-
7 sioners heretofore created under the former provisions
8 of this article shall hereafter be known as the (name of
9 county) county parks and recreation commission, and
10 such commission shall succeed to all of the properties,
11 interest and assets of any such board of park and recre-
12 ation commissioners. The commission shall have the
13 power and authority to receive and control any gift,
14 federal grant, other grant, donation and bequest or de-
15 vise; to exercise the right of eminent domain if an order
16 of the county court authorizing exercise of the right as
17 to any proposed acquisition is first made and entered;
18 to take and hold title to any real or personal property;
19 to receive all operating and capital funds appropriated
20 by the county court to the commission; to receive all
21 income and other funds, whether in cash or check,
22 received by the county court and derived from prop-
23 erties and facilities devoted to park and recreational
24 uses and under the control of said commission; to receive
25 all receipts from income producing park and recreational
26 properties and facilities under the control of the com-

27 mission; to deposit, invest, manage and disburse, all
28 such funds, income or receipts, including the interest
29 or income earned thereon or therefrom; to sue and be
30 sued; to contract and be contracted with; to obtain one
31 or more insurance policies affording coverage for loss
32 of or damage to the properties and facilities under its
33 control and affording public liability coverage for the
34 legal liability of the commission, its officers, agents and
35 employees; to adopt bylaws governing the operation of
36 the commission and specifying the powers and duties
37 of its officers; and to do any and all things which may
38 be necessary or convenient to carry out and effectuate
39 the purposes and provisions of this article.

40 Any such county court is hereby empowered and
41 authorized to transfer to any such commission all such
42 funds or income, as provided for in the preceding para-
43 graph of this section, and such county court may require
44 a blanket surety bond covering those individuals autho-
45 rized to sign checks on behalf of the commission in a penal
46 sum not in excess of twenty-five thousand dollars.

**§7-11-3. Number of members; quorum; qualifications; appoint-
ments; terms; disqualifications.**

1 The commission shall consist of eleven members, a
2 majority of whom shall constitute a quorum for the
3 transaction of business. Each member of said commis-
4 sion shall be a bona fide resident of the county and shall
5 own real estate within such county. The term of the
6 commission members shall be for three years and until
7 their successors have been appointed and have quali-
8 fied: *Provided*, That the county court in appointing the
9 members of the first commission shall appoint three
10 members for a term of one year; four members for a
11 term of two years and four members for a term of three
12 years. The order of the county court shall fix the date
13 on which the term of such commission members shall
14 begin. The members of any board of park and recre-
15 ation commissioners heretofore created under the for-
16 mer provisions of this article shall continue in office
17 as members of the parks and recreation commission of
18 such county until their terms expire and their successors

19 have been appointed and have qualified. Any member
20 of the commission who shall cease to be a bona fide
21 resident of the county or a freeholder thereof, shall
22 thereby be disqualified as a member of said commission
23 and his office shall become vacant. When a vacancy
24 occurs on said commission by reason of death, resigna-
25 tion, change of residence from the county, failure to
26 remain a freeholder of the county, or expiration of term,
27 the county court shall appoint a successor or successors
28 to fill out the unexpired term of the member of the com-
29 mission whose term has been vacated.

§7-11-4. Oath of members; officers; location of office; personnel.

1 After appointment, the members of the commission
2 shall qualify by taking and filing with the clerk of the
3 county court the oath prescribed by law for public offi-
4 cials; one of the members of said commission shall be
5 elected as president, another as vice president, and a
6 secretary shall be elected who need not be a member of
7 the commission. Said commission shall maintain an office
8 at any place it may designate in the county and have
9 control of the management and operation of all properties
10 and facilities which shall be operated in connection with
11 the public parks and recreation system of such county
12 and shall have power to employ or appoint such persons
13 as, in its opinion, may be necessary for the construction,
14 establishment, improvement, development, administra-
15 tion, operation and maintenance of the properties and
16 facilities under its control, subject, however, to the limits
17 of available funds.

§7-11-5. General powers of commission; rules and regulations; misdemeanor offenses; park police authorized.

1 The commission shall have the necessary powers and
2 authority to manage and control all public parks and
3 recreational properties and facilities owned by the county
4 or commission and used as a part of such public parks
5 and recreation system, including the right to promulgate
6 rules and regulations concerning the management and
7 control of such parks and recreational properties and
8 facilities and to enforce any such rules and regulations so
9 promulgated.

10 The commission shall also have plenary power and
11 authority to prepare and submit to the county court for
12 adoption rules and regulations regulating the use of any
13 parks and recreational properties and facilities under the
14 control of the commission and prohibiting any type of
15 use of or activities in connection with any such properties
16 or facilities, and any such rules and regulations, if so
17 adopted, shall be duly entered of record in the order book
18 of the county court. The violation of any such rule and
19 regulation so adopted by the county court shall constitute
20 a misdemeanor, and any person convicted of any such
21 violation shall be punished by a fine of not less than five
22 dollars nor more than one hundred dollars, or by im-
23 prisonment in jail for a period not exceeding thirty days,
24 or by both such fine and imprisonment. Justices of the
25 peace of the county shall have concurrent jurisdiction
26 with the circuit court and other courts of record (having
27 criminal jurisdiction) of any misdemeanor offenses aris-
28 ing under this article. The violation of any such rule and
29 regulation which also constitutes the violation of any
30 state law or municipal ordinance may be prosecuted and
31 punished as a violation of such state law or municipal or-
32 dinance rather than under the provisions of this section.
33 To enforce any such rules and regulations, to protect and
34 preserve all properties and facilities under the control
35 of the commission and to preserve law and order in con-
36 nection therewith, the commission shall have plenary
37 power and authority to provide in its bylaws procedures
38 for the appointment, supervision and discharge of one or
39 more park police officers. Whenever any such appoint-
40 ment is made, a copy of the order of appointment shall
41 be filed by the commission with the county court.

42 In any area under the jurisdiction and control of the
43 commission, or in connection with any properties or facili-
44 ties under the jurisdiction and control of the commission,
45 or in pursuit of one or more individuals therefrom, any
46 park police officer so appointed shall have all of the
47 power and authority which a regularly appointed deputy
48 sheriff of such county has in enforcing the criminal laws
49 of the state. Notwithstanding any provisions of this code
50 to the contrary, park police officers appointed as afore-

51 said shall not be required to obtain a state license to
52 carry a weapon, as required by the provisions of section
53 two, article seven, chapter sixty-one of this code. When
54 any such commission has purchased one or more policies
55 of public liability insurance providing the commission
56 and its officers, agents and employees insurance coverage
57 for legal liability of said commission and its officers,
58 agents and employees for bodily injury, personal injury
59 or damage (including, but not limited to, false arrest and
60 false imprisonment) and property damage, and affording
61 said commission and its officers, agents and employees
62 insurance coverage against any and all legal liability
63 arising from, growing out of, by reason of or in any way
64 connected with, any acts or omissions of said commission,
65 or its officers, agents or employees in the performance
66 of their official duties, and so long as the coverage afore-
67 said remains in full force and effect as to such park po-
68 lice officers, then the bond specified in section five, article
69 seven of said chapter sixty-one shall not be required as to
70 such park police officers.

§7-11-6. Severability.

1 If any provision of this article or the application thereof
2 to any person or circumstance is held invalid, such in-
3 validity shall not affect other provisions or applications
4 of the article, and to this end the provisions of this
5 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.

1 The salaries of the judges of the circuit courts shall be
2 paid out of the state treasury and shall, unless otherwise
3 provided by law, be in the following annual amounts:

4 (1) In circuits having more than sixty thousand popu-
5 lation, nineteen thousand dollars;

6 (2) In circuits having less than sixty thousand popula-
7 tion, seventeen thousand five hundred dollars.

8 Any county court or the board of commissioners of
9 Ohio county may pay the judge of the circuit court addi-
10 tional compensation, but the salary and additional com-
11 pensation or combined contribution of the several county
12 courts and board of commissioners shall not exceed
13 twenty-five thousand dollars.

14 The population shall be according to the United States
15 census, or the estimate of the United States bureau of
16 census, as certified to the state auditor by the United
17 States director of the census last preceding the beginning
18 of the calendar year in which salary is payable.

3

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 cir-
2 cuit court shall be entitled to an allowance for mileage
3 at the rate of ten cents for each mile, to be computed
4 according to the distance by the nearest practicable route,
5 necessarily traveled from his place of residence, to the
6 place of holding any term of court in a county other than
7 that of his residence, and from such place to his resi-
8 dence; and a judge of the circuit court shall be paid the
9 sum of twelve dollars per day as expenses while holding
10 court in a county other than that in which he resides:
11 *Provided*, That no judge of a circuit court shall be paid
12 mileage and expenses for holding more than ten terms
13 of court in any county in any one year, including regular,
14 adjourned and special terms. The mileage and expenses
15 provided for in this article shall be paid to any judge
16 out of the state treasury as and when the salary of such
17 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
2 amount not to exceed four hundred dollars per month for
3 the payment of stenographic help necessary in the dis-
4 charge of the duties of his office, and each judge shall be
5 allowed an amount not to exceed twenty-five dollars per
6 month for the procurement of necessary stationery, pay-
7 ment of postage, and necessary supplies for his office.
8 The judge shall be reimbursed for the actual amounts
9 expended by him for stationery, supplies and postage.
10 Payment for stenographic help shall be made directly to
11 the person performing the stenographic work. Such
12 amounts shall be paid monthly out of the state treasury,
13 but not until the judge submits an itemized statement
14 covering the same.

15 Any county court or the board of county commissioners
16 of Ohio county may pay such additional compensation for
17 stenographic help for the judge of any circuit which may
18 be necessary in the discharge of the duties of the office of
19 the judge of such circuit, or any combination of counties
20 in any circuit may contribute to such additional steno-
21 graphic help. Such additional compensation shall be paid
22 from county funds directly to the person or persons per-
23 forming such work.

— 2 —

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 INTER-MEDIATE JUDGES.

§51-2-1j. Tenth circuit.

- 1 For the county of Raleigh, on the third Monday in
- 2 January, on the third Monday in April, and on the third
- 3 Monday in September.

—————C—————

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 INTER-MEDIATE JUDGES.

§51-2-1dd. Thirtieth circuit.

- 1 For the county of Mingo, on the third Monday in Feb-
- 2 ruary, May and October.

CHAPTER 33

(House Bill No. 755—By Mr. Shiflet)

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

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
2 to a case, a typewritten transcript of his shorthand notes
3 of the testimony or other proceedings, which shall be
4 upon paper measuring eight and one half inches in
5 width and eleven inches in length, with margins of one
6 half inch on the right side and bottom, one inch at the
7 top and one and one half inches on the left, with twenty-
8 four lines on each page, and shall certify the same as
9 being correct, and shall be paid therefor, by the party
10 requesting such transcript, at the rate of ninety cents
11 for each page so transcribed and certified; and for each
12 carbon copy of such transcript, ordered at the same time,
13 he shall be paid thirty cents for each page so furnished.
14 A transcript of such testimony or proceedings, when
15 certified by the official reporter and by the judge of the
16 court, shall be authentic for all purposes, and shall be
17 used by the parties to the cause in any further pro-

18 ceeding therein wherein the use of the same may be
19 required. It may be used, without further authentication,
20 in making up the record on appeal, as provided in sec-
21 tions thirty-six and thirty-seven, article six, chapter
22 fifty-six of this code; and in all cases of appeal such re-
23 porter shall also make a carbon copy of such transcript,
24 which copy shall be filed in the office of the clerk of the
25 court in which the trial or proceedings were had, to be
26 used, if necessary, in making up the record on appeal,
27 and, if so used, the clerk shall not be entitled to any
28 fee for that part of the record. If, upon appeal or writ
29 of error, the judgment, decree or order entered in the
30 cause be reversed, the cost of such transcript shall be
31 taxed as other costs; and if such transcript be requested
32 or required for the purpose of demurring to the evidence,
33 the cost thereof shall be taxed in favor of the party
34 prevailing on the demurrer.

35 It shall also be the duty of such reporter in any criminal
36 case, upon the request of the court or the judge thereof,
37 and for his use, to furnish a transcript of his notes of the
38 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.

§61-2-15a. Certain evidence excluded in prosecutions for statutory rape.

1 Whenever a male person over the age of sixteen years
2 is charged, under the provisions of section fifteen of this
3 article, with carnally knowing a female person of previous
4 chaste character, not his wife, under that age, any action
5 taken, application, certification or representations made,
6 consents given, orders made, license issued or marriage
7 solemnized under or pursuant to the provisions of section
8 one, article one, chapter forty-eight of this code, shall not
9 be used against the accused or be any evidence whatever
10 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.

1 It shall be unlawful for any person knowingly to obtain
2 or attempt to obtain credit, or to purchase or attempt to
3 purchase any goods, property or service, by the use of any
4 false, fictitious or counterfeit credit card, telephone num-
5 ber, credit number or other credit device, or by the use of
6 any credit card, telephone number, credit number or other
7 credit device of another beyond or without the authority
8 of the person to whom such card, number or device was
9 issued, or by the use of any credit card, telephone num-
10 ber, credit number or other credit device in any case
11 where such card, number or device has been revoked
12 and notice of revocation has been given to the person
13 to whom issued.

14 It shall be unlawful for any person knowingly to
15 obtain or attempt to obtain, by the use of any fraudulent
16 scheme, device, means or method, telephone or tele-
17 graph service or the transmission of a message, signal or
18 other communication by telephone or telegraph, or over
19 telephone or telegraph facilities with intent to avoid
20 payment of charges therefor.

21 The word "notice" as used in the first paragraph of
22 this section shall be construed to include either notice
23 given in person or notice given in writing to the person
24 to whom the number, card or device was issued. The
25 sending of a notice in writing by registered or certi-
26 fied mail in the United States mail, duly stamped and
27 addressed to such person at his last known address, shall
28 be prima facie evidence that such notice was duly
29 received.

30 Any person who violates any provision of this section

31 shall, if the credit, goods, property, service or transmission
32 be of the value of one hundred dollars or more, be deemed
33 guilty of a felony, and, upon conviction thereof, shall be
34 punished by imprisonment in the penitentiary not less
35 than one nor more than ten years; and if of less value,
36 be deemed guilty of a misdemeanor, and, upon conviction
37 thereof, shall be punished by imprisonment in jail
38 not exceeding one year or by a fine of not more than
39 five hundred dollars, or, in the discretion of the court,
40 by both such imprisonment and fine. Any person convicted
41 of an attempt to commit an offense under the provisions
42 of this section shall be guilty of a misdemeanor, and,
43 upon conviction thereof, shall be punished by imprisonment
44 in jail not exceeding six months or by a fine of not more
45 than three hundred dollars, or, in the discretion of the court,
46 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 thousand nine hundred thirty-one, as amended, relating to the taking and carrying away, destroying, injuring or defacing of any property or the breaking down, destroying, 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.**

1 If any person unlawfully, but not feloniously, take and
2 carry away, or destroy, injure or deface any property,
3 real or personal, not his own, he shall be guilty of a
4 misdemeanor, and, upon conviction, shall be sentenced
5 to a fine in an amount not to exceed five hundred dollars,
6 or confinement in the county jail for a period not to
7 exceed one year, or both such fine and confinement, in
8 the discretion of the court.

9 And if any person shall break down, destroy, injure,
10 deface or remove any monument erected for the purpose
11 of designating the boundaries of a municipality, tract or
12 lot of land, or any tree marked for that purpose, he shall
13 be guilty of a misdemeanor, and, upon conviction, shall
14 be sentenced to a fine in an amount of not less than twenty
15 dollars nor more than two hundred dollars, or confine-
16 ment in the county jail for a period of not less than one
17 nor more than six months, or both such fine and con-
18 finement, in the discretion of the court. Justices of the
19 peace shall have concurrent jurisdiction of all offenses
20 arising under the provisions of this section.

CHAPTER 37

(Com. Sub. for House Bill No. 617—By Mr. Sommerville
and Mr. Burke)

[Passed March 7, 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.

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.

1 All members of the department of public safety, all
2 sheriffs within their respective counties and all mayors
3 within their respective jurisdiction, may suppress riots,
4 routs and unlawful assemblages. It shall be the duty of
5 each of them to go among, or as near as may be with safe-
6 ty, to persons riotously, tumultuously, or unlawfully as-
7 sembled, and in the name of the law command them to
8 disperse; and if they shall not thereupon immediately and
9 peaceably disperse, such member of the department of
10 public safety, sheriff or mayor giving the command, and
11 any other present, shall command the assistance of all
12 persons present, and of all or any part of other law-en-
13 forcement personnel available to him, as need be, in
14 arresting and securing those so assembled. If any person
15 present, on being required to give his assistance, depart,
16 or fail to obey, he shall be deemed a rioter.

§61-6-1a. Control of riots and unlawful assemblages.

1 Members of the department of public safety, sheriffs
2 and mayors, and those acting under their order, may,
3 when engaged in suppressing a riot, rout or unlawful
4 assemblage, cordon off any area or areas threatened by
5 such riot, rout or unlawful assemblage, and may take
6 all actions which are necessary and reasonable under the

7 emergency to restore law and order, and such actions
8 may be, but are not limited to, the following:

9 (a) Prohibit the sale, offering for sale, dispensing,
10 furnishing or transportation of firearms or other dan-
11 gerous weapons, ammunition, dynamite or other dan-
12 gerous explosives in, to or from such areas.

13 (b) Prohibit the sale, offering for sale, dispensing,
14 furnishing or consumption of alcoholic beverages or non-
15 intoxicating beer in a public place in such areas, and
16 prohibit the transportation of alcoholic beverages or
17 nonintoxicating beer in, to or from such areas.

18 (c) Impose curfews, as required, to control movement
19 of persons in, to and from such areas.

20 (d) Enter a private dwelling or other building or
21 other private place in such areas when in fresh pursuit
22 of a rioter, when in search of a sniper who has fired upon
23 a person from such a dwelling or other building or place
24 or when in search of firearms, other dangerous weapons,
25 ammunition, dynamite or other dangerous explosives
26 when there is reason to believe that such items are
27 stored in the said dwelling, building or place and that
28 they will be removed therefrom before a search warrant
29 could be obtained.

30 No person shall wilfully fail to obey a lawful order
31 of any mayor, sheriff, deputy sheriff, municipal police
32 officer, member of the department of public safety, or
33 other officer, given pursuant to this section.

34 Any person who violates an order given pursuant to the
35 authority of this section shall be guilty of a misdemeanor,
36 and, upon conviction thereof, shall be fined not more than
37 five hundred dollars, or imprisoned in the county jail
38 not more than six months, or both fined and imprisoned.

§61-6-2. Commitment and recognizance of rioters.

1 If any person be arrested for a riot, rout or unlawful
2 assemblage, he shall be taken without unreasonable de-
3 lay before a justice of the county in which the arrest
4 is made who shall commit him to jail, unless he shall
5 enter into a recognizance, with sufficient security, to
6 appear before the court having jurisdiction of the offense,

7 at its next term, to answer therefor, and in the mean-
8 time to be of good behavior and to keep the peace.

**§61-6-3. Failure of member of department of public safety,
mayor or sheriff to exercise powers at riots and un-
lawful assemblages; penalty.**

1 If any member of the department of public safety,
2 sheriff or mayor have notice of a riotous, tumultuous, or
3 unlawful assemblage in his respective jurisdiction as pro-
4 vided in section one of this article, and fail to proceed
5 immediately to the place of such assemblage, or as near
6 as he may safely go, or fail to exercise his authority for
7 suppressing it and arresting the offenders, he shall be
8 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 com-
2 manded, as hereinbefore provided, to disperse or to peace-
3 ably leave the scene of such assemblage, fail to do so
4 without delay, any such member of the department of
5 public safety, sheriff or mayor may require the aid of a
6 sufficient number of persons, in arms or otherwise, and
7 proceed, in such manner as he may deem expedient, to
8 disperse and suppress such assemblage, and arrest and
9 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
2 article to disperse any such assemblage or arrest those
3 engaged in it, any person present, as spectator or other-
4 wise, be killed or wounded, and neither malice, nor pre-
5 meditation be present, any member of the department of
6 public safety, sheriff, or mayor exercising such authority,
7 and everyone acting under his order, shall be held guilt-
8 less; and if the member of the department of public safety,
9 sheriff or mayor, or any person acting under the order
10 of either of them, be killed or wounded in taking such
11 means, or by the rioters, all persons engaged in such
12 assemblage shall be deemed guilty of such killing or
13 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
2 imparted or conveyed any false information, knowing or
3 having reasonable cause to believe such information to be
4 false, concerning the presence of any bomb or other ex-
5 plosive device in, at, on, near, under or against any dwell-
6 ing house, structure, improvement, building, bridge,
7 motor vehicle, vessel, boat, railroad car, airplane or other
8 place, or concerning an attempt or alleged attempt being
9 made or to be made to so place or explode any such bomb
10 or other explosive device, shall be guilty of a misde-
11 meanor, and, upon conviction thereof, shall be punished

12 by a fine of not less than fifty dollars nor more than five
13 hundred dollars, or by imprisonment in the county jail
14 for not more than one year, or, in the discretion of the
15 court, by both such fine and imprisonment.

16 Justices of the peace shall have concurrent jurisdiction
17 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 sur-
2 rounding or adjacent to (1) the state capitol building or
3 any state office building which is a part of the state
4 capitol complex, or (2) a county courthouse, or (3) any

5 municipal office building where the principal business
6 of the municipality is conducted, which ground or lawn
7 is owned by or leased to the state of West Virginia, the
8 county, or such municipality, as the case may be, and
9 place, erect or construct or attempt to place, erect or
10 construct for himself or others shelter accommodations
11 thereon or use any such erected shelter accommodations,
12 without the written permission first had and obtained
13 of the governor, the county court, or the governing body
14 of the municipality, as the case may be, he shall be guilty
15 of a misdemeanor, and, upon conviction thereof, shall be
16 punished by a fine of not less than twenty-five dollars
17 nor more than one hundred dollars, or by imprisonment
18 in jail for not more than thirty days, or in the discretion of
19 the court, by both such fine and imprisonment, and any
20 such shelter accommodations are hereby constituted a
21 public nuisance which may be abated at the expense of
22 any such person. Each day upon which any violation of
23 the provisions of this section continues shall constitute a
24 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.

§61-10-30. Open water wells prohibited.

- 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 thousand 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.

CHAPTER 42

(House Bill No. 711—By Mr. Goodwin and Mr. Simpkins)

[Passed February 26, 1969; in effect ninety days from passage. Approved by the Governor.]

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 pro-
2 hibit sheriffs, their regularly appointed full-time deputies
3 who have been duly confirmed by the county court, and
4 all constables in their respective counties and districts,
5 and all regularly appointed police officers of their respec-
6 tive cities, towns or villages, all jailers, state probation
7 and parole officers, county probation officers and game
8 protectors who have been duly appointed as such, the state
9 fire marshal, the deputy state fire marshal, and such as-
10 sistant state fire marshals as are full-time employees of
11 the state and fully paid by the state, and members of the
12 department of public safety of this state, from carrying
13 the weapons mentioned in section one of this article,
14 who shall have given bond in the penalty of not less than
15 three thousand five hundred dollars, conditioned for the
16 faithful performance of their respective duties, which
17 said officers shall be liable upon their said official bonds,
18 for the damages done by the unlawful or careless use
19 of any such weapon or weapons, whether such bond
20 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,
2 shall be continued. The executive and administrative
3 head of the department shall be a superintendent, who
4 shall be appointed by the governor, by and with the advice
5 and consent of the Senate. The superintendent shall be
6 entitled to all rights, benefits and privileges of regularly
7 enlisted members. The superintendent shall be, on the
8 date of his appointment, at least thirty years of age. He
9 shall, before entering upon the discharge of the duties of
10 his office, execute a bond in the penalty of ten thousand
11 dollars, with security thereon, payable to the state of
12 West Virginia and conditioned for the faithful perform-
13 ance of his duties. Such bond both as to form and security

14 shall be approved by the board of public works. Before
15 entering upon the duties of his office the superintendent
16 shall subscribe to the oath hereinafter provided.

17 The headquarters of the department, hereinafter re-
18 ferred to in this article as departmental headquarters,
19 shall be located in Kanawha county, and suitable and
20 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.

1 (a) The superintendent of the department of public
2 safety shall establish, equip and maintain at the depart-
3 mental headquarters a criminal identification bureau, for
4 the purpose of receiving and filing fingerprints, photo-
5 graphs, records and other information pertaining to the
6 investigation of crime and the apprehension of criminals,
7 as hereinafter provided. The superintendent shall ap-
8 point or designate a regularly enlisted member of the
9 department as officer in charge of the criminal identifica-
10 tion bureau and such officer shall be responsible to the
11 superintendent for the affairs of the bureau. Members of
12 the department assigned to the criminal identification
13 bureau shall carry out their duties and assignments in
14 accordance with internal management rules and regula-
15 tions pertaining thereto promulgated by the superin-
16 tendent.

17 (b) The criminal identification bureau shall cooperate
18 with identification bureaus of other states and of the
19 United States to develop and carry on a complete inter-
20 state, national and international system of criminal iden-
21 tification.

22 (c) The criminal identification bureau may furnish
23 fingerprints, photographs, records or other information to
24 authorized law-enforcement and governmental agencies
25 of the United States and its territories, of foreign coun-
26 tries duly authorized to receive the same, of other states
27 within the United States and of the state of West Vir-
28 ginia upon proper request stating that the fingerprints,
29 photographs, records or other information requested are

30 necessary in the interest of and will be used solely in the
31 administration of official duties and the criminal laws.

32 (d) The criminal identification bureau may furnish,
33 with the approval of the superintendent, fingerprints,
34 photographs, records or other information to any private
35 or public agency, person, firm, association, corporation
36 or other organization, other than a law-enforcement or
37 governmental agency as to which the provisions of sub-
38 section (c) of this section shall govern and control, but
39 all requests under the provisions of this subsection (d)
40 for such fingerprints, photographs, records or other in-
41 formation must be accompanied by a written authoriza-
42 tion signed and acknowledged by the person whose finger-
43 prints, photographs, records or other information is to be
44 released.

45 (e) The criminal identification bureau may furnish
46 fingerprints, photographs, records and other information
47 of persons arrested or sought to be arrested in this state
48 to the identification bureau of the United States govern-
49 ment and to other states for the purpose of aiding law
50 enforcement.

51 (f) Persons in charge of any penal or correctional insti-
52 tution, including any city or county jail, in this state shall
53 take, or cause to be taken, the fingerprints and description
54 of all persons lawfully committed thereto or confined
55 therein and furnish the same in duplicate to the criminal
56 identification bureau, department of public safety. Such
57 fingerprints shall be taken on forms approved by the
58 superintendent of the department of public safety. All
59 such officials as herein named may, when possible to do so,
60 furnish photographs to the criminal identification bureau
61 of such persons so fingerprinted.

62 (g) Members of the department of public safety, and
63 all other state law-enforcement officials, sheriffs, deputy
64 sheriffs, constables, and each and every peace officer in
65 this state, shall take or cause to be taken the fingerprints
66 and description of all persons arrested or detained by
67 them, charged with any crime or offense in this state, in
68 which the penalty provided therefor is confinement in any
69 penal or correctional institution, or of any person who they

70 have reason to believe is a fugitive from justice or an ha-
71 bitual criminal, and furnish the same in duplicate to the
72 criminal identification bureau, department of public safety,
73 on forms approved by the superintendent of said depart-
74 ment of public safety. All such officials as herein named
75 may, when possible to do so, furnish to the criminal iden-
76 tification bureau, photographs of such persons so finger-
77 printed. The arresting officer shall submit to the criminal
78 identification bureau, in duplicate, a report of final dispo-
79 sition concerning any case held for court, or in any case in
80 which the disposition thereof has not been previously fur-
81 nished to said bureau (on the fingerprint record of the
82 person arrested). Such report of final disposition shall be
83 made on forms furnished or approved by the superintend-
84 ent of the department of public safety.

85 (h) Any person who has been fingerprinted or photo-
86 graphed in accordance with the provisions of this section,
87 who is acquitted of the charges upon which he or she
88 was arrested, and who has no previous criminal record,
89 may, upon the presentation of satisfactory proof to the
90 superintendent of the department of public safety, have
91 such fingerprints or photographs, or both, returned to
92 them.

93 (i) Neglect or refusal of any person mentioned in this
94 section to make the report required herein, or to do or
95 perform any act on his or her part to be done or performed
96 in connection with the operation of this section, shall
97 constitute a misdemeanor, and such person shall, upon
98 conviction thereof, be punished by a fine of not less than
99 twenty-five nor more than two hundred dollars, or by
100 imprisonment in the county jail for a period of not ex-
101 ceeding sixty days, or both, in the discretion of the court.
102 Such neglect shall constitute misfeasance in office and
103 subject such person to removal from office. Any person
104 who wilfully removes, destroys, or mutilates any of the
105 fingerprints, photographs, records or other information of
106 the department of public safety, shall be guilty of a
107 misdemeanor, and such person shall, upon conviction
108 thereof, be punished by a fine not exceeding one hundred
109 dollars, or by imprisonment in the county jail for a period

110 of not exceeding six months, or by both, in the discretion
111 of the court.

CHAPTER 44

(Senate Bill No. 74—By Mr. Martin)

[Passed March 5, 1969; in effect July 1, 1969. Approved by the Governor.]

AN ACT to amend and reenact section three, article two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to 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
2 department of public safety, which shall, in addition to
3 the personnel provided for in section two of this article,
4 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
5 lieutenant, one first sergeant, seven sergeants, not more
6 than seventeen corporals and such number of troopers and
7 troopers first class as the superintendent may decide best,
8 but such number of troopers and troopers first class in any
9 company or platoon shall not at any time be less than
10 twenty-five.

11 The superintendent shall provide adequate facilities
12 for the training of all members of the department and

15 shall prescribe a basic training course for newly enlisted
16 members. He shall also provide advanced or in-service
17 training from time to time for all members of the depart-
18 ment. The superintendent shall hold training classes for
19 other peace officers in the state without cost to such
20 officers, except actual expenses for food, lodging and
21 school supplies.

22 Members of the department shall receive salaries, as
23 follows:

24 The inspector shall receive an annual salary of eleven
25 thousand three hundred four dollars; the major shall
26 receive an annual salary of ten thousand two hundred
27 twenty-four dollars; captains shall each receive an annual
28 salary of nine thousand one hundred forty-four dollars;
29 lieutenants shall each receive an annual salary of eight
30 thousand six hundred forty dollars; the master sergeants
31 and first sergeants shall receive an annual salary of eight
32 thousand sixty-four dollars; sergeants shall each receive
33 an annual salary of seven thousand eight hundred twelve
34 dollars; corporals shall each receive an annual salary of
35 seven thousand four hundred sixty-four dollars; troopers
36 first class shall receive an annual salary of seven thou-
37 sand two hundred twenty-four dollars; and each newly
38 enlisted trooper shall receive a salary of four hundred
39 ninety-six dollars during the period of his basic train-
40 ing, and upon the satisfactory completion of such train-
41 ing and assignment to active duty each trooper shall
42 receive, during the remainder of his first year's service,
43 a salary of five hundred fifty-six dollars monthly. During
44 the second year of his service in the department each
45 trooper shall receive an annual salary of six thousand
46 eight hundred sixteen dollars; during the third year of
47 his service each trooper shall receive an annual salary of
48 six thousand nine hundred sixty dollars; and during
49 the fourth and fifth years of his service and for each
50 year thereafter each trooper shall receive an annual
51 salary of seven thousand one hundred four dollars. Each
52 member of the department entitled thereto by the pro-
53 visions hereof shall receive an increase in salary over that
54 hereinbefore set forth in this section, for grade and rank,

55 based on length of service, including that heretofore and
56 hereafter served, with the department, as follows: For
57 each five-year period of service with the department, from
58 the date of first enlistment, each member of the depart-
59 ment shall receive a salary increase of three hundred
60 dollars per year to be effective during his next five years
61 of service which increases shall be successive and
62 cumulative, until a total of four such increases shall be
63 received.

64 In applying the foregoing salary schedule where salary
65 increases are provided for length of service, members of
66 the department in service at the time this act becomes
67 effective shall be given credit for prior service and shall
68 be paid such salaries as the same length of service will
69 entitle them to receive under the provisions hereof.

70 Each member of the department of public safety, ex-
71 cept the superintendent and civilian employees, shall, be-
72 fore entering upon the discharge of his duties, execute a
73 bond with security in the sum of three thousand five
74 hundred dollars payable to the state of West Virginia,
75 conditioned for the faithful performance of his duties as
76 such, and such bond shall be approved as to form by the
77 attorney general, and as to sufficiency by the board of
78 public works, and the same shall be filed with the sec-
79 retary 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.

§15-2-11. Powers of superintendent, officers and members.

1 The superintendent and each of the officers and mem-
2 bers of the department of public safety are hereby autho-
3 rized and empowered as follows:

4 (a) To make arrests anywhere within the confines
5 of the state of any and all persons charged with the
6 violation of any law of this state, or of the United States,
7 and when a witness to the perpetration of any offense or
8 crime, or to the violation of any law of this state, or of
9 the United States, may arrest without warrant; to arrest
10 and detain any and all persons suspected of the com-
11 mission of any felony or misdemeanor whenever com-
12 plaint is made and a warrant is issued thereon for such
13 arrest, and any and all persons so arrested shall be
14 forthwith brought before the proper tribunal for ex-
15 amination and trial in the county where the offense for
16 which any such arrest has been made was committed;

17 (b) To serve criminal process issued by any court
18 or justice of the peace anywhere within this state, ex-
19 cept that they shall not serve civil process;

20 (c) To cooperate with local authorities in detecting
21 crime and in apprehending any person or persons en-
22 gaged in or suspected of the commission of any crime,
23 misdemeanor or offense against the law of this state, or
24 of the United States, or of any ordinance of any munici-
25 pality in this state; and to take affidavits in connection
26 with any application to the state road commission, de-
27 partment of motor vehicles and department of public
28 safety of West Virginia for any license, permit or certifi-
29 cate that may be lawfully issued by these departments
30 of state government;

31 (d) Members of the department of public safety shall
32 be and are hereby created forest patrolmen and game

33 and fish wardens through the state to do and perform
34 any and all duties and exercise any and all powers of
35 such officers, and may apprehend and bring before any
36 court or justice of the peace having jurisdiction of such
37 matters, anyone violating any of the provisions of chap-
38 ters twenty, sixty and sixty-one of this code, and any and
39 all amendments thereto; and the department of public
40 safety shall at any time be subject to the call of the
41 West Virginia alcohol beverage control commissioner to
42 aid in apprehending any person violating any of the
43 provisions of said chapter sixty. They shall serve and
44 execute warrants for the arrest of any person and war-
45 rants for the search of any premises issued by any prop-
46 erly constituted authority, and shall exercise all of the
47 powers conferred by law upon a sheriff, constable or any
48 other peace officer of this state, except that they shall
49 not serve any civil process or exercise any of the powers
50 of such officers in matters of a civil nature;

51 (e) Any member of the department of public safety
52 knowing or having reason to believe that anyone has
53 violated the law may make complaint in writing before
54 any court or officer having jurisdiction and procure
55 a warrant for such offender, execute the same and
56 bring such person before the proper tribunal having
57 jurisdiction. He shall make return on all such warrants
58 to such tribunals and his official title shall be "member
59 of the department of public safety." Members of the
60 department of public safety may execute any summons
61 or process issued by any tribunal having jurisdiction
62 requiring the attendance of any person as a witness be-
63 fore such tribunal and make return thereon as provided
64 by law, and any return by a member of the department
65 of public safety showing the manner of executing such
66 warrant or process shall have the same force and effect
67 as if made by a sheriff;

68 (f) Each member of the department of public safety,
69 when called by the sheriff of any county, or when the
70 governor by proclamation so directs, shall have full power
71 and authority within such county, or within the terri-
72 tory defined by the governor, to direct and command

73 absolutely the assistance of any sheriff, deputy sheriff,
74 constable, chief of police, policeman, town marshal, game
75 and fish warden, and any and every peace officer of the
76 state, or of any county or municipality therein, or of any
77 able-bodied citizen of the United States, to assist and aid
78 in accomplishing the purposes expressed in this article.
79 When so called, any officer or person shall, during the
80 time his assistance is required, be and be considered to
81 be, for all purposes, a member of the department of
82 public safety force and subject to all the provisions of
83 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
2 three, chapter five, the superintendent may employ an
3 attorney to act in proceedings wherein criminal charges
4 are brought against members of the department because

5 of action in line of duty. For such attorney services an
6 amount determined by the superintendent, not to ex-
7 ceed two thousand dollars, may be expended in any
8 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 intercepting messages transmitted on such systems and forbidding the use of such intercepted messages in certain cases; providing 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 PURPOSES.

- §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 forbidden; 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
2 is authorized and empowered to establish such systems
3 of communication for the department as may be appro-
4 priate, including one or more radio broadcasting stations
5 in the state, one of which shall be at the departmental
6 headquarters. Such systems shall be used for police
7 purposes only. The superintendent is further authorized
8 and empowered to provide for the purchase of the neces-
9 sary apparatus and equipment, and of materials for the
10 construction and maintenance of such systems, and shall
11 be responsible for the operation, maintenance and con-
12 duct thereof.

§15-3-2. Radio transmitters operating on the state police frequency.

1 No person in this state shall operate any radio trans-
2 mitter on any frequency assigned by the federal com-
3 munications commission to the department of public
4 safety unless authorized by the superintendent of the
5 department of public safety. Such authorization may be
6 revoked by the superintendent whenever he finds that
7 such transmitter is being operated in violation of any law
8 or of any rule and regulation promulgated by the super-
9 intendent.

§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
2 made on or over any communications system established
3 by the department of public safety and use the infor-
4 mation obtained thereby to aid, abet or assist in com-
5 mitting a crime, or in violating any law of this state, or
6 use the same in a manner which will interfere with the
7 discharge of the department's operations.

8 Any person who violates any provision of this section
9 or of section two of this article shall be guilty of a mis-
10 demeanor, and, upon conviction thereof, shall be sentenced
11 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 amended, 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 marriages, the age of consent, certain prohibited marriages, the necessity, issuance, content, form and recordation of marriage 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 repealed, 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.
- §48-1-2. What relatives a man may not marry.
- §48-1-3. What relatives a woman may not marry.
- §48-1-5. Necessity of license.
- §48-1-6. Application for license; requirements for issuance of license.
- §48-1-6c. Issuance of license in case of emergency or extraordinary circumstances.
- §48-1-6d. Offenses and penalties.
- §48-1-10. Endorsement and return of licenses by persons solemnizing marriage; duties of clerk pertaining thereto.
- §48-1-11. Register of marriages.
- §48-1-12. Persons authorized to celebrate marriages.
- §48-1-12a. Qualifications of minister, priest or rabbi for celebrating marriages.
- §48-1-22. Failure to endorse and return license; penalties.
- §48-1-23. Unlawful to solicit celebration of marriage, etc.

§48-1-1. Age of consent; exception in case of pregnancy.

1 For marriage the age of consent of the male shall be
2 eighteen years of age, and of the female sixteen years.
3 If, however, the male or female, or both, be under the age
4 of consent as aforesaid, and if a licensed physician shall
5 certify in writing that he has examined said female and
6 found her to be pregnant, and if consent be obtained from
7 the parents, parent or guardian in the manner prescribed
8 in section eight of this article, the judge of any court of
9 record of the county, in which county an application for
10 marriage license may otherwise be properly filed as pro-
11 vided in this article, may direct the issuance of a marriage
12 license by the clerk of the county court of such county. In
13 the absence or incapacity to act of the judges of all courts
14 of record of the county in which the application is to be
15 filed, the order may be made and directed to the clerk
16 of the county court of such county by any judge of a court
17 of record in any judicial circuit adjoining the circuit in
18 which such county is located.

§48-1-2. What relatives a man may not marry.

1 No man shall marry his mother, grandmother, sister,
2 daughter, granddaughter, half sister, aunt, brother's
3 daughter, sister's daughter, first cousin, or double cousin.

§48-1-3. What relatives a woman may not marry.

1 No woman shall marry her father, grandfather, brother,

- 2 son, grandson, half brother, uncle, brother's son, sister's
3 son, first cousin, or double cousin.

§48-1-5. Necessity of license.

- 1 Every marriage in this state shall be solemnized under
2 a license as provided in this article.

§48-1-6. Application for license; requirements for issuance of license.

- 1 Every license for marriage shall be issued by the clerk
2 of the county court of the county in which the female to be
3 married usually resides; except that in the case of a female
4 who is a nonresident of the state of West Virginia, the
5 license shall be issued by the clerk of the county court
6 of the county in which application is made. Such
7 license shall be issued not sooner than three days after
8 the filing with said clerk of a written application there-
9 for. The day upon which such application is filed shall
10 be counted as the first day, but two full days shall
11 elapse after the day of such filing before the license shall
12 be issued. Before any such license is issued each ap-
13 plicant therefor shall file with the clerk a certificate or
14 certificates from any physician duly licensed in the state,
15 stating that each party thereto has been given such
16 examination, including a standard serological test, as
17 may be necessary for the discovery of syphilis, made not
18 more than thirty days prior to the date on which such
19 license is issued, and stating that in the opinion of the
20 physician the person therein named either is not infected
21 with syphilis or, if so infected, is not in the state of the
22 disease which is or may later become communicable.
23 Such examinations and tests as are required hereunder
24 may be given as provided by section nineteen, article
25 four, chapter sixteen of this code.

- 26 The application for a marriage license shall contain
27 a statement of the full names of both parties, their re-
28 spective ages and their places of birth and residence. It
29 shall be signed by both of the parties to the contem-
30 plated marriage, under oath before the clerk of the county
31 court or before a person authorized to administer oaths
32 under the laws of this state. At the time of the execu-

tion of such application, the clerk, or the person administering 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 chauffeur's license, an affidavit of both parents or legal guardian of the applicant or other good and sufficient evidence 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 extraordinary circumstances.

In case of an emergency or extraordinary circumstances, as shown by affidavit or other proof, a judge of any court of record of the county, in which county an application 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

10 by either or both of the parties of the physician's cer-
11 tificate and laboratory statement.

12 A certified copy of the order shall be attached to and
13 filed with the application by the licensing authority who
14 shall thereupon proceed with the issuance of the mar-
15 riage license in accordance with the terms of the judge's
16 order. In the absence or incapacity to act of the judges
17 of all courts of record of the county in which the appli-
18 cation is to be filed, the order may be made and directed
19 to the clerk of the county court of such county by any
20 judge of a court of record in any judicial circuit adjoin-
21 ing the circuit in which such county is situated.

§48-1-6d. Offenses and penalties.

1 Any applicant for a marriage license, any physician or
2 representative of a laboratory who shall knowingly mis-
3 represent any of the facts called for in the physician's
4 statement or laboratory report, respectively; and any
5 clerk of the county court or other licensing authority who
6 shall make a false entry as to the date of application for a
7 marriage license; and any clerk of the county court or
8 other licensing authority who shall issue a marriage
9 license prior to the end of the required three-day period
10 or without the required physician's statement and labora-
11 tory report (unless these shall have been dispensed with
12 by judicial order pursuant to section six-c), or who shall
13 issue such license despite his having reason to believe that
14 any of the facts contained in said statement or report have
15 been misrepresented, or shall issue a license on any Sun-
16 day or after five o'clock p. m. and before eight o'clock a. m.
17 on any week day, or who shall receive an application for
18 such license or issue any such license in any place other
19 than the office of such licensing authority, shall be guilty
20 of a misdemeanor, and, upon conviction thereof, shall be
21 punished by a fine of not less than two hundred nor more
22 than one thousand dollars, or by confinement in jail for
23 not less than three nor more than nine months, or by both
24 such fine and confinement in the discretion of the court; or
25 if any clerk of the county court or other licensing author-
26 ity shall otherwise knowingly issue a marriage license
27 contrary to law, he shall be guilty of a misdemeanor, and,

28 upon conviction thereof, shall be punished by a fine not
29 exceeding five hundred dollars, or by confinement in jail
30 not more than one year, or by both such fine and confine-
31 ment in the discretion of the court.

§48-1-10. Endorsement and return of licenses by persons solemnizing marriage; duties of clerk pertaining thereto.

1 Every person solemnizing a marriage shall retain the
2 license authorizing such marriage, and on or before the
3 fifth day of each month shall forward to the county clerk
4 issuing such license the original of all such licenses in
5 his possession, with an endorsement thereon of the fact
6 of such marriage and the time and place of celebrating
7 the same. In the event that the marriage authorized by
8 such license is not solemnized within sixty days from the
9 date of its issuance, then such license shall become null
10 and void. Should the county clerk not receive the said
11 original within sixty days after its issuance, he shall by
12 certified mail notify each of the applicants of that fact.

§48-1-11. Register of marriages.

1 The county court of each county shall furnish to the
2 clerk of such county court a suitable book to be used as a
3 register of marriages, which such clerk shall keep in his
4 office among his records, and in which he shall promptly
5 enter a complete record of all matters which he is re-
6 quired by this article to ascertain relative to the right of
7 any person to obtain a marriage license, of each marriage
8 license issued by him, and of the minister's, priest's,
9 rabbi's, or judge's endorsement certifying that such
10 marriage was solemnized. Such register of marriage
11 shall be properly indexed by the clerk in the names of
12 both parties to the marriage: *Provided, however,* That
13 if the license is issued by reason of the female being
14 pregnant, such fact of pregnancy shall not be noted in the
15 clerk's register of marriages.

§48-1-12. Persons authorized to celebrate marriages.

1 Any minister, priest or rabbi over the age of twenty-one
2 years, who has complied with the provisions of section
3 twelve-a of this article, or a judge of any court of record

4 in this state, is authorized to celebrate the rites of mar-
5 riage in all the counties of the state. No person, other
6 than a minister, priest or rabbi, who has complied with
7 the provisions of section twelve-a of this article, or a
8 judge of any court of record in this state, shall here-
9 after celebrate the rites of marriage in this state, any-
10 thing in any act of the Legislature or of any court to the
11 contrary, notwithstanding.

**§48-1-12a. Qualifications of minister, priest or rabbi for cele-
brating marriages.**

1 When any minister, priest or rabbi shall, before the
2 county court of any county in this state, or the clerk of
3 any such court in vacation, produce proof that he is over
4 the age of twenty-one, duly licensed by, and being in
5 regular communion with the religious society of which he
6 is a member, and give bond in the penalty of fifteen
7 hundred dollars, with surety approved by such court or
8 clerk thereof in vacation, such court or clerk may make
9 an order authorizing him to celebrate the rites of mar-
10 riage in all the counties of the state: *Provided, however,*
11 That any minister, priest or rabbi who gives proof be-
12 fore the county court of any county in this state, or the
13 clerk of any such court in vacation, of his ordination by
14 his respective church, denomination or synagogue, shall
15 be exempted from the giving of such bond.

§48-1-22. Failure to endorse and return license; penalties.

1 If any minister, priest or rabbi who shall have given
2 bond in order to become authorized to celebrate marriages
3 in this state shall wilfully fail to comply with the provi-
4 sions of section ten of this article, the conditions of such
5 bond shall be deemed to be thereby broken and such
6 bond shall be forfeited as otherwise provided by law,
7 and the license of any minister, priest or rabbi who shall
8 wilfully fail to comply with the provisions of said section
9 ten, whether he shall have given bond or not, to celebrate
10 marriages shall be suspended for a period of not less than
11 six months and not to exceed one year. It shall be the
12 duty of the county clerk to whom the marriage license
13 should have been returned to notify the prosecuting at-

14 torney of such county of such failure to return such mar-
15 riage license as provided in section ten of this article, and,
16 thereupon, it shall be the duty of such prosecuting
17 attorney to institute proceedings before a judge of the
18 circuit court of said county to suspend the license of any
19 such minister, priest or rabbi to celebrate marriages, after
20 reasonable notice of such proceedings has been given to
21 such minister, priest or rabbi. Said court shall deter-
22 mine all questions of law and fact.

§48-1-23. Unlawful to solicit celebration of marriage, etc.

1 It shall be unlawful for any minister, priest or rabbi
2 to solicit in any manner the celebration of any marriage
3 ceremony and it shall be unlawful for a minister, priest
4 or rabbi, by giving or making directly or indirectly,
5 any tip, gift, present, subscription, contribution, loan
6 or anything of value, to reward any person who may
7 accompany, bring, send or direct the holders of a
8 marriage license to such minister, priest or rabbi.
9 The penalty for a violation of the foregoing provisions
10 shall be a revocation of the license of such minister,
11 priest or rabbi to celebrate marriages and no such license
12 shall thereafter be issued to him. It shall be the duty
13 of the prosecuting attorney of the county wherein the
14 violation occurs, to institute proceedings before the
15 judge of the circuit court of said county to revoke said
16 license, after reasonable notice thereof has been given
17 to said minister, priest or rabbi. Said court shall deter-
18 mine all questions of law and fact.

CHAPTER 49

(Senate Bill No. 4—By Mr. Jackson, Mr. President,
and Mr. Brotherton)

[Passed March 6, 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.
- §48-2-3. What persons may not institute annulment action.
- §48-2-4. Grounds for divorce.
- §48-2-5. Courts having jurisdiction.
- §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.
- §48-2-9. Service of process.
- §48-2-10. Procedure; verification of pleadings; necessary proof; costs.
- §48-2-11. Infant, incompetent and insane parties.
- §48-2-12. Particeps criminis may become a party.
- §48-2-13. Maintenance of spouse and children pendente lite; control of property.
- §48-2-14. When a divorce not to be granted.
- §48-2-15. Alimony; custody and maintenance of children.
- §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.
- §48-2-22. Provisions concerning prior divorces from bed and board.
- §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.
- §48-2-26. Notice of hearing by commissioner.
- §48-2-27. Sealing by clerk of evidence and pleadings.
- §48-2-28. Action for separate maintenance.
- §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, feeble-minded 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.

§48-2-3. What persons may not institute annulment action.

- 1 An action for annulling a marriage may not be instituted:
- 2 (a) Where the cause is the natural or incurable im-

3 potency of body of either of the parties to enter the mar-
4 riage state, by the party who had knowledge of such in-
5 capacity at the time of marriage; or

6 (b) Where the cause is fraud, force or coercion, by the
7 party who was guilty of such fraud, force or coercion, nor
8 by the injured party if, after knowledge of the facts, he
9 or she has by acts or conduct confirmed such marriage; or

10 (c) Where the cause is affliction with a venereal disease
11 existing at the time of marriage, by the party who was so
12 afflicted if such party has subsequent to the marriage be-
13 come cured of such disease, nor by the person who was not
14 so afflicted if he or she after the curing of the afflicted
15 person has by acts or conduct confirmed the marriage; or

16 (d) Where the cause is the nonage of either of the
17 parties, by the party who was capable of consenting, nor
18 by the party not so capable if he or she has by acts or
19 conduct confirmed the marriage after arriving at the age
20 of consent; or

21 (e) Where the cause is lack of consent on the part of
22 either of the parties, by the party consenting or bringing
23 about the marriage; or

24 (f) Where the cause is that either of the parties has
25 been convicted of an infamous offense prior to marriage,
26 by the other party if, after knowledge of such fact, he or
27 she has cohabited with the party so convicted; or

28 (g) Where the cause is that the wife was at the time of
29 marriage with child by some person other than the
30 husband, or that prior to the marriage the wife had been
31 notoriously a prostitute, by the husband, if after know-
32 ledge of the fact, he has cohabited with the wife; or

33 (h) Where the cause is that the husband was prior to
34 the marriage notoriously a licentious person, by the wife
35 if, after knowledge of the fact, she has cohabited with
36 the husband.

§48-2-4. Grounds for divorce.

1 (a) A divorce may be ordered:

2 (1) For adultery; or

3 (2) When either of the parties subsequent to the mar-
4 riage has, in or out of this state, been convicted for the

5 commission of a crime which is a felony, and such con-
6 viction has become final; or

7 (3) To the party abandoned, when either party wilfully
8 abandons or deserts the other for one year; or

9 (4) For cruel or inhuman treatment, or reasonable ap-
10 prehension of bodily hurt, and false accusation of adultery
11 or homosexuality by either party against the other shall
12 be deemed cruel treatment within the meaning of this
13 subdivision; cruel and inhuman treatment shall also be
14 deemed to exist when the treatment by one spouse of
15 another, or the conduct thereof, is such as to destroy
16 or tend to destroy the mental or physical well-being,
17 happiness and welfare of the other and render continued
18 cohabitation unsafe or unendurable and under no cir-
19 cumstances whatever shall it be necessary to allege or
20 prove acts of physical violence in order to establish cruel
21 and inhuman treatment as a ground for divorce; or

22 (5) For habitual drunkenness of either party subse-
23 quent to the marriage; or

24 (6) For the addiction of either party, subsequent to the
25 marriage, to the habitual use of any narcotic drug or drugs
26 or dangerous drug or drugs as those terms are defined in
27 this code; or

28 (7) Where the parties have lived separate and apart
29 in separate places of abode without any cohabitation
30 and without interruption for two years, whether such
31 separation was the voluntary act of one of the parties
32 or by the mutual consent of the parties; and a plea
33 of res adjudicata or of recrimination with respect to any
34 other provision of this section shall not be a bar to either
35 party's obtaining a divorce on this ground. If alimony
36 is sought under the provisions of section fifteen of
37 this article, the court may inquire into the question of
38 who is the party at fault and may award such ali-
39 mony according to the right of the matter and such
40 determination shall not affect the right of either party
41 to obtain a divorce on this ground; or

42 (8) For permanent and incurable insanity. No divorce
43 shall be granted on the ground of insanity unless such
44 permanently incurable insane person shall have been

45 confined in a mental hospital or other similar institu-
46 tion for a period of not less than three consecutive
47 years next preceding the filing of the complaint; nor shall
48 a divorce be granted on these grounds unless the court
49 shall have heard competent medical testimony that such
50 insanity is permanently incurable. The court granting a
51 divorce under this subdivision may in its discretion order
52 support and maintenance for such permanently incurable
53 insane party by the other. Where an insane person,
54 within the meaning of this section, is a plaintiff in an
55 action for divorce or annulment, the defendant shall not
56 enter a plea of recrimination which is based upon the
57 insanity of the plaintiff.

58 (b) It shall not be necessary to allege the facts constitut-
59 ing the ground or grounds relied upon, and a complaint
60 or counter complaint shall be sufficient if any one of
61 the grounds is alleged in the language of such ground
62 as set forth in subsection (a) of this section.

§48-2-5. Courts having jurisdiction.

1 The circuit court and courts of record vested with
2 jurisdiction over domestic relations by act of the Leg-
3 islature shall have jurisdiction of actions for annulling
4 or affirming marriages, or for divorces.

§48-2-6. Right to sue to annul or affirm a marriage.

1 No action to annul or affirm a marriage shall be main-
2 tainable unless at the commencement of the action one
3 of the parties is a bona fide resident of this state, except
4 that in the case of an action to annul a marriage that
5 was performed in this state it shall not be necessary,
6 if a matrimonial domicile has not been established else-
7 where, that one of the parties be such a resident.

§48-2-7. Right to sue for divorce.

1 No action for divorce shall be maintainable:

2 (a) If the cause for divorce is adultery, whether the
3 cause of action arose in or out of this state, unless one
4 of the parties, at the commencement of the action, is
5 a bona fide resident of this state. In such case if the
6 defendant is a nonresident of this state and cannot be per-

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.

§48-2-9. Service of process.

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

10 either party in the pleadings or otherwise; and no judg-
11 ment order shall be granted on the uncorroborated testi-
12 mony of the parties or either of them. Costs may be award-
13 ed to either party as justice requires, and in all cases the
14 court, in its discretion, may require payment of costs at
15 any time, and may suspend or withhold any order until
16 the costs are paid.

§48-2-11. Infant, incompetent and insane parties.

1 In any action for divorce or annulment, an infant party
2 shall sue, answer and plead by a next friend, and an
3 incompetent or insane party shall sue, answer and plead
4 by his committee, and no guardian ad litem shall be re-
5 quired unless specifically ordered by the court or judge
6 hearing said action.

§48-2-12. Particeps criminis may become a party.

1 Anyone charged as a particeps criminis shall be made
2 a party to a divorce action, upon his or her application
3 to the court, subject to such terms and conditions as the
4 court may prescribe.

**§48-2-13. Maintenance of spouse and children pendente lite;
control of property.**

1 The court may, at any time after commencement of the
2 action and reasonable notice to the other party, make any
3 order that may be proper to compel either party to pay
4 any sum necessary for the maintenance of the other party
5 and to enable him or her to carry on or defend the action
6 in the trial court and on appeal should one be taken, or
7 to prevent either party from imposing any restraint on
8 the personal liberty of the other, or to provide for the
9 custody and maintenance of the minor children of the
10 parties, during the pendency of the action, or to preserve
11 the estate of either party, so that it be forthcoming to
12 meet any order which may be made in the action, or to
13 compel either party to give security to abide such order,
14 or to compel either party to deliver to the other any of
15 his or her separate estate which may be in the possession
16 or control of the other, or to prevent either from interfer-
17 ing 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.

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

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-

21 nance of the children, and make a new order concern-
22 ing the same, as the circumstances of the parents or
23 other proper person or persons and the benefit of the
24 children may require. In any case where the divorce or
25 the annulment is denied, if the parties are living separate
26 and apart from each other, the court shall retain jurisdic-
27 tion of the case for the purpose of determining with which
28 of the parents or other proper person or persons the
29 children or any of them may remain and of making such
30 order concerning the care, custody, education and mainte-
31 nance of the minor children, or any of them, as to the
32 court may seem proper and the benefit of the child or
33 children may require; and such order may, from time to
34 time afterward, on verified petition of either of the parties
35 or other proper person having actual or legal custody of
36 such child or children, be revised or altered, and a new
37 order made, as the circumstances of the parties or the
38 needs of the children may require. For the purpose of
39 making effectual any order provided for in this section the
40 court may make any order concerning the estate of the
41 parties, or either of them, as it shall deem expedient.

42 In any case where a divorce is granted in this state
43 upon constructive service of process, and personal juris-
44 diction is thereafter obtained of the defendant in such
45 case, the court may make such further order as it shall
46 deem expedient, concerning the maintenance of the
47 parties, or either of them, or concerning the care, custody,
48 education and maintenance of the minor children, and
49 in any case where an annulment is granted in this state
50 upon constructive service of process, and personal juris-
51 diction is thereafter obtained of the defendant in such
52 case, the court may make such further order as it shall
53 deem expedient concerning the care, custody, education
54 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,
2 ascertain and determine an amount as alimony, support
3 or maintenance to be paid by a spouse or to modify
4 any order pertaining thereto, shall take into considera-
5 tion, among other things, the financial needs of the

6 parties, the earnings and earning ability of the husband
7 and wife, the estate, real and personal, and the extent
8 thereof as well as the income derived therefrom of both
9 the husband and wife and shall allow, or deny, alimony
10 or maintenance or modify any former order with rela-
11 tion thereto, in accordance with the principles of justice.

§48-2-17. Recordation of order for support, maintenance or alimony.

1 An order for support, maintenance or alimony shall
2 not give rise to a lien on any real estate of the person
3 against whom the order is entered until such order is
4 entered of record in the office of the clerk of the county
5 court where any such real estate is situate. On and after
6 the effective date of this section, any such order shall be
7 recorded in the same manner as other judgments are
8 recorded.

§48-2-18. Court may release certain liens created for support, maintenance or alimony.

1 If any person deem that his or her interest, or that of
2 any person for whom he or she may act in a fiduciary
3 or representative capacity, will be promoted by a re-
4 lease, in full or in part, of a lien created upon his or
5 her real or personal property for the support or main-
6 tenance of another person or persons, or for alimony,
7 he or she may apply by petition, in a summary way,
8 to the court that entered the order or decree creating
9 such lien for relief from said order; the petition shall
10 be verified and shall describe said lien, the circumstances
11 of the petitioner or the person for whom he is acting,
12 the name or names of the person or persons holding
13 such lien, and the circumstances calculated to show the
14 propriety of the release requested; all persons interested
15 shall be made defendants and shall be given ten days'
16 notice before hearing upon the petition. If authorized
17 by the court, the release may be so conditioned as to
18 promote substantial justice, but the release shall be
19 prospective in effect, only, and shall not operate to
20 deprive the person secured by the lien of the right to
21 receive alimony or support payments accrued to the
22 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

3 marriage allow the wife to resume her maiden name. The
4 court may also allow the wife to resume the name of a
5 former husband if she has any living child or children by
6 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.**

1 Actions for divorce, annulment and separate mainte-
2 nance shall mature in the same manner as other actions
3 provided for in the Rules of Civil Procedure of the state
4 of West Virginia, and when ready for hearing under said
5 rules shall be tried before the court, in chambers, and all
6 witnesses shall appear and testify at the hearing the same
7 as witnesses in other civil actions. Such actions may be
8 heard, when matured, and a judgment order entered, at
9 any time irrespective of whether or not there is a term of
10 court in session. The law governing the taking and read-
11 ing of depositions, as provided for in the Rules of Civil
12 Procedure, shall apply to depositions in the hearing of a
13 divorce case. The court may, instead of proceeding with
14 the action under this section, refer the same to a com-
15 missioner, or a special commissioner, of said court as pro-
16 vided for in section twenty-five of this article.

**§48-2-25. Reference to commissioner; taking of depositions;
oral testimony before court.**

1 Instead of proceeding with the action under the pro-
2 visions of section twenty-four of this article, the court
3 may, in its discretion, refer it to one of the commissioners
4 of such court, or to a special commissioner, who shall
5 take and return the testimony in such action, with a
6 report of all such facts as the commissioner may be able
7 to obtain as to property rights of the parties, their income,
8 their character, conduct, health, habits, their children,
9 their respective places of residence from the time of their
10 marriage up to the time of such report, and any other
11 matter deemed necessary by the court, together with his
12 recommendation concerning whether a divorce, annul-
13 ment or affirmation, as the case may be, should be grant-
14 ed, and concerning any other matter on which the court

15 may request his recommendation. All such facts so re-
16 ported and the recommendation of the commissioner shall
17 be considered by the court in passing on the merits of the
18 case, whether the same be referred to in the pleadings or
19 evidence, or not. Except as otherwise expressly provided
20 herein, the procedure in respect to the reference of such
21 a case to a commissioner shall be governed in all respects
22 by the rules applicable to references to commissioners
23 generally.

24 If testimony is to be taken in a county other than that
25 in which the action is pending, or of witnesses residing out
26 of the state of West Virginia, the same shall be taken be-
27 fore some person duly authorized to take depositions in
28 the county or state where taken. If such depositions are
29 taken out of the county in which the action is pending, or
30 without the state, the same shall be, by the person taking
31 the same, filed with or forwarded to the clerk of the court
32 wherein such action is pending, and on receipt of such
33 depositions such clerk shall lay the same before the com-
34 missioner to whom such action has been referred, who
35 shall consider the same in connection with his report
36 hereinbefore mentioned. The person before whom deposi-
37 tions are taken hereunder shall be personally present
38 at the time and place of taking depositions, and no deposi-
39 tion shall be taken or read in the action unless it appears
40 therefrom that such person was personally present during
41 the taking of the same. It is hereby made the duty of the
42 person before whom such depositions are taken, to see
43 that all witnesses are so examined as to elicit all facts
44 within their knowledge pertaining to the action. If any
45 person before whom any such depositions are taken certi-
46 fied falsely as to his presence at the taking of such deposi-
47 tions, he shall be guilty of a misdemeanor, and, on con-
48 viction thereof, shall be fined not less than fifty nor more
49 than five hundred dollars.

50 The court in which such action is pending may so refer
51 the same as often as, in its judgment, justice requires,
52 and may, if it so elect, summon anyone to appear before
53 such court, and give evidence with reference thereto, and
54 base its findings on such oral evidence solely. The com-

55 missioner shall be allowed for his services the same com-
56 pensation as is allowed in other court actions, and all
57 costs, including stenographer's fees, shall be taxed as in
58 other court actions.

§48-2-26. Notice of hearing by commissioner.

1 The commissioner to whom any case is referred under
2 the provisions of the preceding section shall, before pro-
3 ceeding to execute the requirements of the order of
4 reference, cause the party desiring to take depositions
5 and evidence, to give to the opposing party, or the
6 attorney of record for said opposing party, at least ten
7 days' notice of the time and place when and where he
8 will commence proceedings, but if said opposing party
9 is not then represented by an attorney, and personal
10 service of such notice cannot be had on that party by
11 reason of absence from the state, or nonresidence, then
12 it shall be sufficient to publish such notice in a news-
13 paper of general circulation in the county wherein the
14 action is pending, upon entry of order setting forth the
15 basis therefor and for the number of insertions as the
16 order may direct: *Provided, however,* That no notice
17 of such proceedings shall be required to be given in any
18 action wherein the defendant has not appeared in person
19 in any hearing or proceeding before the court, or has not
20 appeared by a pleading or written motion, duly filed
21 in the action, unless specifically required and ordered
22 by the court.

23 The opposing party, or his attorney, may waive such
24 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
2 annulment of marriage or for divorce the clerk shall
3 immediately seal in a package all pleadings, except the
4 orders of the court, all the written testimony, exhibits
5 to the testimony, the stenographic notes or other record-
6 ings of the testimony, if any were taken, the commis-
7 sioner's report, and all other evidence, and the same shall
8 not be again opened except upon written permission of
9 the court.

§48-2-28. Action for separate maintenance.

1 Whenever a husband shall, without good and sufficient
2 cause, have failed to provide suitable support for his
3 wife, or have abandoned or deserted her, or if the wife
4 shall have grounds for divorce, the court of any county
5 that would have jurisdiction of an action for divorce
6 between the parties, shall, at the action of the wife,
7 whether or not a divorce be prayed for, order to the
8 wife as alimony and separate maintenance such sum
9 out of the husband's earnings or income as the court
10 may determine, considering the circumstances of the
11 parties and their stations in life, and may prohibit the
12 husband from imposing any restraint on her personal
13 liberty, and may free her real and personal property
14 from possession, control or any interest of the husband;
15 and during the pendency of the action the court shall
16 have the same powers to make such orders as are pro-
17 vided for actions for divorce by section thirteen of this
18 article insofar as the same are applicable on behalf of
19 the wife. Any order entered in the case shall be effective
20 during such time as the court shall by its order direct,
21 or until the further order of the court thereon, and
22 upon the petition of either party, the court may, from
23 time to time afterwards, revise or alter such order, or
24 make further orders, concerning the maintenance of
25 the wife and the interest of the husband in the property
26 of the wife, and the care, custody, education and main-
27 tenance of the minor children of the parties, and may
28 determine with which of their parents the children or
29 any of them shall remain.

§48-2-29. Advertising of any offer to obtain divorces prohibited.

1 Whosoever prints, publishes, distributes, or circulates,
2 or causes to be printed, published, distributed, or circu-
3 lated, any circular, pamphlet, card, handbill, advertise-
4 ment, printed paper, book, newspaper, or notice of any
5 kind, offering to procure, or aid in procuring, any divorce,
6 or the severance, dissolution, or annulment of any mar-
7 riage, or, by such publication as above mentioned, offers
8 to engage, appear or act as attorney or counsel in any ac-
9 tion for alimony, divorce, or the severance, dissolution, or

10 annulment of marriage, either in this state or elsewhere,
11 shall be deemed guilty of a misdemeanor, and, upon
12 conviction thereof, shall be fined not less than one hun-
13 dred nor more than three hundred dollars, and if the per-
14 son so convicted be an attorney at law he shall, in addi-
15 tion to the above penalty, be disbarred from practicing
16 as such attorney at law in the courts of this state. This
17 section shall not apply to the printing or publishing of
18 any notice or advertisement required or authorized by
19 any law of this state or orders of any court.

§48-2-30. Validation of certain divorce decrees.

1 All decrees of divorce heretofore entered by courts of
2 this state, having jurisdiction of suits for divorce, wherein
3 maturity of the cause at rules has been waived, consent
4 given for hearing, the cause placed upon the docket and
5 set for hearing and a final decree and judgment entered
6 by the court therein, shall be recognized as having full
7 force and effect from the date of their rendition and entry
8 as though said divorce causes had been regularly matured
9 at rules, placed upon the docket and regularly set for
10 hearing.

§48-2-31. Validation of certain divorce orders; limitations on actions contesting such orders.

1 All orders of divorce and annulment of marriage here-
2 tofore entered on and after March twenty-six, one thou-
3 sand nine hundred sixty-three, and before January first,
4 one thousand nine hundred sixty-five, wherein the action
5 was tried or heard less than the maximum period of time
6 within which the defendant was required to answer, shall
7 be recognized as having full force and effect from the
8 date of the entry of such order as though the action had
9 been tried or heard after the maximum period of time
10 within which the defendant was required to answer,
11 unless an interested party shall institute proceedings or
12 an action to set aside any such order of divorce or annul-
13 ment, upon such ground, before the first day of January,
14 one thousand nine hundred sixty-nine.

CHAPTER 50

(Senate Bill No. 42—By Mr. Jackson, Mr. President,
and Mr. Brotherton)

[Passed February 28, 1969; in effect July 1, 1969. Approved by the Governor.]

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.**
- 4. Adoption.**
- 5. Change of Name.**
- 7. Maintenance of Illegitimate Children.**

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.

- 1 A contract between a husband and wife shall not be
- 2 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 property.

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 required.

§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

9 child. Consent to the adoption of a minor child shall be
10 required and obtained as follows:

11 (1) In the case of a legitimate child sought to be
12 adopted, the written consent, duly acknowledged, of both
13 parents, or the surviving parent, of such legitimate child
14 sought to be adopted must be obtained and presented with
15 the petition: *Provided*, That, if both parents are living
16 and one parent is insane or has abandoned the child
17 sought to be adopted, only the consent of the other parent
18 shall be required, but the parent who is alleged to have
19 abandoned the child must be personally served, either
20 within or without the state, with a copy of the petition
21 and notice of the date, time and place of the hearing on
22 said petition at least twenty days prior to the date set
23 for the hearing; and if after due diligence personal service
24 cannot be obtained, then the copy of the petition and the
25 notice of the hearing may be sent by registered mail to
26 the last known address of such surviving parent, such
27 service to be complete upon mailing. If both parents are
28 either dead, unknown, insane, have abandoned the child
29 sought to be adopted or have been deprived of the custody
30 of the person of such child by law, then and in such case,
31 the written consent, acknowledged as aforesaid, of the
32 legal guardian of such child or those having at the time
33 the legal custody of the child shall be obtained and so
34 presented, and if there be no legal guardian nor any per-
35 son having the legal custody of the child, then such con-
36 sent must be obtained from some discreet and suitable
37 person appointed by the court or judge thereof to act as
38 the next friend of such child in the adoption proceedings.

39 (2) In the case of an illegitimate child sought to be
40 adopted, the written consent, duly acknowledged, of the
41 mother of such illegitimate child sought to be adopted
42 must be obtained and presented with the petition. If the
43 mother of such illegitimate child is dead, insane, has
44 abandoned the child sought to be adopted or has been
45 deprived of the custody of the person of such child by law,
46 then and in such case the written consent, acknowledged
47 as aforesaid, of the legal guardian of such child or those
48 having at the time the legal custody of the child shall

49 be obtained and so presented, and if there be no legal
50 guardian nor any person having the legal custody of the
51 child, then such consent must be obtained from some
52 discreet and suitable person appointed by the court or
53 judge thereof to act as the next friend of such child in
54 the adoption proceedings.

55 (3) In addition to the consent required in subdivisions
56 (1) and (2) of this subsection, in any case where the child
57 sought to be adopted be twelve years of age or over, the
58 written consent of such child to such adoption, given in
59 the presence of the judge having jurisdiction thereof,
60 must also be obtained and presented with the petition,
61 unless for extraordinary cause such is waived by court
62 order.

63 (b) No petition for an adoption shall be made or pre-
64 sented until after the child sought to be adopted shall
65 have lived in the home of the adopting parent or parents
66 for a period of six months.

**§48-4-3. Proceedings on petition; appointment of next friend;
contents of order.**

1 Upon the presentation of such petition to the court, or
2 the judge of such court in vacation, the same shall be
3 ordered filed with the clerk of such court, and the court
4 or judge thereof shall appoint a day for the hearing of
5 such petition and the examination under oath of the
6 parties in interest. The court or judge thereof may
7 adjourn the hearing of such petition or the examination
8 of the parties in interest from time to time, as the nature
9 of the case may require. Between the time of the filing
10 of the petition for adoption and the hearing thereon, the
11 court or judge thereof shall, unless the court or judge
12 otherwise directs, cause a discreet inquiry to be made
13 to determine whether such child is a proper subject for
14 adoption and whether the home of the petitioner or peti-
15 tioners is a suitable home for such child. Any such in-
16 quiry, if directed, shall be made by any suitable person
17 or agency designated by the court, or judge thereof, and
18 the results thereof shall be submitted to the court or
19 judge thereof at or prior to the hearing upon the petition
20 and shall be filed with the records of the proceeding and

21 become a part thereof. If it shall be necessary, under
22 the provisions of this article, that a discreet and suitable
23 person shall be appointed to act as the next friend of
24 the child sought to be adopted, then and in that case
25 the court or judge thereof shall order a notice of the
26 petition and of the time and place when and where the
27 appointment of next friend will be made, to be published
28 as a Class II legal advertisement in compliance with the
29 provisions of article three, chapter fifty-nine of this code,
30 and the publication area for such publication shall be
31 the county where such court is located. At the time and
32 place so named and upon due proof of the publication
33 of such notice, the court or judge thereof shall make
34 such appointment, and shall thereupon assign a day for
35 the hearing of such petition and the examination of the
36 parties interested. Upon the day so appointed the court
37 or judge thereof shall proceed to a full hearing of the
38 petition and examination of the parties in interest, under
39 oath and of such other witnesses as the court or judge
40 thereof may deem necessary to develop fully the stand-
41 ing of the petitioners and their responsibility, and the
42 status of the child sought to be adopted; and if the court
43 or judge thereof shall be of the opinion from the testi-
44 mony that the facts stated in the petition are true, and
45 if upon examination the court or judge thereof is satis-
46 fied that the petitioner is, or the petitioners are, of good
47 moral character, and of respectable standing in the com-
48 munity, and are able properly to maintain and educate
49 the child sought to be adopted, and that the best interests
50 of the child would be promoted by such adoption, then
51 and in such case the court or judge thereof shall make
52 an order reciting at length the facts proved and the name
53 by which the child shall thereafter be known, and de-
54 claring and adjudging that from the date of such order,
55 the rights, duties, privileges and relations, theretofore
56 existing between the child and his or her parents, shall
57 be in all respects at an end, and that the rights, duties,
58 privileges and relations between the child and his or her
59 parent or parents by adoption shall thenceforth in all re-
60 spects be the same, including the rights of inheritance, as
61 if the child had been born to such adopting parent or

62 parents in lawful wedlock, except only as otherwise pro-
63 vided in this article.

**§48-4-4. Recordation of order; fees; disposition of records;
names of adopting parents not to be disclosed; cer-
tificate for state registrar of vital statistics; birth
certificate.**

1 The order shall be recorded in a book kept for that pur-
2 pose, and the clerk shall receive the same fees as in other
3 cases. All records of proceedings in adoption cases and all
4 papers and records relating to such proceedings shall be
5 kept in the office of the clerk of the court in a sealed file,
6 which file shall be kept in a locked or sealed cabinet, vault
7 or other container and shall not be open to inspection or
8 copy by anyone, except upon court order for good cause
9 shown. No person in charge of adoption records shall dis-
10 close the names of the adopting parent or parents or
11 adopted child except by court order. The clerk of the
12 court keeping and maintaining the records in adoption
13 cases shall keep and maintain an index of such cases
14 separate and distinct from all other indices kept or main-
15 tained by him, and the index of adoption cases shall be
16 kept in a locked or sealed cabinet, vault or other con-
17 tainer and shall not be open to inspection or copy by
18 anyone, except upon court order for good cause shown.
19 Immediately upon the entry of such order of adoption,
20 the court shall direct the clerk thereof forthwith to
21 make and deliver to the state registrar of vital statistics
22 a certificate under the seal of said court, showing:

23 (1) The date and place of birth of the adoptee, if
24 known;

25 (2) The names of the natural parents of the adoptee, if
26 known;

27 (3) The name by which said child has previously been
28 known;

29 (4) The names and addresses of the adopting parents;

30 (5) The name by which the child is to be thereafter
31 known; and

32 (6) Such other information from the record of said
33 adoption proceedings as may be required by the law

34 of this state relating to vital statistics and as may enable
35 the state registrar of vital statistics to carry out the duty
36 imposed upon him by this section.

37 Upon receipt of said certificate, the said registrar of
38 vital statistics shall forthwith issue and deliver by mail
39 to the adopting parents at their last known address and to
40 the clerk of the county court of the county wherein such
41 order of adoption was entered a birth certificate in the
42 form required by law, except that the name of the adop-
43 tee shown in said certificate shall be the name given him
44 by the order of adoption. Such county court clerk shall
45 record such birth in the manner provided by chapter six-
46 teen, 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.**

1 Upon the entry of such order of adoption, the natural
2 parent or parents, any parent or parents by any previous
3 legal adoption, and the lineal or collateral kindred of any
4 such parent or parents, except any such parent who is
5 the husband or wife of the petitioner for adoption, shall
6 be divested of all legal rights, including the right of in-
7 heritance from or through the adopted child under the
8 statutes of descent and distribution of this state, and shall
9 be divested of all obligations in respect to the said adopted
10 child, and the said adopted child shall be free from all
11 legal obligations, including obedience and maintenance,
12 in respect to any such parent or parents. From and after
13 the entry of such order of adoption, the adopted child
14 shall be, to all intents and for all purposes, the legitimate
15 issue of the person or persons so adopting him or her and
16 shall be entitled to all the rights and privileges and
17 subject to all the obligations of a natural child of such
18 adopting parent or parents.

19 For the purpose of descent and distribution, from and
20 after the entry of such order of adoption, a legally
21 adopted child shall inherit from and through the parent
22 or parents of such child by adoption and from or through
23 the lineal or collateral kindred of such adopting parent
24 or parents in the same manner and to the same extent as

25 though said adopted child were a natural child of such
26 adopting parent or parents, but such child shall not in-
27 herit from his or her natural parent or parents nor their
28 lineal or collateral kindred, except that a child legally
29 adopted by a husband or wife of the natural parent shall
30 inherit from the natural parent of such child as well as
31 from the adopting parent. If a legally adopted child shall
32 die intestate, all property, including real and personal,
33 of such adopted child shall pass, according to the statutes
34 of descent and distribution of this state, to those persons
35 who would have taken had the decedent been the natural
36 child of the adopting parent or parents.

§48-4-6. Revocation of adoption.

1 (a) Except when the consent to such adoption has been
2 properly given by the department of welfare or a
3 licensed child welfare agency, as provided in section
4 one, article three, chapter forty-nine of this code, a parent
5 or guardian of a legitimate child or the mother or guard-
6 ian of an illegitimate child who did not consent to the
7 adoption of such child, or any parent of a legitimate child
8 entitled to notice as provided in subdivision (1) of sec-
9 tion one of this article who was not served with notice as
10 provided in said subdivision (1), may, at any time within
11 one year after learning of the adoption, apply by petition
12 to the court in which the adoption was granted, praying
13 that the adoption be vacated. The court to which such
14 application is made shall fix a date and time for a hear-
15 ing, shall cause notice thereof to be given to the person
16 or persons who were permitted to adopt such minor, and,
17 at the time so fixed, shall hear the petitioner and all
18 parties interested, and may vacate or affirm the adoption
19 in its discretion. Any party interested may appeal to
20 the supreme court of appeals from the decision of the
21 court in the matter, as in other civil cases.

22 (b) When any minor has been adopted, he may, with-
23 in one year after becoming of age, sign, seal and acknowl-
24 edge before proper authority, in the county in which the
25 order of adoption was made, a dissent from such adoption,
26 and file such instrument of dissent in the office of the clerk
27 of the court which granted said adoption and the clerk of

28 the county court of such county, and such clerks shall
29 record and index the same. Upon the filing of such instru-
30 ment of dissent the adoption shall be vacated.

§48-4-7. Adoption of adults.

1 Any adult person who is a resident of West Virginia
2 may petition the circuit court or any other court of record
3 having jurisdiction of adoption proceedings for permis-
4 sion to adopt one who has reached the age of twenty-one
5 years or over, and, if desired, to change the name of such
6 person. The consent of the person to be adopted shall be
7 the only consent necessary. The order of adoption shall
8 create the same relationship between the adopting par-
9 ent or parents and the person adopted and the same rights
10 of inheritance as in the case of an adopted minor child.
11 If a change in name is desired, the adoption order shall
12 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
2 that of his child or ward, may apply therefor to the cir-
3 cuit court or any other court of record having juris-
4 diction of the county in which he resides, or the judge
5 thereof in vacation, by petition setting forth that he has
6 been a bona fide resident of such county for at least
7 one year prior to the filing of the petition, the cause for
8 which the change of name is sought, and the new name
9 desired; and previous to the filing of such petition such
10 person shall cause to be published a notice of the time
11 and place that such application will be made, which
12 notice shall be published as a Class I legal advertisement
13 in compliance with the provisions of article three, chapter
14 fifty-nine of this code, and the publication area for such
15 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
2 the publication of such notice and of the matters set

3 forth in the petition, and being satisfied that no injury
4 will be done to any person by reason of such change,
5 that reasonable and proper cause exists for changing
6 the name of petitioner, and that such change is not desired
7 because of any fraudulent or evil intent on the part of
8 the petitioner, the court or judge thereof in vacation may
9 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; recognizance.

1 Any unmarried woman may go before a justice of the
2 county in which she resides and accuse any person of
3 being the father of a bastard child of which she has
4 been delivered. Such justice shall examine her under
5 oath, and reduce her examination to writing and sign it.
6 On such examination, unless the child be three years
7 old or upwards, the justice shall issue a warrant, directed
8 to the sheriff of, or a constable in, any county where the
9 accused may be, requiring him to be apprehended and
10 taken before a justice of the county in which he may
11 be found; and it shall be the duty of such justice to
12 require the accused to enter into a recognizance, with
13 one or more good securities, in a sum not less than five
14 hundred nor more than one thousand dollars, conditioned
15 for his appearance at the next term of the circuit court or
16 any other court of record having jurisdiction of the county
17 in which such warrant issued, to answer such charge, and
18 to abide by and perform the order of the court in relation
19 thereto. If a married woman live separate and apart from
20 her husband for the space of one year or more, and shall
21 not at any time during such separation, cohabit with such
22 husband she may, if she be delivered of a child at any time
23 after such one year, and while such separation continues,
24 accuse any person, other than her husband, of being the
25 father of such child, in like manner, and the same pro-

26 ceedings shall thereupon be had, as if she were an un-
27 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; admissibility 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 con-
- 2 sortium to the same extent and in all cases as a married
- 3 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.
2 The county court shall divide each magisterial district of
3 the county into election precincts, shall number the pre-
4 cincts, shall determine and establish the boundaries
5 thereof, and shall designate one voting place in each
6 precinct, which place shall be established as nearly as
7 possible at the point most convenient for the voters of the
8 precinct. Each magisterial district shall contain at least
9 one voting precinct and each precinct shall have but one
10 voting place therein.

11 Each precinct within any urban center shall contain
12 not less than three hundred nor more than eight hundred
13 registered voters. Each precinct in a rural or less thickly
14 settled area shall contain not less than two hundred nor
15 more than seven hundred registered voters. If, at any
16 time the number of registered voters shall exceed the
17 maximum number in either case herein specified, it shall
18 be the duty of the county court to, and it shall, rearrange
19 the precincts within the political division so that the new
20 precincts formed therefrom, or from any part thereof,
21 shall each contain a number of registered voters within
22 the limits above provided. If such county court fails to
23 so act as herein directed, any qualified voter of the county
24 may apply for a writ of mandamus to compel the per-
25 formance of this duty.

26 In order to facilitate the conduct of local and special
27 elections and the use of election registration records
28 therein, precinct boundaries shall be established to coin-
29 cide with the boundaries of any municipality of the
30 county and with the wards or other political subdivisions
31 of the municipality except in instances where found by
32 the county court to be wholly impracticable so to do.

33 The provisions of this section shall be subject to the
34 provisions of section twenty-eight of article four of this
35 chapter relating to the number of voters in precincts in
36 which voting machines are used.

37 The county court shall keep available at all times
38 during business hours in the courthouse at a place con-
39 venient for public inspection a map or maps of the county
40 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
2 voter may be challenged by the clerk of the county
3 court, the secretary of state, any registrar of the county,
4 the chairman of any political party committee, or any
5 voter who shall appear in person at the clerk's office.
6 Such challenge shall be entered upon a form prescribed
7 by the secretary of state and shall be filed as a matter
8 of record in the office of the clerk of the county court.
9 Upon the receipt and filing of such challenge, the clerk
10 of the county court shall mail to the person so challenged
11 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

3 is to be used, the clerk of the circuit court of the county
4 in which an applicant is a qualified voter shall mail,
5 postage prepaid, to each duly registered applicant who
6 has executed and filed his application, to the address
7 shown therein, an official ballot or ballots (if more than
8 one are to be voted at such election), except that the
9 clerk shall not, after the fifteenth day next prior to such
10 election, mail any such ballot to an applicant whose
11 address is shown to be outside the continental limits
12 of the United States of America. All absentee ballots
13 mailed upon the basis of applications therefor made on
14 federal standard form number seventy-six, issued by
15 the federal government under authority of Public Law
16 No. 296, or any revision or replacement of such form,
17 whether designated in the same or a different manner,
18 shall be mailed by the clerk in envelopes embossed with
19 the words "Official Election Balloting Material Via Air
20 Mail," printed in red, with the notation in the upper
21 right-hand corner, "Free of U. S. Postage Including Air
22 Mail." The clerk shall, without delay, mail all such
23 absent voter ballots as soon after the thirtieth day next
24 prior to the election as he shall have in his office prop-
25 erly executed applications therefor.

26 The applicant may obtain the absent voter ballot or
27 ballots by applying personally at the office of the clerk
28 of the circuit court during regular business hours not
29 more than fifteen days before such election and on any
30 day thereafter up to and including the Saturday next pre-
31 ceding the date of the primary or general election or,
32 in the case of special elections, up to and including the
33 third day next preceding the day of any such special
34 election, and shall at the time of applying personally
35 vote such ballot or ballots in the clerk's office.

36 In computing the thirtieth, fifteenth, fourth and
37 third day before the election day, the day of election
38 shall be excluded. Before any ballot is mailed or delivered
39 the clerk shall affix his official seal and he and the other
40 members of the board of ballot commissioners shall place
41 their signatures near the lower left-hand corner on the
42 back thereof.

CHAPTER 55

(House Bill No. 513—By Mr. Watson and Mr. Seibert)

[Passed March 7, 1969; in effect ninety days from passage. Approved by the Governor.]

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-14. Election boards where electronic voting system used; instruction; vacancies; compensation.
- §3-4A-15. Instructions and help to voters; vote recording device models; facsimile diagrams; sample ballots; legal ballot advertisements.
- §3-4A-16. Delivery of vote recording devices; time, arrangement for voting.
- §3-4A-17. Check of vote recording devices before use; corrections; reserve vote recording devices.
- §3-4A-18. Disrepair of vote recording devices in use; reserve vote recording devices.
- §3-4A-19. Conducting electronic voting system elections generally; duties of election officers.
- §3-4A-20. "Independent" voting in primary elections.
- §3-4A-21. Recording and disposition of absent voters' ballots.
- §3-4A-22. Assistance to illiterate and disabled voters.
- §3-4A-23. Persons prohibited about voting booths; penalties.
- §3-4A-24. Voting by challenged voter.
- §3-4A-25. Closing polls.
- §3-4A-26. Test of automatic tabulating equipment.
- §3-4A-27. Proceedings at the counting center.
- §3-4A-28. Post-election custody and inspection of vote recording devices; canvass and recounts.
- §3-4A-29. Incorrect recordation or tabulation of votes; testing accuracy of vote recording devices and automatic tabulating equipment; procedures and requirements.
- §3-4A-30. Adjustments in voting precincts where electronic voting system used.
- §3-4A-31. Use of electronic voting systems in municipal elections.
- §3-4A-32. Applicability of general laws relating to elections.
- §3-4A-33. Tampering with vote recording devices or automatic tabulating equipment; other dishonest practices; attempts; penalty.
- §3-4A-34. Wilful neglect of duty by officials; penalties.

§3-4A-1. Use of electronic voting systems authorized.

1 Electronic voting systems may be used for the pur-
2 pose of registering or recording and computing votes
3 cast in general, special and primary elections, provided
4 that the use thereof shall be governed by the terms,
5 conditions, restrictions and limitations imposed by this
6 article.

§3-4A-2. Definitions.

- 1 As used in this article, unless otherwise specified:
- 2 (a) "Automatic tabulating equipment" means all ap-
3 paratus necessary to electronically count votes recorded
4 on ballot cards and tabulate the results;
 - 5 (b) "Ballot card" means a tabulating card or paper

6 on which votes may be recorded by means of perforat-
7 ing or marking in electronic sensitized ink or pencil;

8 (c) "Ballot labels" means the cards, papers, booklet,
9 pages or other material showing the names of offices
10 and candidates and the statements of measures to be
11 voted on, which are placed on the vote recording de-
12 vice;

13 (d) "Counting center" means one or more facilities
14 equipped with suitable and necessary automatic tabu-
15 lating equipment, selected by the county court, for the
16 electronic counting of votes recorded on ballot cards;

17 (e) "Electronic voting system" is a means of con-
18 ducting an election whereby votes are recorded on bal-
19 lot cards by means of marking with electronic sensitized
20 ink or perforating, and such votes are subsequently
21 counted by automatic tabulating equipment at one or
22 more counting centers; and

23 (f) "Vote recording device" means equipment in
24 which ballot labels and ballot cards are placed to allow
25 a voter to record his vote.

§3-4A-3. Procedure for adopting electronic voting systems.

1 An electronic voting system may be adopted for use
2 in general, primary and special elections in any county
3 by either of the following procedures, and not other-
4 wise:

5 (1) By a majority of the members of the county court
6 voting to adopt the same at a meeting regularly called
7 in regular or special session: *Provided*, That such meet-
8 ing shall be held not less than six months prior to a
9 general election or six months prior to a primary elec-
10 tion. If at such meeting, such county court shall enter
11 an order of its intention to adopt the use of an elec-
12 tronic voting system, it shall thereafter forthwith cause
13 to be published a certified copy of such order as a
14 Class II-0 legal advertisement in compliance with the
15 provisions of article three, chapter fifty-nine of this code
16 and the publication area for such publication shall be
17 the county involved. The first publication of such order
18 shall not be less than twenty days after the entry of

19 such order. Such county court shall not adopt the use
20 of an electronic voting system until ninety days after the
21 entry of such order of its intention to adopt the same.
22 Promptly after the expiration of ninety days after the
23 entry of such order of intention to adopt the use of
24 an electronic voting system, if no petition has there-
25 tofore been filed with such county court requesting a
26 referendum on the question of adoption of an electronic
27 voting system as hereinafter provided, such county court
28 shall enter a final order adopting the electronic vot-
29 ing system, and the electronic voting system shall there-
30 by be adopted.

31 If five percent or more of the registered voters of
32 such county shall sign a petition requesting that an
33 electronic voting system be not adopted for use in such
34 county and such petition be filed with the county court
35 of such county within ninety days after the entry of
36 such order of intention to adopt the use of an electronic
37 voting system, such county court shall submit to the
38 voters of such county at the next general or primary
39 election, whichever shall first occur, the question: "Shall
40 an electronic voting system be adopted in ____ County?"
41 If this question be answered in the affirmative by a
42 majority of the voters in such election upon the ques-
43 tion, an electronic voting system shall thereby be
44 adopted. If such question shall not be answered in the
45 affirmative by such majority, the use of an electronic vot-
46 ing system shall not be adopted.

47 (2) By the affirmative vote of a majority of the voters
48 of such county voting upon the question of the adop-
49 tion of an electronic voting system in such county. If
50 five percent or more of the registered voters of such
51 county shall sign a petition requesting the adoption of
52 an electronic voting system for use in such county, and
53 such petition be filed with the county court of such
54 county, such county court shall submit to the voters of
55 such county at the next general or primary election,
56 following by not less than ninety days the date of the
57 filing of such petition, the question: "Shall an electronic
58 voting system be adopted in _____ County?" If this

59 question be answered in the affirmative by a majority
60 of the voters of such county voting upon the question,
61 an electronic voting system shall thereby be adopted.
62 If such question shall not be answered in the affirma-
63 tive by such majority, the use of an electronic voting
64 system shall not be adopted.

§3-4A-4. Procedure for terminating use of electronic voting systems; future proceedings after termination of or failure to adopt system.

1 If at any time after the adoption of an electronic
2 voting system in any county as herein provided, five
3 percent or more of the registered voters of such county
4 shall sign a petition requesting that the use of an elec-
5 tronic voting system be terminated, and such petition
6 be filed with the county court of such county, such
7 county court shall submit to the voters of such county
8 at the next general or primary election, following by
9 not less than ninety days the date of the filing of such
10 petition, the question: "Shall the use of an electronic
11 voting system in _____ County be terminated?" If
12 this question be answered in the affirmative by a major-
13 ity of the voters of such county voting upon the ques-
14 tion, the use of an electronic voting system in all future
15 elections shall thereby be terminated; otherwise, the
16 use of an electronic voting system shall be con-
17 tinued. Any vote pursuant to this section and the
18 preceding section which results in a failure to adopt,
19 or in a termination of the use of an electronic voting
20 system shall not be construed to preclude any future
21 proceeding by the voters or the county court of any
22 county to adopt or readopt an electronic voting system
23 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.

1 If the use of an electronic voting system shall have
2 been adopted as hereinbefore provided, it shall be the
3 duty of the county court of such county to acquire the

4 necessary number of vote recording devices to supply
5 all or part of the election precincts within such county
6 as soon as possible, and to acquire such reserve device
7 or devices as will be deemed necessary. All such acquisi-
8 tion of vote recording devices shall be by sealed com-
9 petitive bidding.

10 If it shall be impossible or impractical for the county
11 court to supply each election precinct with a vote re-
12 cording device or vote recording devices for use at the
13 next election following the adoption of an electronic
14 voting system, as many vote recording devices shall be
15 supplied for that election and the succeeding elections
16 as it is possible or practical for the county court to
17 acquire in the manner as hereinafter provided, and the
18 devices so acquired may be used in such election pre-
19 cincts within the county as the county court may direct
20 until it shall be possible to provide the requisite num-
21 ber of vote recording devices properly to equip all pre-
22 cincts within the county. Where it is impossible or im-
23 practical to supply all of the election precincts within
24 such county with vote recording devices, such vote re-
25 cording devices may be used in combination with ap-
26 proved existing methods of voting as provided in this
27 chapter.

28 It shall be the further duty of the county court of
29 such county to acquire prior to any election in which
30 such electronic voting system is to be used, the use of
31 automatic tabulating equipment approved by the state
32 election commission, for the purpose of counting votes
33 in such election. In addition, the county court of such
34 county shall provide the necessary counting centers for
35 use in said election. Such counting centers shall not
36 be located more than one hundred miles from the county
37 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.**

1 (a) The county court may acquire vote recording
2 devices by any one or any combination of the following
3 methods:

4 (1) By purchasing the same and paying the purchase
5 price therefor in cash from funds available from the
6 maximum general levy or from any other lawful source;
7 and

8 (2) By leasing the same under written contract of
9 lease and paying the rentals therefor in cash from funds
10 available from the maximum general levy or any other
11 lawful source.

12 (b) The county court may acquire the use of auto-
13 matic tabulating equipment by leasing or renting the
14 same under written contract of lease or rental and pay-
15 ing the rentals therefor in cash from funds available
16 from the maximum general levy or other lawful source.
17 The county court is authorized to accept as a gift the use
18 of suitable automatic tabulating equipment.

19 (c) The county court may also secure a counting
20 center.

**§3-4A-7. Bids and contracts for vote recording devices; false
swearing or failure to disclose facts.**

1 Contracts for the purchase or lease of vote recording
2 devices shall be based on competitive bids. The county
3 court shall solicit sealed bids by sending requests by
4 mail to all known manufacturers and suppliers of vote
5 recording devices which have been previously approved
6 by the state election commission as hereinafter provided.
7 The award of contracts of purchase or lease shall be
8 based on the quality, cost, specifications and suitability
9 of the particular vote recording device, technical services
10 to be provided by the manufacturer, and the cost and
11 availability of automatic tabulating equipment suitable
12 for use in connection with said vote recording devices
13 and the ballot cards used therewith.

14 No bid shall be accepted by the county court unless
15 accompanied by a contract which shall provide that in
16 the event the bid is accepted the party or parties making
17 the sale or lease shall:

18 (1) Guarantee in writing to keep the vote record-
19 ing devices in good working order for five years with-
20 out additional cost to the county court.

21 (2) Warrant to defend and indemnify the county
22 court against any claim for patent infringement, and
23 in case any vote recording device or devices shall be held
24 to be an infringement of a valid patent, to obtain a
25 license for the use of such patent on the vote record-
26 ing devices sold or leased to the county court or to
27 modify the devices so that the offending infringement
28 is removed without altering the efficiency or statutory
29 requirements of the devices; all at the sole cost and
30 expense of the supplier of the vote recording devices.

31 (3) Provide a bond with good corporate surety duly
32 qualified to do business in West Virginia, conditioned upon
33 the due performance of said guaranty and said warranty,
34 in a penal sum to be fixed by the county court.

35 No bid shall be accepted by the county court unless
36 the party or parties submitting the bid shall file with
37 the bid an affidavit:

38 (1) Disclosing the name and address of, and the
39 amount of any contribution paid or to be paid to, any
40 individual, partnership, corporation or association hired
41 regularly and specially for the purpose, or party for
42 the purpose, of attempting to influence directly or in-
43 directly the purchase or lease of the vote recording de-
44 vices represented by the bid.

45 (2) Declaring that no individual, partnership, corpo-
46 ration or association not disclosed in said affidavit shall
47 thereafter be regularly or specially hired and no contri-
48 bution shall thereafter be paid for the purpose or partly
49 for the purpose of attempting to influence directly or
50 indirectly the purchase or lease of the vote recording
51 devices represented by the bid.

52 For the purpose of this affidavit, the word "contribu-
53 tion" shall mean payment, distribution, loan, advance,
54 deposit, gift of money, property, benefit or other consid-
55 eration, or any agreement providing for a payment,
56 distribution, loan, advance, deposit, or gift by money,
57 property, benefit, or other consideration at any future
58 time.

59 Any person who shall knowingly or wilfully make
60 any false or fraudulent statement, or who shall know-

61 ingly or wilfully fail to disclose any material fact in
62 the affidavit required by this section shall be guilty
63 of a felony, and, upon conviction thereof, shall be pun-
64 ished by a fine of not less than one thousand dollars
65 nor more than five thousand dollars or imprisonment
66 in the state penitentiary for not less than one year
67 nor more than three years, or both, in the discretion of
68 the court.

69 In construing this section, the term "person" shall
70 include an individual, partnership, committee, associa-
71 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.**

1 Any person or corporation owning or being interested
2 in any electronic voting system may apply to the state
3 election commission to the end that such system may
4 be examined and a report be made on its accuracy,
5 efficiency, capacity, and safety. The state election com-
6 mission shall appoint two qualified experts who are not
7 members of the same political party to examine the
8 system and make full reports thereon to the commission
9 within thirty days from the date of the application.
10 They shall state in the report whether or not the system
11 so examined complies with the requirements of this
12 article and can be safely used by voters at elections
13 under the conditions prescribed in this article. If the
14 report be in the affirmative on said question, the system
15 may be approved by the commission and, if approved
16 by the commission, a system of its make and design may
17 be adopted for use at elections as herein provided. Any
18 form of electronic voting system not so approved shall
19 not be used at any election. Each of the two qualified
20 experts appointed by the commission shall be entitled
21 to two hundred dollars for his compensation and ex-
22 penses in making such examination and report, and such
23 compensation shall be paid by the person or corporation
24 applying for such examination, which sum shall be paid
25 in advance of making the examination and which sum

26 shall be the sole compensation to be received by any
27 such expert for his work hereunder.

§3-4A-9. Minimum requirements of electronic voting systems.

1 An electronic voting system of particular make and
2 design shall not be approved by the state election com-
3 mission or be purchased, leased, or used, by any county
4 court unless it shall fulfill the following require-
5 ments:

6 (1) It shall secure or insure the voter absolute
7 secrecy in the act of voting, or, at the voter's election,
8 shall provide for open voting;

9 (2) It shall be so constructed that no person except
10 in instances of open voting, as herein provided for,
11 can see or know for whom any voter has voted or is
12 voting;

13 (3) It shall permit each voter to vote at any elec-
14 tion for all persons and offices for whom and which
15 he is lawfully entitled to vote, whether or not the name
16 of any such person appears on a ballot label as a can-
17 didate; and it shall permit each voter to vote for as
18 many persons for an office as he is lawfully entitled
19 to vote for; and to vote for or against any question upon
20 which he is lawfully entitled to vote and the automatic
21 tabulating equipment used in such electronic voting
22 systems shall reject choices recorded on any ballot card
23 or paper ballot if the number of such choices exceeds
24 the number to which a voter is entitled;

25 (4) It shall permit each voter to deposit, write in,
26 or affix upon devices to be provided for that purpose,
27 ballots containing the names of persons for whom he
28 desires to vote whose names do not appear upon the
29 ballot labels;

30 (5) It shall permit each voter to change his vote
31 for any candidate and upon any question appearing upon
32 the ballot labels up to the time when his ballot or ballot
33 card is deposited in the ballot box;

34 (6) It shall correctly record and accurately count
35 all votes cast for each candidate and for and against

36 each question appearing upon the ballots or ballot
37 labels;

38 (7) It shall permit each voter at any election other
39 than primary elections, by one mark or punch to vote
40 a straight party ticket, and by one mark or punch to
41 vote for all candidates of one party for presidential
42 electors; and to vote a mixed ticket selected from the
43 candidates of any and all parties and from independent
44 candidates;

45 (8) It shall permit each voter in primary elections
46 to vote only for the candidates of the party with which
47 he has declared his affiliation, and preclude him from
48 voting for any candidate seeking nomination by any
49 other political party, permit him to vote for the candi-
50 dates, if any, for nonpartisan nomination or election,
51 and permit him to vote on public questions;

52 (9) It shall be provided with means for sealing the
53 vote recording device to prevent its use and to prevent
54 tampering with ballot labels, both before the polls are
55 open or before the operation of the vote recording device
56 for an election is begun and immediately after the polls
57 are closed or after the operation of the vote recording
58 device for an election is completed;

59 (10) It shall have the capacity to contain the names
60 of candidates constituting the tickets of at least nine
61 political parties, and to accommodate the wording of
62 at least fifteen questions;

63 (11) It shall be durably constructed of material of
64 good quality and in a workmanlike manner and in a
65 form which shall make it safely transportable;

66 (12) It shall be so constructed with frames for the
67 placing of ballot labels and with suitable means for
68 the protection of such labels, that the labels on which
69 are printed the names of candidates and their respective
70 parties, titles of offices, and wording of questions shall
71 be so reasonably protected from mutilation, disfigure-
72 ment or disarrangement;

73 (13) It shall bear a number that will identify it or
74 distinguish it from any other machine;

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-
vices; duties.**

1 When an electronic voting system is acquired by any
2 county court, the vote recording devices shall be im-
3 mediately placed in the custody of the county clerk,
4 and shall remain in his custody at all times except when
5 in use at an election or when in custody of a court or
6 court officers during contest proceedings. The clerk shall
7 see that the vote recording devices are properly pro-
8 tected and preserved from damage or unnecessary deteri-
9 oration, and shall not permit any unauthorized person
10 to tamper with them. The clerk shall also be charged
11 with the duty of keeping the vote recording devices in
12 repair and of preparing the same for voting.

**§3-4A-11. Ballot labels, instructions and other supplies; va-
cancy changes; procedure and requirements.**

1 The ballot commissioners of any county in which an
2 electronic voting system is to be used in any election
3 shall cause to be printed for use in such election the
4 ballots or ballot labels, as appropriate, for the electronic
5 voting system. The ballot labels so printed shall total in
6 number one and one-half times the total number of vote
7 recording devices to be used in the several precincts
8 of the county in such election. All such labels shall be
9 delivered to the clerk of the county court at least fifty
10 days prior to the day of the election in which such labels
11 are to be used. The labels shall contain the name of
12 each candidate and each question to be voted upon and
13 shall be clearly printed or typed in black ink on clear
14 white material of such size as will fit the vote recording
15 devices. Arrows may be printed on the ballot labels to
16 indicate the place to punch the ballot card, which may
17 be to the right or left of the name or proposition.

18 The titles of offices may be arranged on the ballot
19 labels in vertical columns or in a series of separate
20 pages, and shall be printed above or at the side of the
21 names of candidates so as to indicate clearly the candi-
22 dates for each office and the number to be elected. In case
23 there are more candidates for an office than can be
24 printed in one column or on one ballot label page, the
25 ballot label shall be clearly marked that the list of
26 candidates is continued on the following column or page,
27 and so far as possible, the same number of names shall
28 be printed on each column or page. The names of can-
29 didates for each office shall be printed in vertical columns
30 or on separate pages, grouped by the offices which they
31 seek.

32 In elections in which voters are authorized to vote
33 for persons whose names do not appear on the ballot
34 card, a separate write-in ballot, which may be in the
35 form of a paper ballot or card, shall be provided if
36 required to permit voters to write in the title of the
37 office and the names of persons whose names are not
38 on the ballot, for whom he wishes to vote.

39 One set of ballot labels shall be inserted in the vote
40 recording device prior to the delivery of such device
41 to the polling place. The remainder of such ballot labels
42 for each device shall be retained by the clerk of the
43 county court for use in the event the set so inserted
44 in such device becomes lost, mutilated or damaged.

45 In addition to all other equipment and supplies re-
46 quired by the provisions of this article, the ballot com-
47 missioners shall cause to be printed a supply of
48 instruction cards, sample ballots, facsimile diagrams of
49 the vote recording device ballot and official printed
50 ballots or ballot cards adequate for the orderly conduct
51 of the election in each precinct in their county. In
52 addition they shall provide all other materials and
53 equipment necessary to the conduct of the election, in-
54 cluding voting booths, appropriate facilities for the
55 reception and safekeeping of ballot cards, the ballots
56 of absent voters and of challenged voters and of such
57 "independent" voters who shall, in primary elections,

58 cast their votes on nonpartisan candidates and public
59 questions submitted to the voters.

**§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.**

1 When the ballot labels are printed and delivered to
2 the clerk of the county court, he shall place them in the
3 vote recording devices in such manner as will most
4 nearly conform to the arrangement prescribed for paper
5 ballots, and as will clearly indicate the party designation
6 or emblem of each candidate. Each column row or page
7 containing the names of the office and candidates for
8 such office shall be so arranged as to clearly indicate
9 the office for which the candidate is running. The names
10 of the candidates for each office indicated shall be placed
11 on the ballot.

12 The clerk of the circuit court shall appoint a time at
13 which all candidates for the House of Delegates are to
14 appear in his office for the purpose of drawing by lot
15 to determine where their names will appear on the
16 ballots or ballot labels. The clerk shall give due notice
17 of such time to each such candidate by registered or
18 certified mail, return receipt requested. At the time
19 appointed, all such candidates for the House of Dele-
20 gates shall assemble in the office of such clerk and
21 such candidates shall then proceed to draw by lot to
22 determine where their names shall appear on the ballots
23 or ballot labels. The number so drawn by each such
24 candidate shall determine where his or her name shall
25 appear on the ballots or ballot labels. In the event
26 any candidate or candidates fail to appear at the time
27 appointed, the clerk shall draw for such absent candi-
28 date or candidates in the presence of those candidates
29 assembled, if any, and the number so drawn by the clerk
30 shall determine where the name of any absent candi-
31 date or candidates shall appear on the ballots or ballot
32 labels. The clerk shall then seal the vote recording
33 devices so as to prevent tampering with ballot labels.
34 The clerk shall then enter in an appropriate book,

35 opposite the number of each precinct, the identifying
36 or distinguishing number of the specific vote recording
37 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
2 the preparation of the vote recording devices, as provided in the next preceding section, and not later than
3 seven days before the day of the election, he shall
4 notify the members of the county court and the ballot
5 commissioners that the devices are ready for use. Thereupon the members of the county court and the ballot
6 commissioners shall convene at the office of the clerk
7 or at such other place wherein the vote recording devices
8 are stored, not later than five days before the day of the
9 election, and shall examine the devices to determine
10 whether the requirements of this article have been met.
11 Any candidate, and one representative of each political
12 party having candidates to be voted on at the election,
13 may be present during such examination. If the devices
14 are found to be in proper order, the members of the
15 county court and the ballot commissioners shall endorse
16 their approval in the book in which the clerk entered
17 the numbers of the devices opposite the numbers of the
18 precincts. Not later than three days before the election
19 the election commissioner of each precinct who shall
20 have been previously designated by the ballot commissioners, shall attend at the office of the clerks of the
21 circuit and county courts of such county to receive the
22 necessary election records, books and supplies required
23 by law. Such election commissioners shall receive the
24 per diem mileage rate prescribed by law for this service.
25 Such election commissioners shall give the ballot commissioners 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
2 board, consisting of three election commissioners and

3 two poll clerks, to conduct each election in each precinct
4 of each county in which an electronic voting system has
5 been adopted and is to be used.

6 The county court shall call the necessary meeting or
7 meetings for the instruction of all election officials in
8 the use of the electronic voting system. Such meeting
9 or meetings shall be held and the proper instruction
10 given not less than seven days prior to any election in
11 which the electronic voting system is to be used. No
12 election officer, upon being so notified to appear for in-
13 struction, shall fail without just cause to do so. If any
14 officer does so fail to appear, the county court may
15 appoint some other qualified person, and such person,
16 after instruction, shall act in the place of the defaulting
17 officer. If such defaulting officer were appointed by the
18 county court upon the written recommendation of a
19 county executive committee as provided in article one
20 of this chapter, the county court shall give written
21 notice of such default to such county executive committee
22 and appoint a person to take the place of such defaulting
23 person upon the recommendation of such county execu-
24 tive committee. The election officers shall receive the
25 per diem mileage rate prescribed by law for attending
26 such instruction meetings.

27 Where not inconsistent with the provisions of this
28 section, provisions of article one of this chapter, relating
29 to the appointment of election officers, shall be applicable
30 herein.

**§3-4A-15. Instructions and help to voters; vote recording de-
vice models; facsimile diagrams; sample ballots;
legal ballot advertisements.**

1 For the instruction of the voters on any election day
2 there shall be provided for each polling place one in-
3 struction model for each vote recording device. Each
4 such instruction model shall be constructed so as to
5 provide a replica of a vote recording device, and shall
6 contain the arrangement of the ballot labels, party col-
7 umns or rows, office columns or rows, and questions.
8 Fictitious names shall be inserted in the ballot labels
9 of the models. Such models shall be located on the

10 election officers' tables or in some other place in which
11 the voter must pass to reach the vote recording device.
12 Each voter, upon request, before voting, shall be offered
13 instruction by the election officers in the operation of
14 the vote recording device by use of the instruction
15 model, and each voter shall be given ample opportunity
16 to operate the model himself.

17 The ballot commissioners shall also provide facsimile
18 ballots or ballot labels, at least two of which, or com-
19 plete sets of which, shall be posted on the walls of each
20 polling place. The facsimile diagrams shall be exact
21 diagrams of the ballot labels or paper ballots to the
22 end that the voter may become familiar with the loca-
23 tion of the parties, offices, candidates and questions as
24 they appear on the vote recording device to be used
25 in his precinct.

26 The ballot commissioners may, with the consent of
27 the county court, or the county court may, prepare and
28 mail to each qualified voter at his address as shown on
29 the registration books a facsimile sample of the ballot or
30 ballot labels for his precinct.

31 In counties where an electronic voting system has
32 been adopted, the legal ballot advertisements required
33 by articles five and six of this chapter, shall consist of
34 a facsimile of the ballot or ballot labels with the names
35 of the candidates and the offices for which they are run-
36 ning shown in their proper positions.

**§3-4A-16. Delivery of vote recording devices; time, arrange-
ment for voting.**

1 The clerk of the county court shall deliver or cause
2 to be delivered each vote recording device to the poll-
3 ing place where it is to be employed. Such delivery
4 shall be made not less than one hour prior to the open-
5 ing of the polls. At the time of the delivery of the vote
6 recording device, it shall be sealed in such a way to
7 prevent its use and tampering with the ballot labels.
8 The election commissioners shall then cause the vote
9 recording device to be arranged in the voting booth in

10 such manner that the front of the vote recording de-
11 vice, on which the ballot labels appear, will not be
12 visible, when the vote recording device is being oper-
13 ated, to any person other than the voter if the voter shall
14 elect to close the curtain, screen or hood to the voting
15 booth.

**§3-4A-17. Check of vote recording devices before use; cor-
rections; reserve vote recording devices.**

1 Before permitting the first voter to vote, the elec-
2 tion officers shall examine the vote recording devices
3 to ascertain whether the ballots or ballot labels are
4 arranged as specified on the facsimile diagram furnished
5 to the precinct. If the ballots or ballot labels are
6 arranged incorrectly, the officers shall immediately
7 notify the clerk of the county court of the foregoing
8 facts and obtain from such clerk a reserve vote recording
9 device, and thereafter proceed to conduct the election.
10 Any reserve vote recording device so used shall be pre-
11 pared for use by the clerk or his duly appointed deputy
12 and said reserve vote recording device shall be delivered
13 and examined in the same manner as hereinbefore pro-
14 vided. The vote recording device found to have been
15 with incorrect ballot labels shall be returned immedi-
16 ately to the custody of the clerk who shall then promptly
17 cause such vote recording device to be repaired in order
18 that it may be used as a reserve vote recording device
19 if needed.

**§3-4A-18. Disrepair of vote recording devices in use; reserve
vote recording devices.**

1 If, during the conduct of an election, a vote record-
2 ing device becomes in a state of disrepair so that it
3 cannot be operated in a manner that will comply with
4 the provisions of this article, the election officers shall
5 seal it in such manner as to prevent further voting
6 thereon. Then the election officers shall secure from the
7 county clerk a reserve vote recording device, which shall
8 be prepared for use, delivered and examined in the same
9 manner as hereinbefore provided, and shall thereafter
10 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 dili-
2 gently maintain a watch in order to see that no per-
3 son votes more than once and to prevent any voter
4 from occupying the voting booth for more than three
5 minutes.

6 (2) In primary elections, before a voter is permitted
7 to occupy the voting booth, the election officer repre-
8 senting the party to which the voter belongs shall di-
9 rect the voter to the vote recording device which will
10 allow the voter to vote only for the candidates who are
11 seeking nomination on the ticket of the party with which
12 the voter is affiliated.

13 (3) The election officers shall issue to each voter
14 when he signs the poll book a card or ticket numbered
15 to correspond to the number on the poll book of such
16 voter, and in the case of a primary election, indicating
17 the party affiliation of such voter, which numbered card
18 or ticket shall be presented to the election officer in
19 charge of the vote recording device.

20 (4) One hour before the opening of the polls the
21 precinct election officers shall arrive at the polling place
22 and set up the voting booths so that they will be in clear
23 view of the election officers, open the vote recording
24 devices, place them in the voting booths, and examine
25 them to see that they have the correct ballots or bal-
26 lot labels by comparing them with the sample ballots, and
27 are in proper working order. They shall open and check
28 the ballots, ballot cards, supplies, records and forms, and
29 post the sample ballots or ballot labels and instructions
30 to voters.

31 (5) Each voter shall be instructed how to operate the
32 vote recording device before he enters the voting booth.

33 (6) Any voter who shall spoil, deface or mutilate the
34 ballot or ballot card delivered to him, on returning
35 the same to the poll clerks, shall receive another in
36 place thereof. Every person who does not vote any
37 ballot or ballot card delivered to him shall, before leav-
38 ing the election room return such ballot or ballot card

39 to the poll clerks. When a spoiled or defaced ballot
40 or ballot card is returned, the poll clerks shall make
41 a minute of the fact on the poll books, at the time, and
42 the word "spoiled" shall be written across the face of
43 the ballot or ballot card and it shall be placed in an
44 envelope for spoiled ballots or ballot cards.

45 Immediately on closing the polls, the election commis-
46 sioners shall ascertain the number of spoiled ballots or
47 ballot cards during the election and the number of bal-
48 lots or ballot cards remaining not voted. The election
49 commissioners shall also ascertain from the poll books
50 the number of persons who voted and shall report,
51 over their signatures, to the clerk of the county
52 court, the number of ballots or ballot cards cast,
53 the number of ballots or ballot cards spoiled dur-
54 ing the election and the number of ballots or ballot
55 cards unused. All unused ballots or ballot cards shall
56 at the same time be returned to the clerk of the county
57 court, who shall immediately destroy them by fire or
58 otherwise.

59 Each commissioner who is a member of an election
60 board which fails to account for every ballot or ballot
61 card delivered to it shall be guilty of a misdemeanor,
62 and, upon conviction thereof, shall be fined not more
63 than one thousand dollars or confined in the county
64 jail for not more than one year, or both.

65 The board of ballot commissioners of each county,
66 or the chairman thereof, shall preserve the ballots
67 or ballot cards that are left over in their hands,
68 after supplying the precincts as provided, until
69 the close of the polls on the day of election, and
70 such ballots or ballot cards, shall then be destroyed
71 by such board, or the chairman thereof, by fire or
72 otherwise.

73 (7) Where ballot cards are used, the voter, after he
74 has marked his ballot card, shall, before leaving the
75 voting booth, place the ballot card inside the envelope
76 provided for this purpose, with the stub extending out-
77 side said envelope, and return it to an election officer
78 who shall remove the stub and deposit the envelope

79 with the ballot card inside in the ballot box. No ballot
80 from which the stub has been detached shall be accepted
81 by the officer in charge of the ballot box, but it shall
82 be marked "spoiled" and placed with the spoiled ballots.

83 (8) The precinct election officers shall prepare a re-
84 port in quadruplicate of the number of voters who have
85 voted, as indicated by the poll books, and shall place
86 two copies of this report in the ballot box, which there-
87 upon shall be sealed with a paper seal signed by the
88 election officers so that no additional ballots may be de-
89 posited or removed from the ballot box. Two election
90 officers of different political parties shall forthwith de-
91 liver the ballot box to the counting center or other
92 designated place and receive a signed numbered receipt
93 therefor, and the time of their departure from the poll-
94 ing place shall be noted on the two remaining copies
95 of the report, which shall be immediately mailed to the
96 clerk of the county court.

97 (9) The poll books, register of voters, unused ballots
98 or ballot cards, spoiled ballots or ballot cards and other
99 records and supplies shall be delivered to the clerk of
100 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-
4 tered as "independent" are entitled to vote, as provided
5 in section eighteen of article two of this chapter, the
6 election officers shall provide a vote recording device
7 so that such "independent" voters may vote only those
8 portions of the ballot or ballot card relating to the
9 nonpartisan candidates and the public questions sub-
10 mitted.

11 If vote recording devices are not available for the
12 "independent" voters, provision shall be made for sealing
13 the partisan section or sections of the ballot or ballot
14 labels on a vote recording device using temporary seals
15 thus permitting the independent voter to vote for the
16 nonpartisan section or sections of the ballot or ballot

17 labels. After the "independent" voter has voted, the
18 temporary seals may be removed and the device may
19 then be used by partisan voters.

20 In lieu of using a vote recording device, such "inde-
21 pendent" voter may request official printed ballots re-
22 lating to such nonpartisan candidates and public ques-
23 tions. Such ballots, when signed on the back by the poll
24 clerks as in other elections, shall be voted and folded
25 by the "independent" voter and shall be delivered to
26 one of the election commissioners who shall secure same
27 in a sealed or locked container until canvassed and
28 counted in the same manner as provided for handling
29 and recording absent voter ballots as provided in section
30 twenty-one of this article.

§3-4A-21. Recording and disposition of absent voters' ballots.

1 When absent voters' ballots have been voted and de-
2 livered to the election board of any precinct, the election
3 commissioners shall as time permits proceed to determine
4 the legality of such ballots as prescribed in article six
5 of this chapter. Without unfolding the absent voters'
6 ballots determined to be legal, the election commissioners
7 shall shuffle and intermingle the same so as to preserve
8 the secrecy of the ballots to the fullest extent prac-
9 ticable, and prior to the close of the polls and before
10 sealing the vote recording device, shall record such
11 ballots on the vote recording device. Such recording of
12 absent voters' ballots shall be done by one of the election
13 commissioners and the act of casting such votes shall
14 be performed in the presence, and under the careful
15 observation and full view, of all members of the precinct
16 election board, and the ballot or ballot card shall not
17 be deposited in the ballot box until each member of
18 such board is satisfied that the votes have been recorded
19 in such a manner as fully carries out the intent of the
20 voter as shown by the cross marks on the paper ballot.

21 After completion of the count, absentee ballots shall
22 be enclosed in a sealed package, properly endorsed, and
23 returned and filed with the statement of returns.

§3-4A-22. Assistance to illiterate and disabled voters.

1 Any duly registered voter, who shall have indicated
2 on his registration record that he is unable, because of
3 illiteracy or physical disability, to write or whose physical
4 disability, in the opinion of the election officers prevents
5 him from operation of the vote recording device, may
6 ask for assistance from two election officers of opposite
7 political party affiliation to whom he shall thereupon
8 declare his choice of candidates and his position on public
9 questions appearing on the ballot or ballot labels. Such
10 election officers, in the presence of the voter and in the
11 presence of each other, shall thereupon cause such voter's
12 declared choices to be recorded on the vote recording
13 device as votes.

§3-4A-23. Persons prohibited about voting booths; penalties.

1 Excepting the election officials acting under authority
2 of sections nineteen, twenty, twenty-one and twenty-two
3 of this article in the conduct of the election, no person
4 other than the voter alone may be in, about or within
5 five feet of the voting booth during the time such voter
6 is in the process of voting at any election, and, during
7 such time, no person may communicate in any manner
8 with the voter and the voter may not communicate
9 with any other person or persons. Any conduct or action
10 of an election official about or around the voting booth
11 while the voter is in the process of voting, in excess of
12 the authority vested in such official by provisions of this
13 article, shall constitute a violation of the provisions
14 hereof. Any person violating any provision or provisions
15 of this section shall be guilty of a misdemeanor, and,
16 upon conviction thereof, shall be fined not exceeding one
17 thousand dollars or be sentenced to imprisonment in the
18 county jail for a period not exceeding twelve months,
19 or, in the discretion of the court, shall be subject to
20 both such fine and imprisonment.

§3-4A-24. Voting by challenged voter.

1 If the right of any person to vote be challenged in
2 accordance with provisions of article one of this chapter
3 relating to the challenging of voters, such person shall

4 not be permitted to cast his vote by use of the vote re-
5 cording device but he shall be supplied by the election
6 officer at the polling place with an official printed ballot
7 of such election. Such ballot shall not be endorsed on
8 the back by the poll clerks but, when voted by the chal-
9 lenged voter, shall have affixed thereto by the poll clerks
10 their statement of information as to the challenge on
11 the form prescribed therefor. Such challenged ballots
12 shall be secured, handled and disposed of as challenged
13 ballots in other elections, as provided in article one of
14 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-
10 visions of article three, chapter fifty-nine of the code
11 and the publication area for such publication shall be
12 the county involved.

13 The test shall be open to be witnessed by representa-
14 tives of the political parties, candidates, the press and
15 the public. It shall be conducted by processing a pre-
16 audited group of ballots or ballot cards as appropriate,
17 so punched or marked as to record a predetermined
18 number of valid votes for each candidate and on each
19 measure, and shall include for each office one or more
20 ballots which have votes in excess of the number
21 allowed by law in order to test the ability of the auto-

22 matic tabulating equipment to reject such votes. If
23 any error is detected, the cause therefor shall be ascer-
24 tained and corrected and an errorless count shall be
25 made and certified to by the board before the count is
26 started. The tabulating equipment shall pass the same
27 test at the conclusion of the count before the election
28 returns are approved as official. On completion of the
29 count the programs, test materials, and ballots shall be
30 sealed and retained as provided in this chapter for paper
31 ballots.

§3-4A-27. Proceedings at the counting center.

1 (1) All proceedings at the counting center shall be
2 under the direction of the clerk of the county court and
3 shall be conducted under circumstances which allow
4 observation by representatives of each political party and
5 the public, but no persons except those authorized for
6 the purpose shall touch any ballot or ballot card or
7 return. All persons who are engaged in processing and
8 counting of the ballots shall be deputized in writing and
9 take an oath that they will faithfully perform their
10 assigned duties. If any ballot is damaged or defective
11 so that it cannot properly be counted by the automatic
12 tabulating equipment, a true duplicate copy shall be
13 made of the damaged ballot in the presence of witnesses
14 and substituted for the damaged ballot. All duplicate
15 ballots shall be clearly labeled "duplicate," and shall
16 bear a serial number which shall be recorded on the
17 damaged or defective ballot.

18 (2) The returns printed by the automatic tabulating
19 equipment, to which have been added write-in and other
20 valid votes, shall, when certified by the board of can-
21 vassers, constitute the official return of each precinct
22 or election district. Upon completion of the count, the
23 official returns shall be open to the public.

24 (3) If for any reason it becomes impracticable to
25 count all or a part of the ballots with tabulating equip-
26 ment, the board of canvassers may direct that they be
27 counted manually, following as far as practicable the
28 provisions governing the counting of paper ballots.

29 (4) As soon as possible after the completion of the
30 count, the clerk of the county court shall have the vote
31 recording device properly boxed or securely covered
32 and removed from the polling place to a proper and secure
33 place of storage.

§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
2 ballot cards shall remain sealed during the canvass of
3 the returns of the election and for a period of seven
4 days after the canvass is finally concluded, during which
5 time any candidate or the chairman of any county executive
6 committee of any political party or their appointed
7 representatives, shall be permitted to examine the vote
8 recording devices and the ballots and ballot cards under
9 the supervision of the county court.

10 (2) In canvassing the returns of the election, the
11 board of canvassers shall examine all of the vote recording
12 devices, the ballots and ballot cards and the
13 automatic tabulating equipment used in such election
14 and shall determine the number of votes cast for each
15 candidate and for and against each question and by such
16 examination shall procure the correct returns and ascertain
17 the true results of the election. Any candidate
18 or his party representative may be present at such
19 examination.

20 (3) If any candidate shall demand a recount of the
21 votes cast at an election, the ballots and ballot cards
22 shall not be reexamined during such recount for the
23 purpose of reascertaining the total number of votes cast
24 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
2 an election it appears to the board of canvassers or if
3 it is so alleged in a petition for a recount, that a vote
4 recording device or piece of automatic tabulating equip-

5 ment used in the election has by reason of mechanical
6 failure or improper or fraudulent preparation or tam-
7 pering, incorrectly recorded or tabulated the actual votes
8 cast or counted on such device or equipment, the board
9 of canvassers shall proceed to determine whether an
10 error has occurred in the vote recorded or counted on
11 such device or equipment. If an error is found, the board
12 of canvassers shall have the cause of the error corrected
13 and the ballots affected recounted so that the election
14 returns will accurately reflect the votes cast at such
15 election if it is possible to accurately correct such error.
16 If the board of canvassers is unable to accurately cor-
17 rect such errors made by said device or equipment and
18 therefore cannot correct the returns to accurately re-
19 flect the actual votes cast at such election, the total
20 votes recorded or tabulated on such device or equipment,
21 despite the fact that such vote may be erroneous, shall
22 be accepted in the canvass and in the recount as the
23 votes cast.

24 (2) If it is necessary for the board of canvassers to
25 test any vote recording device or automatic tabulating
26 equipment counting device for its mechanical accuracy
27 in recording or tabulating the votes cast at such elec-
28 tion, such test shall be conducted by the clerk of the
29 county court in the presence of the board of canvassers
30 and of any candidate or his party representative. After
31 the completion of such test the clerk will then and there
32 prepare and file a statement in writing giving in de-
33 tail the result of the examination and test.

§3-4A-30. Adjustments in voting precincts where electronic voting system used.

1 The provisions of section five of article one of this
2 chapter, relating to the number of registered voters in
3 each precinct, shall not apply to and control in precincts
4 in counties in which electronic voting systems have been
5 adopted and the county courts of such counties, sub-
6 ject to other provisions of this chapter with respect to
7 the altering or changing of the boundaries of voting
8 precincts, may change the boundaries of precincts or
9 consolidate precincts, as practicable, to achieve the maxi-

10 mum advantage from the use of electronic voting sys-
11 tems.

12 The county court may in the urban centers of any
13 county adopting an electronic voting system, designate
14 a voting place without the limits of a precinct, provided
15 such voting place is in a public building, and in an ad-
16 joining precinct. In such event more than one precinct
17 may vote in any such public building.

**§3-4A-31. Use of electronic voting systems in municipal elec-
tions.**

1 The county court of any county which has adopted
2 the use of an electronic voting system is hereby autho-
3 rized to make such system available to any municipality
4 in, or partly in, such county for use in elections con-
5 ducted by such municipality, and the use of the elec-
6 tronic voting system by such municipality shall be upon
7 such terms and conditions as may be agreed upon be-
8 tween the county court and the municipality.

§3-4A-32. Applicability of general laws relating to elections.

1 Except as modified by this article, the general laws
2 applying to regular, special and primary elections shall
3 apply to elections conducted with the use of electronic
4 voting systems.

5 If it shall be impracticable for the county court of
6 any county, after the adoption of an electronic voting
7 system by such county, to supply the necessary vote
8 recording devices to each precinct of such county for
9 use in any election, the holding of any election in such
10 precincts, which have not been supplied with vote re-
11 cording devices shall be governed by the general laws
12 with respect to conducting a regular, special and pri-
13 mary election by the use of printed ballots or the laws
14 with respect to conducting such election by the use of
15 voting machines if such machines are used.

**§3-4A-33. Tampering with vote recording devices or automatic
tabulating equipment; other dishonest practices;
attempts; penalty.**

1 Any person not an election officer or other public
2 official who shall tamper or attempt to tamper with any

3 vote recording device or automatic tabulating equip-
4 ment, or in any way intentionally impair or attempt to
5 impair, their use, and any person who shall be guilty
6 of or shall attempt any dishonest practice upon any
7 such device or equipment, or with or by its use, shall
8 be deemed guilty of a felony, and, upon conviction
9 thereof, shall be confined in the penitentiary for not less
10 than one year nor more than ten years.

11 Any clerk of a county court, county commissioner,
12 ballot commissioner, election commissioner, or poll clerk,
13 or any custodian, technician, or other public official
14 authorized to take part in the holding of an election
15 or in preparing for an election, who, with intent to
16 cause or permit any vote recording device or automatic
17 tabulating equipment to fail to record or tabulate cor-
18 rectly all votes cast thereon or tabulated therewith, tam-
19 pers with or disarranges such device in any way, or
20 any part or appliance thereof, or who causes or consents
21 to the use of such device or equipment for vote record-
22 ing or tabulating at any election with knowledge of the
23 fact that the same is not in order, or not perfectly
24 set and adjusted so that it will correctly record or tabu-
25 late all votes cast, or who, with the purpose of defraud-
26 ing or deceiving any voter or of causing it to be doubt-
27 ful for what ticket or candidate or candidates or propo-
28 sition any vote is cast, or of causing it to appear on
29 said device or devices that the votes cast for one ticket,
30 candidate or proposition, were cast for another ticket,
31 candidate or proposition, removes, changes or mutilates
32 any ballot or ballot label on said device or any part
33 thereof, or does any other thing intended to interfere
34 with the validity or accuracy of the election, shall be
35 deemed guilty of a felony, and, upon conviction there-
36 of, shall be confined in the penitentiary not less than one
37 year nor more than ten years.

§3-4A-34. Wilful neglect of duty by officials; penalties.

1 Any public officer or election officer upon whom any
2 duty is imposed by this article who shall wilfully omit
3 or neglect to perform such duty, or who shall do any
4 act prohibited in this article for which punishment is

5 not otherwise provided herein, shall be guilty of a mis-
6 demeanor, and, upon conviction thereof, shall be punished
7 by a fine of not less than five hundred dollars nor more
8 than one thousand dollars, or imprisonment in the county
9 jail for not less than sixty days nor more than one year,
10 or both, in the discretion of the court.

CHAPTER 56

(House Bill No. 769—By Mr. Speaker, Mr. Boiarsky,
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 Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section fourteen-a, to read as follows:

ARTICLE 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.

1 Wherever a person, by conveyance inter vivos or by
2 will, purports to create any present or future interest
3 in real or personal property in a class of persons described
4 as his own heirs, next of kin, distributees, or by other

5 words of like import, such heirs, next of kin or other
6 described persons shall take, by purchase and not by
7 descent or distribution, the interest so purported to be
8 created; it being the intent and purpose of this section
9 to completely abolish the rule of law known as the doc-
10 trine of worthier title and the rule of law that a grantor
11 cannot create a limitation in favor of his own heirs or
12 next of kin. This section shall only apply to instruments
13 which become effective after the effective date of this
14 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, com-
2 mittee, trustee, or other fiduciary whose duty it may be
3 to loan or invest money entrusted to him as such, may,
4 without any order of any court, invest the same or any
5 part thereof in any of the following securities, and with-

6 out liability for any loss resulting from investments
7 therein: *Provided*, That such fiduciary shall exercise the
8 judgment and care under the circumstances then pre-
9 vailing which men of prudence, discretion and intelli-
10 gence exercise in the management of their own affairs,
11 not in regard to speculation, but in regard to the perma-
12 nent disposition of their funds, considering the probable
13 income as well as the probable safety of their capital:

14 (a) In bonds or interest-bearing notes or obligations of
15 the United States, or those for which the faith of the
16 United States is distinctly pledged to provide for the pay-
17 ment of the principal and interest thereof, including, but
18 not by way of limitation, bonds or debentures issued
19 under the "Federal Farm Loan Act," debentures issued
20 by "Banks for Cooperatives" under the "Farm Credit Act
21 of One Thousand Nine Hundred Thirty-three," as amend-
22 ed, and debentures issued by the federal national mort-
23 gage association; and in bonds, interest-bearing notes and
24 obligations issued, guaranteed or assumed by the Inter-
25 national Bank for Reconstruction and Development or by
26 the Inter-American Development Bank;

27 (b) In bonds or interest-bearing notes or obligations
28 of this state;

29 (c) In bonds of any state of the United States which
30 has not within ten years previous to the making of such
31 investment defaulted in the payment of any part of either
32 principal or interest on any of its bonds issued by au-
33 thority of the legislature of such state;

34 (d) In the bonds or interest-bearing notes or obliga-
35 tions of any county, district, school district or independent
36 school district, municipality, or any other political divi-
37 sion of this state that have been issued pursuant to the
38 authority of any law of this state, since the ninth day of
39 May of the year one thousand nine hundred seventeen;

40 (e) In bonds and negotiable notes secured by first
41 mortgage or first trust deed upon improved real estate
42 where the amount secured by such mortgage or trust
43 deed shall not at the time of making the same exceed
44 eighty percent of the assessed value, or sixty-six and two-
45 thirds percent of the appraised value as determined by

46 wholly disinterested and independent appraisers, which-
47 ever value shall be the higher, of the real estate covered
48 by such mortgage or trust deed, and when such mortgage
49 or trust deed is accompanied by a satisfactory abstract of
50 title, certificate of title, or title insurance policy, showing
51 good title in the mortgagor when making such mortgage
52 or trust deed, and by a fire insurance policy in an old line
53 company with loss, if any, payable to the mortgagee or
54 trustee as his interest may appear: *Provided*, That the
55 rate of interest upon the above enumerated securities in
56 this subdivision (e), in which such investments may be
57 made, shall not be less than two percent, nor more than
58 eight percent, per annum;

59 (f) In savings accounts and time deposits of bank or
60 trust companies to the extent that such deposits are in-
61 sured by the federal deposit insurance corporation, or by
62 any other similar federal instrumentality that may be
63 hereafter created, provided there shall be such an instru-
64 mentality in existence and available for the purpose, or
65 by bonds of solvent surety companies: *Provided*, That the
66 rate of interest upon such savings accounts or time de-
67 posits shall not be less than the rate paid other depositors
68 in such bank or trust company;

69 (g) In shares of state building and loan associations,
70 or federal savings and loan associations, to the extent that
71 such shares are insured by the federal savings and loan
72 insurance corporation, or by any other similar federal
73 instrumentality that may be hereafter created, provided
74 that there shall be such an instrumentality in existence
75 and available for the purpose, or by bonds of solvent
76 surety companies: *Provided*, That the dividend rate upon
77 such shares shall not be less than the rate paid to other
78 shareholders in such associations;

79 (h) In other securities of corporations organized and
80 existing under the laws of the United States or of the
81 District of Columbia or any state of the United States
82 including, but not by way of limitation, bonds, deben-
83 tures, notes, equipment trust obligations or other evi-
84 dences of indebtedness, and shares of common and pre-
85 ferred stocks of such corporations and securities of any

86 open end or closed end management type investment
87 company or investment trust registered under the "Fed-
88 eral Investment Company Act" of one thousand nine
89 hundred forty, as from time to time amended, which men
90 of prudence, discretion and intelligence acquire or retain
91 for their own account, provided, and upon conditions,
92 however, that:

93 (1) No investment shall be made pursuant to the pro-
94 visions of this subdivision (h) which, at the time such
95 investment shall be made, will cause the aggregate market
96 value thereof to exceed fifty percent of the aggregate
97 market value at that time of all of the property of the
98 fund held by such fiduciary. Notwithstanding the afore-
99 said percentage limitation the cash proceeds of the sale
100 of securities received or purchased by a fiduciary and
101 made eligible by this subdivision (h) may be reinvested
102 in any securities of the type described in this subdivi-
103 sion (h).

104 (2) No bonds, debentures, notes, equipment trust
105 obligations or other evidence of indebtedness of such cor-
106 porations shall be purchased under authority of this sub-
107 division (h) unless such obligations, if other than issues
108 of a common carrier subject to the provisions of section
109 twenty-a of the "Interstate Commerce Act," as amended,
110 shall be obligations issued, guaranteed or assumed by
111 corporations which have any securities currently regis-
112 tered with the securities and exchange commission.

113 (3) No common or preferred stocks, other than bank
114 and insurance company stocks, shall be purchased under
115 authority of this subdivision (h) unless currently fully
116 listed and registered upon an exchange registered with
117 the securities and exchange commission as a national
118 securities exchange. No sale or other liquidation of any
119 investment shall be required solely because of any change
120 in the relative market value of those investments made
121 eligible by this subdivision (h) and those made eligible
122 by the preceding subdivisions of this section. In deter-
123 mining the aggregate market value of the property of a
124 fund and the percentage of a fund to be invested under
125 the provisions of this subdivision, a fiduciary may rely

126 upon published market quotations as to those investments
127 for which such quotations are available, and upon such
128 valuations of other investments as in the fiduciary's best
129 judgment seem fair and reasonable according to available
130 information.

131 Trust funds received by executors, administrators,
132 guardians, curators, committees, trustees and other fidu-
133 ciaries may be kept invested in the securities originally
134 received by them, unless otherwise ordered by a court
135 having jurisdiction of the matter, as hereinafter provided,
136 or unless the instrument under which the trust was
137 created shall direct that a change of investment be made,
138 and any such fiduciary shall not be liable for any loss
139 that may occur by depreciation of such securities.

140 This section shall not apply where the instrument
141 creating the trust, or the last will and testament of any
142 testator, or any court having jurisdiction of the matter,
143 specially directs in what securities the trust funds shall
144 be invested, and every such court is hereby given power
145 specially to direct by order or orders, from time to time,
146 additional securities in which trust funds may be in-
147 vested, and any investment thereof made in accordance
148 with any such special direction shall be legal, and no
149 executor, administrator, guardian, curator, committee,
150 trustee or other fiduciary shall be held for any loss result-
151 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 imbecilic, 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

22 house of ill-fame, or an assignation house, she shall not
23 be committed to said home, except as hereinafter pro-
24 vided; and the superintendent of the home shall not
25 receive any girl into such home unless the commitment
26 is accompanied by a certificate of health, signed by a
27 reputable physician, showing that she is not of unsound
28 mind, and is not an imbecile or idiot, and is not pregnant,
29 nor afflicted with epilepsy, syphilis, gonorrhea, or any
30 other infectious disease, nor one, who, being over sixteen
31 years of age, is or has been an inmate of a house of
32 ill-fame or an assignation house. If, upon such exami-
33 nation, it shall appear that the girl is suffering with a
34 venereal disease in any stage, the judge committing such
35 girl shall make an order committing her to the industrial
36 home, and shall make an additional order directing that
37 she first be transferred to the Fairmont emergency hos-
38 pital, or the Huntington state hospital, or to the Welch
39 emergency hospital, for observation, treatment and de-
40 tention pending such treatment until cured of such
41 venereal disease or rendered completely noninfectious
42 therefrom, after which time she shall be transferred to
43 the industrial home at Salem, there to be kept as pro-
44 vided by law: *Provided, however,* That any such girl
45 who is feeble minded shall be sent to Huntington state
46 hospital, and not to Fairmont emergency hospital nor
47 to Welch emergency hospital: *And provided further,*
48 That any feeble-minded girl who may be so sent to
49 Huntington state hospital shall not afterwards be trans-
50 ferred to the West Virginia industrial home for girls.
51 It shall be the duty of the superintendents of the hospitals
52 at Fairmont, Huntington and Welch to receive into said
53 hospitals all girls who may be committed thereto, as
54 provided herein, and to detain, care for, and treat such
55 girls until cured or rendered completely noninfectious,
56 and as soon thereafter as convenient to transfer them
57 to the industrial home at Salem, except as hereinbefore
58 provided. The state commissioner of public institutions
59 shall provide such suitable buildings, wards and equip-
60 ment at said hospitals as may be necessary to carry out
61 the provisions of this section, including the expense of
62 transferring the girls to Salem.

63 It shall be the duty of the judge, upon committing a
64 girl who is infected with a venereal disease to any of
65 said hospitals, as provided herein, to notify the director
66 of the bureau of venereal diseases of West Virginia of
67 the fact, giving the name, age and address of the girl
68 and the disease from which she is suffering. It shall
69 be the duty of the superintendent of the hospital re-
70 ceiving such girl to notify the director when any girl
71 is received and when she is transferred to the industrial
72 home, as provided herein.

§28-3-5. Compensation of physician and matron in commitment proceeding.

1 In a proceeding for the commitment of a girl to the
2 industrial home for girls, or to Fairmont emergency
3 hospital, Huntington state hospital or Welch emergency
4 hospital, the compensation of the physician making the
5 examination, and of the woman or matron present at
6 such examination, shall be fixed by the court and taxed
7 and paid as the other costs of the case are taxed and paid:
8 *Provided*, That the compensation of the physician shall
9 not exceed three dollars, and the compensation of the
10 matron shall not exceed one dollar, for each examination.

§28-3-6. Custody and conveyance of girls committed to institutions; expenses.

1 Whenever a girl is committed to the industrial home,
2 to Fairmont emergency hospital, Huntington state hos-
3 pital or Welch emergency hospital, by any of the courts
4 hereinbefore named, it shall be the duty of the clerk of
5 the court before whom the trial was held to prepare the
6 commitment papers in the case and forward the same
7 by mail without delay to the superintendent of the in-
8 dustrial home, or to the superintendents in charge of the
9 Fairmont emergency hospital, Huntington state hospital
10 or Welch emergency hospital, as the case may appear to
11 demand. On receipt of such commitment papers, the
12 superintendent of the home, if the commitment is found
13 by her to conform to the provisions of this article, and
14 there is room in said home, shall promptly so advise the
15 authority making the commitment, who shall at once
16 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 purposes; application of county funds in state treasury.

1 The superintendent of the industrial home, the super-
2 intendants 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

11 shall charge to each county fifty dollars on account of
12 each girl from such county who was kept in such home
13 during the preceding year, and a proportionate amount
14 on account of each girl kept in the home for any part of
15 such year less than the whole. Any money in the treasury
16 of the state to the credit of any such county, from what-
17 ever source arising, and not appropriated to pay any
18 other debt of the county to the state, shall be applied,
19 so far as necessary, to the payment of the sums so
20 charged. If any sum in the treasury due the county shall
21 not be sufficient to pay the whole amount so charged
22 against it, such sum shall be applied as a credit on the
23 amount charged, and the balance shall remain a charge
24 against the county.

§28-3-18. Same—Determination of payments due; levy; compelling payment.

1 Within ten days after receiving such list the auditor
2 shall certify to the county court of such county a list of
3 the girls from the county in such home, or Fairmont
4 emergency hospital, Huntington state hospital or Welch
5 emergency hospital, stating the length of the term dur-
6 ing the year each girl was in such home, as shown by
7 the list certified by the superintendent, the amount due
8 from the county on her account, and the total amount
9 due on account of all. He shall credit on such statement
10 whatever amount has been applied as a payment thereon
11 from any funds of the county in the treasury. Such
12 statement shall be a receipt to the county for any amount
13 so credited, and shall be a bill for any amount still ap-
14 pearing to be due from the county. Unless the bill shall
15 have been paid by the application of funds of the county
16 in the state treasury, the county court shall, at its next
17 levy term, provide for the payment of the same, or such
18 part as may not have been paid, and cause the amount
19 to be paid into the state treasury. If the amount so due
20 from any county be not paid in a reasonable time after
21 such levy term, the auditor may in the name of the state,
22 apply to the circuit court of the county for a mandamus
23 to require the county court to provide for and pay the
24 same, or he may proceed in the name of the state by any
25 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
2 of Odd Fellows, the order Knights of Pythias or Fra-
3 ternal Order of Eagles, in this state, working under the
4 respective jurisdiction of the parent grand lodge of said
5 respective orders, for this state, shall disband, surrender
6 or forfeit its charter and cease to work, all its property,
7 real and personal, shall, immediately upon such dis-
8 banding, surrender or forfeiture, vest in the said respec-
9 tive parent grand lodge, having jurisdiction over said
10 subordinate lodge, to be held by that body for the char-
11 itable uses of the said respective parent grand lodge, in
12 this state, according to the rules, regulations and policy
13 of the grand lodge concerned, and said respective parent
14 grand lodge is authorized in its corporate name, to sue
15 for and recover such property, real and personal.

CHAPTER 60

(Senate Bill No. 25—By Mr. Hedrick)

[Passed February 21, 1969; in effect from passage. Approved by the Governor.]

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.

1 A local board of health, created and maintained pur-
2 suant to the provisions of article two or article two-a of
3 this chapter, is authorized to establish and operate within
4 its jurisdiction, one or more family planning and child
5 spacing clinics under the supervision of a licensed physi-
6 cian for the purpose of disseminating information, con-
7 ducting medical examinations and distributing family
8 planning and child spacing appliances, devices, drugs, ap-
9 proved methods and medication without charge to indi-
10 gent and medically indigent persons on request and with
11 the approval of said licensed physician. Such informa-
12 tion, appliances, devices, drugs, approved methods and
13 medication shall be dispensed only in accordance with the
14 recipients' expressed wishes and beliefs and in accordance
15 with all state and federal laws for the dispensing of
16 legend drugs: *Provided, however,* That the procedures of
17 sterilization and abortion shall not be considered ap-
18 proved methods of family planning and child spacing
19 within the intent of this section and are expressly ex-

20 cluded 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 duties of the state registrar; providing for registration districts and appointment, removal and duties of local registrars, 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 preparing and signing birth certificates; providing for registration of infants of unknown parentage, delayed registration 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 determinations; providing for issuance of new certificates of birth following adoption, legitimation, and paternity determination; providing for registration of deaths, and designation 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 disinterment 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 procedure 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 decisions of custodians of permanent local records who refuse to disclose information; copies of records, searches of records, 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 Virginia, 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.
- §16-5-9. Compensation of local registrars.
- §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.
- §16-5-15. Judicial procedure to establish facts of birth.
- §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.

- §16-5-21. Burial, transit and disinterment and reinterment permits.
- §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.
- §16-5-26. Disclosure 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
- 3 of such body or bones thereof from the state of which
- 4 it reasonably may be concluded that death recently oc-
- 5 curred.
- 6 b. "Fetal death" means death prior to the complete
- 7 expulsion or extraction from its mother of a product of
- 8 human conception, irrespective of the duration of preg-
- 9 nancy, such death being indicated by the fact that after
- 10 such expulsion or extraction the fetus does not breathe
- 11 or show any other evidence of life such as beating of
- 12 the heart, pulsation of the umbilical cord or definite
- 13 movement of voluntary muscles.
- 14 c. "Filing" means the presentation of a certificate, re-
- 15 port or other record provided for in this article, of a birth,
- 16 death, fetal death, adoption, marriage, divorce or annul-
- 17 ment, for registration by the division of vital statistics
- 18 of the state department of health.
- 19 d. "Final disposition" means the burial, interment,
- 20 cremation or other disposition of a dead body or fetus.
- 21 e. "Institution" means any establishment, public or
- 22 private, which provides in-patient medical, surgical, or
- 23 diagnostic care or treatment, or nursing, custodial or
- 24 domiciliary care to two or more unrelated individuals
- 25 or to which persons are committed by law.

26 f. "Live birth" means the complete expulsion or ex-
27 traction from its mother of a product of human concep-
28 tion, irrespective of the duration of pregnancy, which,
29 after such expulsion or extraction, breathes or shows any
30 other evidence of life such as beating of the heart, pulsa-
31 tion of the umbilical cord or definite movement of vol-
32 untary muscles, whether or not the umbilical cord has
33 been cut or the placenta is attached.

34 g. "Physician" means a person authorized or licensed
35 to practice medicine pursuant to article three or article
36 fourteen, chapter thirty of this code.

37 h. "Registration" means the acceptance by the division
38 of vital statistics, and the incorporation in its official
39 records, of certificates, reports, or other records provided
40 for in this article, of births, deaths, fetal deaths, adoptions,
41 marriages, divorces and annulments.

42 i. "System of vital statistics" means the registration,
43 collection, preservation, amendment, certification of vital
44 statistics records and activities related thereto, including,
45 but not restricted to, the tabulation, analysis and publica-
46 tion of statistical data derived from such records.

47 j. "Vital statistics" means records of birth, death,
48 fetal death, marriage, divorce, annulment and data related
49 thereto.

50 k. "Local registrar" means the person appointed by the
51 state registrar of vital statistics for a county or other dis-
52 trict to perform the vital statistics functions specified
53 to be performed in and for such county or other district.

54 l. "Deputy local registrar" means a person appointed
55 by and working under the supervision of a local regis-
56 trar in the discharge of the vital statistics functions spec-
57 ified to be performed in and for the county or other dis-
58 trict of such local registrar.

59 m. "Subregistrar" means a person appointed, with the
60 approval of the state registrar of vital statistics, by and
61 working under the supervision of a local registrar in the
62 discharge of the vital statistics functions specified to be
63 performed in and for the county or other district of such
64 local registrar.

§16-5-2. Division of vital statistics; statewide system; supervision by state board of health; offices, etc.

1 Pursuant to the provisions of section seven, article
2 one of this chapter, there is hereby established in the
3 state department of health a division of vital statistics
4 which shall install, maintain, and operate the system of
5 vital statistics throughout this state. The state board of
6 health shall have general supervision over the division
7 of vital statistics, which shall be under the immediate
8 supervision of the state registrar of vital statistics. The
9 board shall provide for such clerical and other assistants in
10 the division of vital statistics as may be necessary for the
11 purposes of this article. Suitable offices shall be pro-
12 vided at the seat of state government for the division of
13 vital statistics, and such offices shall be properly equipped
14 with a fireproof vault and filing cases for the permanent
15 and safe preservation of all official records made, main-
16 tained, or filed under the provisions of this article.

§16-5-3. Rules and regulations of state board of health.

1 The state board of health is authorized, in conformity
2 with the provisions of section three, article one of this
3 chapter to adopt, amend and repeal rules and regulations
4 for the purpose of carrying out the specific provisions
5 of this article.

§16-5-4. Appointment of state registrar of vital statistics.

1 The state board of health, with the advice of the state
2 director of health, shall appoint and prescribe the quali-
3 fications of the state registrar of vital statistics in accord-
4 ance with the provisions of section seven, article one of
5 this chapter.

§16-5-5. Duties of state registrar of vital statistics; enforcement of article.

1 a. The state registrar of vital statistics shall:
2 (1) Administer and enforce the provisions of this
3 article and all other applicable laws of this state and all
4 lawful rules and regulations adopted and promulgated
5 thereunder.

6 (2) Direct and supervise the statewide system of vital
7 statistics and the operation of the division of vital statis-
8 tics, and act as custodian of its records.

9 (3) Direct, supervise and control the activities of
10 local registrars and the activities of public officers in re-
11 lation to the operation of the vital statistics system and
12 provide them with the postage necessary for them to
13 carry out their duties under this article.

14 (4) Prescribe, with the approval of the state board of
15 health, and provide and distribute all forms necessary
16 to carry out the provisions of this article and of the rules
17 and regulations adopted and promulgated thereunder.

18 (5) Prepare and publish annual reports of vital
19 statistics of this state, and such other reports as may be
20 required by the state board of health.

21 b. The state registrar of vital statistics may delegate
22 such functions and duties as are hereby vested in him to
23 officers and employees of the division of vital statistics
24 and to local registrars as the state registrar may deem
25 necessary or expedient.

26 c. The state registrar, either personally or by a duly
27 delegated representative, shall have authority to investi-
28 gate cases of irregularity or violation of law arising under
29 the provisions of this article, and all local registrars,
30 deputy local registrars, and subregistrars shall aid him,
31 upon request, in such investigations. When he shall deem
32 it necessary, he shall report cases of violation of any of
33 the provisions of this article to the prosecuting attorney
34 of the county, with a statement of the facts and circum-
35 stances. When any such case is reported to him by the
36 state registrar, the prosecuting attorney shall forthwith
37 initiate and promptly prosecute the necessary court pro-
38 ceedings against the person or corporation responsible
39 for the alleged violation of law. Upon request of the state
40 registrar, the attorney general shall assist in the enforce-
41 ment of the provisions of this article.

§16-5-6. Registration districts.

1 For the purposes of this article the state board of health
2 may establish registration districts throughout the state.
3 The board may eliminate, or change the boundaries of,

- 4 any district and may consolidate two or more districts
5 or subdivide any district to facilitate registration.

§16-5-7. Appointment and removal of local registrars, deputy local registrars, and subregistrars.

1 a. The state registrar of vital statistics shall appoint
2 a local registrar and the local registrar may appoint one
3 or more deputy local registrars of vital statistics for
4 each registration district.

5 b. When it appears necessary for the convenience of
6 the people in any district, the local registrar may, with
7 the approval of the state registrar, appoint one or more
8 persons to act as subregistrars.

9 c. The state registrar may remove a local registrar, a
10 deputy local registrar, or a local subregistrar for reason-
11 able cause.

§16-5-8. Duties of local registrars, deputy registrars and subregistrars.

1 a. A local registrar, with respect to his registration
2 district, shall:

3 (1) Administer and enforce the provisions of this
4 article and all instructions, rules and regulations adopted
5 and promulgated pursuant thereto.

6 (2) Require that certificates be completed and filed
7 in accordance with provisions of this article and the rules
8 and regulations adopted and promulgated pursuant
9 thereto.

10 (3) Transmit, on the first and fifteenth day of each
11 month or as soon as possible thereafter, the certificates,
12 reports or other returns filed with him to the state reg-
13 istrar of vital statistics, or transmit the same more fre-
14 quently when directed to do so by the state registrar.

15 (4) Maintain such records, make such reports and
16 perform such other duties as may be required by the
17 state registrar of vital statistics.

18 b. In accordance with rules and regulations adopted
19 and promulgated pursuant to this article, the deputy lo-
20 cal registrar shall perform the duties of the local regis-
21 trar in the absence or incapacity of such local registrar
22 and shall perform such other duties as may be prescribed.

23 c. Subregistrars shall perform such duties as may be
24 prescribed by rules and regulations adopted and promul-
25 gated pursuant to this article.

§16-5-9. Compensation of local registrars.

1 a. Each local registrar shall be paid the sum of one
2 dollar for each certificate of birth, death, or fetal death
3 registered by him and transmitted to the state registrar
4 of vital statistics in accordance with the rules and regula-
5 tions adopted and promulgated pursuant to this article.

6 b. If no birth, death or fetal death is registered by
7 him during any calendar month, the local registrar shall
8 report that fact to the state registrar of vital statistics
9 and be paid the sum of one dollar for such report.

10 c. No compensation shall be paid under this section to
11 any full-time employee of any state or local governmental
12 unit or body. Where such employee is designated to serve,
13 and serves, as a local registrar, the compensation pro-
14 vided by this section shall be paid to the governmental
15 unit or body by which such local registrar is employed.

§16-5-10. Payment of fees to local registrars.

1 The state registrar of vital statistics shall certify at the
2 end of each quarter of the calendar year, to the county
3 courts of the several counties, the number of births, fetal
4 deaths and deaths properly registered with the names
5 of the local registrars and the amounts due each. All
6 amounts payable to a local registrar under the provisions
7 of this section shall be paid by the treasurer of the county
8 in which the registration district is located, upon the order
9 of the county court of such county issued upon such certi-
10 fication by the state registrar of vital statistics. Where
11 a local registrar is a full-time employee of any state or
12 local governmental unit or body, the state registrar shall
13 so state in his certification, and, in such case, the county
14 court shall make payment, pursuant to section nine of
15 this article, to the governmental unit or body by which
16 such registrar is employed.

§16-5-11. Form of certificates, etc.

1 a. In order to promote and maintain uniformity in the
2 system of vital statistics, the forms of certificates, reports

3 and other returns required by this article, or by rules and
4 regulations adopted and promulgated thereunder, shall
5 include as a minimum (in addition to the items required
6 by the laws of this state) the items recommended by the
7 federal agency responsible for national vital statistics,
8 subject to the approval of, and to modification by, the
9 state board of health.

10 b. Each certificate, report and form required to be
11 filed under this article shall have entered upon its face
12 the date of registration, duly attested.

§16-5-12. Birth registration generally.

1 a. A certificate of birth for each live birth which
2 occurs in this state shall be filed with the local registrar
3 of the district in which the birth occurs within seven
4 days after such birth and shall be registered by such
5 registrar if it has been completed and filed in accordance
6 with this section. When a birth occurs in a moving con-
7 veyance, a birth certificate shall be filed in the district in
8 which the child is first removed from the conveyance.

9 b. When a birth occurs in an institution, the person
10 in charge of the institution or his designated representa-
11 tive shall obtain the personal data, prepare the certificate,
12 secure the signatures required for the certificate and file
13 it with the local registrar. The physician in attendance
14 shall certify to the facts of birth and provide the medical
15 information required for the certificate within five days
16 after the birth.

17 c. When a birth occurs outside an institution, the cer-
18 tificate shall be prepared and filed by one of the following
19 in the indicated order of priority:

20 (1) The physician in attendance at or immediately
21 after the birth, or in the absence of such a person,

22 (2) Any other person in attendance at or immediately
23 after the birth, or in the absence of such a person,

24 (3) The father, the mother, or, in the absence of the
25 father and the inability of the mother, the person in
26 charge of the premises where the birth occurred.

27 d. If the mother was married either at the time of
28 conception or birth, the name of the husband shall be

29 entered on the certificate as the father of the child unless
30 paternity has been determined otherwise by a court of
31 competent jurisdiction, in which case the name of the
32 father as determined by the court shall be entered.

33 e. If the mother was not married either at the time
34 of conception or birth, the name of the father shall not
35 be entered on the certificate of birth without the written
36 consent of the mother and of the person to be named as
37 the father unless a determination of paternity has been
38 made by a court of competent jurisdiction, in which case
39 the name of the father as determined by the court shall
40 be entered.

41 f. Either of the parents of the child shall sign the
42 certificate of live birth to attest to the accuracy of the
43 personal data entered thereon, in time to permit its filing
44 within the seven days prescribed above.

45 g. In order that each county may have a complete
46 record of the births occurring in said county, the local
47 registrar shall transmit each month to the county clerk
48 of his county the copies of the certificates of all births
49 occurring in said county, from which copies the clerk
50 shall compile a record of such births and shall enter the
51 same in a systematic and orderly way in a well-bound
52 register of births, which said register shall be a public
53 record: *Provided*, That such copies and register shall
54 not state that any child was either legitimate or illegit-
55 imate. The form of said register of births shall be pre-
56 scribed by the state registrar of vital statistics.

**§16-5-13. Infants of unknown parentage; foundling registra-
tion.**

1 a. Whoever assumes the custody of a living infant of
2 unknown parentage shall report, on a form and in the
3 manner prescribed by the state registrar of vital statistics,
4 within seven days of the date of such assumption of
5 custody, to the local registrar of the district in which
6 the child was found, the following information:

7 (1) The date and place of finding;

8 (2) Sex, color or race and approximate age of child;

9 (3) Name and address of the persons with whom or
10 the institution with which the child has been placed for
11 care; and

12 (4) Other data required by rules and regulations
13 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
16 determined by approximation.

17 c. A report registered under this section shall consti-
18 tute the certificate of birth for the infant.

19 d. If the child is identified and a certificate of birth
20 is found or obtained, any report registered under this sec-
21 tion shall be sealed and filed and may be opened only by
22 order of a court of record of competent jurisdiction or as
23 may be provided by lawful rule and regulation adopted
24 and promulgated pursuant to this article.

§16-5-14. Delayed registration of births.

1 a. When the birth of a person born in this state has
2 not been registered within the time period provided in
3 section twelve of this article, a certificate may be filed in
4 accordance with rules and regulations adopted and pro-
5 mulgated by the state board of health. Such certificate
6 shall be registered subject to such evidentiary require-
7 ments as the state board of health shall by rule and regula-
8 tion prescribe to substantiate the alleged facts of birth.

9 b. Certificates of birth registered one year or more
10 after the date of occurrence shall be marked "Delayed"
11 and shall show on their face the date of the delayed
12 registration.

13 c. A summary statement of the evidence submitted
14 in support of the delayed registration shall be endorsed
15 on the certificate.

16 d. (1) When an applicant does not submit the mini-
17 mum documentation required in the rules and regulations
18 for delayed registration or when the state registrar of vital
19 statistics finds reason to question the validity or adequacy
20 of the certificate or the documentary evidence, the state
21 registrar of vital statistics shall not register the delayed

22 certificate and shall advise the applicant in writing of the
23 reasons for this action.

24 (2) The state board of health may by rule and regu-
25 lation provide for the dismissal of an application which
26 is not actively prosecuted.

§16-5-15. Judicial procedure to establish facts of birth.

1 a. If a delayed certificate of birth is refused under the
2 provisions of section fourteen of this article, a petition
3 may be filed with the circuit court or other court of record
4 of competent jurisdiction for an order establishing a
5 record of the date and place of the birth and the parent-
6 age of the person whose birth is to be registered.

7 b. Such petition shall allege:

8 (1) That the person for whom a delayed registration
9 of birth is sought was born in this state;

10 (2) That no record of birth of such person can be
11 found in the office of the state or the local custodian of
12 birth records;

13 (3) That diligent efforts by the petitioner have failed
14 to obtain the evidence required in accordance with sec-
15 tion fourteen of this article and of any rules and regula-
16 tions adopted and promulgated thereunder;

17 (4) That the state registrar of vital statistics has re-
18 fused to register a delayed certificate of birth; and

19 (5) Such other allegations as may be required by the
20 court.

21 c. The petition shall be accompanied by a copy of the
22 statement of reasons of the registration official made in ac-
23 cordance with subsection d (1), section fourteen of
24 this article and by all documentary evidence which was
25 submitted to the registration official in support of such
26 registration.

27 d. The court shall fix a time and place for hearing the
28 petition and shall require that the petitioner give the
29 registration official who refused to register the petitioner's
30 delayed certificate of birth not less than twenty days'
31 notice of said hearing. Such official, or his authorized
32 representative, may appear and testify in the proceeding.

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

19 or other person concerned with the adoption shall supply
20 the petitioner with such information in the possession of
21 such agency or person as may be necessary to complete
22 the certificate.

23 c. Whenever an adoption order or decree is amended
24 or vacated, the clerk of the court shall prepare a cer-
25 tificate thereof, which shall include such facts as are
26 necessary to identify the original adoption certificate and
27 the facts amended in the adoption order of decree which
28 are required to properly amend the birth record.

29 d. Not later than the tenth day of each calendar month,
30 the clerk of the court shall forward to the state registrar
31 of vital statistics a report of all orders or decrees of adop-
32 tion and of annulments or amendments thereof, entered in
33 the preceding month, together with such related certifi-
34 cates and reports as may be required under the provisions
35 of this article.

36 e. When the state registrar of vital statistics shall re-
37 ceive a record of adoption or of an annulment or amend-
38 ment of an order or decree of adoption from a court for
39 a person born outside of this state, such record shall be
40 forwarded to the appropriate registration authority in the
41 state of birth.

§16-5-17. Court reports of determination of paternity.

1 a. Whenever a judgment has been entered determining
2 the paternity of a child, the clerk of the court shall pre-
3 pare a certificate on a form prescribed and furnished by
4 the state registrar of vital statistics. The certificate shall
5 include such facts as are necessary to locate and identify
6 the certificate of birth of the person whose paternity is
7 determined; shall provide information necessary to estab-
8 lish a new certificate of birth of the person whose pa-
9 ternity is determined; and shall identify the action and
10 be certified by the clerk of court.

11 b. Not later than the tenth day of each calendar month,
12 the clerk of the court shall forward to the state registrar
13 of vital statistics certificates of paternity entered in the
14 preceding month, together with such related reports as
15 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

38 from inspection or forwarded to the state registrar of vital
39 statistics, as he shall direct.

§16-5-19. Death registration.

1 a. A death certificate for each death which occurs
2 in this state shall be filed with the local registrar of the
3 registration district in which the death occurs within
4 three days after such death, and prior to removal of the
5 body from the state, and shall be registered by such regis-
6 trar if it has been completed and filed in accordance with
7 this section: *Provided, That*

8 (1) if the place of death is unknown, a death certifi-
9 cate shall be filed in the registration district in which
10 a dead body is found within three days after the finding;
11 and

12 (2) if death occurs in a moving conveyance, a death
13 certificate shall be filed in the registration district in which
14 the dead body is first removed from such conveyance.

15 b. The funeral director or person acting for him who
16 first assumes custody of a dead body shall file the death
17 certificate. He shall obtain the necessary personal data
18 from the next of kin or the best qualified person or source
19 available. He shall obtain the medical certification of the
20 cause of death from the person responsible for making
21 such certification.

22 c. The medical certification shall be completed and
23 signed within twenty-four hours after death by the physi-
24 cian in charge of the patient's care for the illness or con-
25 dition which results in death except when inquiry is re-
26 quired pursuant to chapter sixty-one, article twelve or
27 other applicable provision of this code.

28 d. When death occurs without medical attendance and
29 inquiry is not required pursuant to chapter sixty-one,
30 article twelve or other applicable provisions of this code,
31 the local health officer shall investigate the cause of death
32 and complete and sign the medical certification within
33 twenty-four hours after receiving notice of the death.

34 e. When death occurs in a manner subject to investi-
35 gation, the coroner or other officer or official charged with
36 the legal duty of making such investigation shall investi-

37 gate the cause of death and shall complete and sign the
38 medical certification within twenty-four hours after mak-
39 ing determination of the cause of death.

40 f. In order that each county may have a complete
41 record of the deaths occurring in said county, the local
42 registrar shall transmit each month to the county clerk
43 of his county a copy of the certificates of all deaths occur-
44 ring in said county, and if any person shall die in a county
45 other than that county within the state in which such
46 person last resided prior to death, then the state registrar
47 shall, if possible, also furnish a copy of such death certifi-
48 cate to the clerk of the county court of the county where-
49 in such person last resided, from which copies the clerk
50 shall compile a record of such deaths and shall enter the
51 same in a systematic and orderly way in a well-bound
52 register of deaths for that county, which such register
53 shall be a public record. The form of said death register
54 shall be prescribed by the state registrar of vital statistics.

§16-5-20. Fetal death registration.

1 a. A fetal death certificate for each fetal death which
2 occurs in this state after a gestation period of twenty
3 completed weeks shall be filed with the local registrar of
4 the registration district in which the delivery occurs
5 within three days after such delivery and prior to removal
6 of the fetus from the state, and shall be registered with
7 such registrar if it has been completed and filed in ac-
8 cordance with this section: *Provided, That*

9 (1) if the place of fetal death is unknown, a fetal
10 death certificate shall be filed in the registration district
11 in which a dead fetus is found within three days after
12 the finding; and

13 (2) if a fetal death occurs in a moving conveyance,
14 a fetal death certificate shall be filed in the registration
15 district in which the fetus is first removed from such
16 conveyance.

17 b. The funeral director or person acting for him who
18 first assumes custody of a fetus shall file the fetal death
19 certificate. In the absence of such a person, the physician
20 or other person in attendance at or after the delivery
21 shall file the certificate of fetal death. The person filing

22 such certificate shall obtain the personal data from the
23 next of kin or the best qualified person or source avail-
24 able and shall obtain the medical certification of the cause
25 of death from the person responsible for making such cer-
26 tification.

27 c. The medical certification shall be completed and
28 signed within twenty-four hours after delivery by the
29 physician in attendance at or after delivery except when
30 inquiry is required by chapter sixty-one, article twelve
31 or other applicable provision of this code.

32 d. When a fetal death occurs without medical attend-
33 ance for the mother at or after delivery and an in-
34 quiry is not required by chapter sixty-one, article twelve
35 or other applicable provision of this code, the local health
36 officer shall investigate the cause of fetal death and shall
37 complete and sign the medical certification within twenty-
38 four hours after receiving notice of the delivery.

39 e. When the coroner or other officer or official charged
40 with the legal duty of making such investigation shall
41 investigate a fetal death as required by chapter sixty-one,
42 article twelve or other applicable provision of this code,
43 he shall complete and sign the medical certification within
44 twenty-four hours after making determination of the
45 cause of such fetal death.

§16-5-21. Burial, transit and disinterment and reinterment permits.

1 a. The funeral director or person acting for him who
2 first assumes custody of a dead body or of a fetus
3 which has died after a gestation period of twenty com-
4 pleted weeks shall obtain a burial or transit permit prior
5 to final disposition or removal from the state of the body
6 or fetus and within seventy-two hours after death.

7 b. Such burial or transit permit shall be issued by the
8 local registrar of the district where the certificate of death
9 or fetal death is filed in accordance with the requirements
10 of section nineteen or section twenty of this article.

11 c. A burial or transit permit issued under the law
12 of another state which accompanies a dead body or fetus
13 brought into this state shall be authority for final dis-
14 position of the body or fetus in this state.

15 d. A permit for disinterment and reinterment shall
16 be required prior to disinterment of a dead body or fetus
17 except as authorized by rule and regulation or otherwise
18 provided by law or by order of a court having jurisdiction
19 with respect thereto. Such permit shall be issued by the
20 local registrar to a licensed funeral director, embalmer,
21 or other persons acting on their behalf, upon proper ap-
22 plication.

23 e. The form and contents of burial, transit and disin-
24 terment and reinterment permits shall be prescribed by
25 the state registrar of vital statistics in conformance with
26 the provisions of subdivision (4), subsection a, section
27 five of this article.

**§16-5-22. No burial without permit; duty of custodian or
funeral director.**

1 No person in charge of any premises on which inter-
2 ment or other disposition of dead bodies is made shall
3 inter or permit the interment or other disposition of any
4 such body unless it is accompanied by a burial, transit
5 or reinterment permit except as otherwise provided by
6 order of a court having jurisdiction with respect thereto.
7 Such person shall endorse upon the permit the date of
8 interment or other disposition over his signature and shall
9 return the permit, so endorsed, to the local registrar of
10 the registration district within which the interment or
11 other disposition of the body is made. Such return shall
12 be made within ten days from the date of interment or
13 other disposition. The person endorsing the permit shall
14 keep a record of all bodies interred or otherwise disposed
15 of on the premises under his charge, which record shall
16 contain the name of the deceased person, place of death,
17 date of burial or disposal, name and address of the funeral
18 director or person acting for him, and such other infor-
19 mation as may be required by rule and regulation duly
20 adopted pursuant to this article. Such record shall at all
21 times be open to official inspection: *Provided*, That when
22 a body is interred or otherwise disposed of in a cemetery,
23 burial ground, or other premises having no person in
24 charge, the funeral director or person acting for him and
25 making or supervising such interment or disposition shall

26 endorse upon the burial, transit or reinterment permit,
27 the date of interment or disposition over his signature
28 and shall write across the face of the permit "No person
29 in charge" and shall file the endorsed permit with the
30 local registrar of the registration district in which inter-
31 ment or other disposition is made within ten days of such
32 interment or other disposition.

§16-5-23. Extension of time for filing death certificates, etc.

1 a. The state board of health shall, by rule and regula-
2 tion and upon such conditions as it may prescribe to assure
3 compliance with the purposes of this article, provide for
4 the extension of the periods prescribed in sections nine-
5 teen, twenty and twenty-one of this article for the filing of
6 death certificates, fetal death certificates, medical certifica-
7 tions of the cause of death, and for the obtaining of burial
8 or transit permits, in cases in which compliance with the
9 applicable prescribed period would result in undue hard-
10 ship.

11 b. Rules and regulations of the state board of health
12 shall provide for the issuance of a burial or transit permit
13 under section twenty-one of this article prior to the filing
14 of a certificate of death or fetal death upon conditions de-
15 signed to assure compliance with the purposes of this
16 article in cases in which compliance with the requirement
17 that the certificate be filed prior to the issuance of the
18 permit would result in undue hardship.

§16-5-24. Correction and amendment of vital records.

1 a. A certificate or record registered pursuant to this
2 article may be amended only in accordance with the pro-
3 visions of this article and rules and regulations duly
4 adopted thereunder.

5 b. A certificate that is amended under this section shall
6 be marked "amended", except as hereinafter provided in
7 this subsection and in subsection d of this section. The date
8 of amendment and a summary description of the evidence
9 submitted in support of the amendment shall be endorsed
10 on or made a part of the record. The state board of health
11 shall prescribe by rule and regulation the conditions
12 under which additions or minor corrections shall be made

13 to birth certificates within one year after the date of birth
14 without the certificate being considered or marked as
15 amended. The state board of health shall also prescribe
16 by rule and regulation a simplified procedure for the
17 correction of any certificate or record registered pursuant
18 to this article which is deficient in any particular, includ-
19 ing, but not limited to, the omission or misspelling of a
20 first name, and such rule and regulation shall specify
21 when and under what circumstances a certificate or record
22 so corrected shall be considered or marked as amended.

23 c. Upon receipt of a certified copy of a court order of
24 a court of competent jurisdiction changing the name of
25 a person born in this state, which order was made and
26 entered in a proceeding brought for that purpose, and
27 upon request of such person or his parent, guardian, or
28 legal representative, the state registrar of vital statistics
29 shall amend the certificate of birth to reflect the new name.

30 d. Upon request, and upon receipt of a sworn acknowl-
31 edgment of paternity of a child born out of wedlock
32 signed by both parents, the state registrar of vital statis-
33 tics shall amend the certificate of birth to show such pa-
34 ternity if paternity is not shown on the birth certificate.
35 Upon request of both of the parents, the surname of the
36 child shall be changed on the certificate to that of the
37 father. Such certificate shall not be marked "amended."

38 e. When a certificate is amended under this section,
39 the state registrar of vital statistics shall report the
40 amendment to the custodian of any permanent local
41 records and such record shall be amended accordingly.

§16-5-25. Reproduction of records.

1 To preserve original documents, the state registrar of
2 vital statistics is hereby authorized to prepare typewrit-
3 ten, photographic, or other reproductions of original rec-
4 ords and files in his office. Such reproductions when certi-
5 fied by him shall be accepted as the original record.

§16-5-26. Disclosure of records.

1 a. To protect the integrity of vital statistics records,
2 to insure their proper use, and to insure the efficient and
3 proper operation of the vital statistics system, it shall

4 be unlawful for any person to permit inspection of con-
5 fidential information or to disclose confidential informa-
6 tion contained in vital statistics records, or to copy or
7 issue a copy of all or part of any such confidential infor-
8 mation, except as authorized by law or by order of a court
9 having jurisdiction with respect thereto or by rule and
10 regulation duly adopted under the provisions of this
11 article.

12 b. The state board of health may by rule and regulation
13 authorize the disclosure of confidential data contained in
14 vital statistics records for statistical research purposes.

15 c. Information in vital statistics records indicating that
16 a birth occurred out of wedlock shall not be disclosed
17 except as provided by rule and regulation duly adopted or
18 upon order of a court having jurisdiction with respect
19 thereto.

20 d. Appeals from decisions of the custodians of per-
21 manent local records refusing to disclose confidential in-
22 formation, or to permit inspection of or copying of confi-
23 dential information under the authority of this section
24 and rules and regulations issued hereunder shall be made
25 to the state registrar of vital statistics, whose decisions
26 shall be binding upon the local custodians of permanent
27 local records.

§16-5-27. Copies of data from vital records.

1 In accordance with section twenty-five of this article
2 and the rules and regulations adopted pursuant thereto:

3 a. The state registrar of vital statistics shall upon
4 request issue a certified copy of all or any part of any
5 certificate or record in his custody. Each copy issued
6 shall show the date of registration, and copies issued from
7 records marked "delayed", "amended", or "court order"
8 shall be similarly marked and shall show the effective
9 date of the delayed registration, amendment or court
10 order.

11 b. A certified copy of a certificate or any part thereof,
12 issued in accordance with subdivision a of this section,
13 shall be considered for all purposes the same as the
14 original, and shall be prima facie evidence of the facts
15 therein stated.

16 c. The national office of vital statistics may be furnished
17 such copies of or data from state vital statistics records
18 as it may require for national statistics: *Provided*, That
19 the state shall be reimbursed for the cost of furnishing
20 such data: *Provided, however*, That such data shall not
21 be used for other than statistical purposes by the na-
22 tional office of vital statistics unless so authorized by the
23 state board of health.

24 d. Federal, state, local and other public or private
25 agencies may, upon request, be furnished copies of or
26 data from state vital statistics for statistical purposes
27 upon such terms or conditions as may be prescribed by
28 the state board of health.

29 e. No person shall prepare or issue any certificate
30 which purports to be an original, certified copy, or copy of
31 a certificate of birth, death, or fetal death, except as au-
32 thorized by this article, or by rules and regulations duly
33 adopted thereunder: *Provided*, That the foregoing provi-
34 sions of this subdivision shall not be construed as in any
35 way prohibiting or infringing upon the right and duty of
36 a county clerk to furnish a certified copy of any records
37 in his lawful custody.

§16-5-28. Fees for copies and searches.

1 a. The state board of health shall prescribe the fees,
2 if any, to be charged and collected by the state registrar of
3 vital statistics for certified copies of certificates or records,
4 not to exceed two dollars per copy, or for a search
5 of the files or records when no copy is made: *Provided*,
6 That the state registrar shall, upon request of any parent
7 or guardian, supply without fee a certificate limited to
8 a statement as to the date of birth of any child, when the
9 same shall be necessary for admission to school, or for
10 the purpose of securing employment: *Provided, however*,
11 That the state registrar may furnish certified copies of
12 birth and death records to the state welfare department,
13 to county welfare departments and to organized charities,
14 free of charge, when such certificates are needed in pre-
15 senting claims to the federal government, or to the state
16 department of welfare, and an accurate record shall be
17 made of all such certificates so furnished.

18 b. Fees collected under this section by the state regis-
19 trar of vital statistics shall be deposited to the state gen-
20 eral fund.

§16-5-29. Persons required to keep records.

1 a. Every person in charge of an institution as defined
2 in this article shall keep a record concerning each per-
3 son admitted to or confined in such institution containing
4 such information as is required by the standard certifi-
5 cate of birth, death, and fetal death forms issued under
6 the provisions of this article. The record shall be made
7 at the time of admission from information provided by
8 such person, but when it cannot be so obtained, the same
9 shall be obtained from relatives or other persons ac-
10 quainted with the facts. The name and address of the
11 person providing the information shall be a part of the
12 record.

13 b. When a dead human body is released or disposed
14 of by an institution, the person in charge of the institution
15 shall keep a record showing the name of the deceased,
16 date of death, name and address of the person to whom
17 the body is released, and date of removal from the institu-
18 tion or if finally disposed of by the institution, the date,
19 place, and manner of disposition.

20 c. A funeral director, embalmer or other person who
21 removes from the place of death or transports or finally
22 disposes of a dead body or fetus, in addition to filing any
23 certificate or other form required by this article, shall
24 keep a record which shall identify the body, and such in-
25 formation pertaining to his receipt, removal and delivery
26 of such body as may be prescribed by rules and regu-
27 lations duly adopted by the state board of health.

28 d. Records maintained under this section shall be re-
29 tained for a period of not less than three years and shall
30 be made available for inspection by the state registrar
31 of vital statistics or his representative upon request.

§16-5-30. Duty to furnish information relative to vital events.

1 Any person having knowledge of any fact required to
2 be recorded under the provisions of this article or any
3 rules and regulations duly adopted thereunder, or knowl-

4 edge of which by the state registrar of vital statistics is
5 necessary to effectuate the purposes of this article, shall
6 furnish information of such fact to the state registrar of
7 vital statistics upon request.

§16-5-31. Penalties.

1 a. (1) Any person who wilfully and knowingly
2 makes any false statement in a report, record, or certifi-
3 cate required to be filed under this article, or in an ap-
4 plication for an amendment thereof or who wilfully and
5 knowingly supplies false information intending that such
6 information be used in the preparation of any such report,
7 record or certificate, or amendment thereof; or

8 (2) Any person who without lawful authority and
9 with the intent to deceive, makes, alters, amends or
10 mutilates any record, report, or certificate required to be
11 filed under this article, or any certified copy of such
12 record, report, or certificate; or

13 (3) Any person who wilfully and knowingly uses or
14 attempts to use, or furnishes or attempts to furnish to
15 another for use, for any purpose of deception, any certifi-
16 cate, record, report, or certified copy thereof so made,
17 altered, amended, or mutilated; or

18 (4) Any person who with the intention to deceive
19 wilfully uses or attempts to use any certificate of birth
20 or certified copy of a record of birth knowing that such
21 certificate or certified copy was issued upon a record
22 which is false in whole or in part or which related to
23 the birth of another person; or

24 (5) Any person who wilfully and knowingly fur-
25 nishes a certificate of birth or certified copy of a record of
26 birth with the intention that it be used by a person other
27 than the person to whom the record of birth relates, shall
28 be guilty of a misdemeanor, and, upon conviction thereof,
29 shall be punished by a fine of not more than one thousand
30 dollars or by imprisonment for not more than one year,
31 or by both such fine and imprisonment.

32 b. (1) Any person who knowingly transports or ac-
33 cepts for transportation, interment or other disposition
34 a dead body without an accompanying permit as provided
35 in this article; or

36 (2) Any person who refuses to provide information
37 required by this article; or

38 (3) Any person who wilfully neglects or violates any
39 of the provisions of this article or refuses to perform
40 any of the duties imposed upon him by this article, shall
41 be guilty of a misdemeanor, and, upon conviction thereof,
42 shall be punished by a fine of not less than twenty-five
43 dollars nor more than one hundred dollars or by im-
44 prisonment for not more than thirty days, or by both
45 such fine and imprisonment.

**§16-5-32. Uniform system of registration of marriage, divorce
and annulment of marriage.**

1 To the end that an efficient and uniform system of regis-
2 tration of marriage, divorce and annulment of marriage
3 shall be established in this state, the state division of
4 vital statistics shall provide for the registration of each
5 marriage, divorce, and annulment of marriage which
6 shall occur in this state. In so doing, the state board of
7 health shall have the authority and duty to:

8 a. Install a statewide system of registering, indexing,
9 and preserving records of marriage, divorce and annul-
10 ment of marriage.

11 b. Make and amend necessary rules and regulations,
12 give instructions, and prescribe and furnish forms, for
13 collecting, transcribing, compiling, and preserving records
14 and statistics of marriage, divorce and annulment of mar-
15 riage.

16 c. Make and publish a statistical report of marriage,
17 divorce and annulment of marriage in this state.

§16-5-33. Registration of marriages.

1 All marriages taking place within the state shall be
2 registered with the state registrar of vital statistics in the
3 following manner:

4 a. On or before the tenth day of each month, the
5 county clerk of each county shall forward to the state
6 registrar a report of all marriage records made by him
7 during the previous month, in such form and setting
8 forth such information as may be prescribed by rule and
9 regulation duly adopted pursuant to this article.

10 b. The state registrar shall preserve and index all
11 records thus received and shall upon request issue a
12 certified copy of the same, which shall be prima facie
13 evidence in all courts in the state of the facts stated
14 therein.

§16-5-34. Registration of divorces and annulments of marriages.

1 a. The clerk of every court of record having jurisdic-
2 tion of actions for divorce or annulment of marriage shall
3 monthly make and deliver to the state registrar of vital
4 statistics a report on a form prescribed by the state regis-
5 trar of vital statistics, listing all of the divorces or annul-
6 ments of marriages granted by such court during the pre-
7 ceding calendar month, showing insofar as such informa-
8 tion appears in the complaint or final order or decree:

9 (1) the names and ages of the parties to the action,
10 (2) the date and place of the marriage thereby termi-
11 nated,

12 (3) the names of said parties' children under the age
13 of eighteen years,

14 (4) the date of the final order or decree:

15 *Provided*, That in counties where the court is not in
16 continuous session these reports shall be forwarded with-
17 in ten days following the close of the term of the court.

18 b. The state registrar shall search his files of reports
19 of divorce and annulment of marriage upon receipt of
20 written request and a fee of one dollar. If the record is
21 found, he shall verify the facts of the divorce or annul-
22 ment of marriage in writing to the applicant and shall
23 notify the applicant of the place where the original record
24 is found.

25 c. Failure of the clerk of the court to comply with
26 the provisions of subsection a hereof shall in no way
27 affect the validity of any final judgment, order or decree
28 of divorce or annulment of marriage.

§16-5-35. Severability.

1 If any provision of this article or the application there-
2 of to any person or circumstance is held invalid, such
3 invalidity shall not affect other provisions or applications

4 of the article, and to this end the provisions of this article
5 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.

§5-11-16. Certain records exempt.

1 Notwithstanding any other provisions of this article, it
2 shall not be an unlawful discriminatory practice for
3 the department of employment security to ascertain
4 and record the age, sex, race, religion, color, national
5 origin or ancestry of any individual for the purpose
6 of making such reports as may from time to time be
7 required by agencies of the federal government or be nec-
8 essary to show compliance with any rule or regulation
9 issued by any such agency. Said records may be made and
10 kept in the manner required by the federal govern-
11 ment: *Provided*, That such recording of the age, sex,
12 race, religion, color, national origin or ancestry of any
13 individual shall not be used to discriminate, within the
14 meaning of this article, directly or indirectly, against
15 any such individual as prohibited by all other sections
16 of this article.

CHAPTER 63

(House Bill No. 774—By Mr. Speaker, Mr. Boiarsky,
and Mr. Seibert)

[Passed March 6, 1969; in effect ninety days from passage. Approved by the
Governor.]

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.

31. Corporations.

CHAPTER 13. PUBLIC BONDED INDEBTEDNESS.

ARTICLE 2C. INDUSTRIAL DEVELOPMENT BOND ACT.

§13-2C-7. Bonds issued to finance industrial plant.

1 All bonds issued by a county court or by a municipality
2 under the authority of this article shall be limited obliga-
3 tions of the county, or of the municipality, the principal
4 and interest on which shall be payable out of the rev-
5 enues derived from the leasing of the plant to finance
6 which the bonds are issued or any other revenue derived
7 from such industrial plant. The bonds and interest cou-
8 pons issued under the authority of this article shall never

9 constitute an indebtedness of the county, or of the mu-
10 nicipality issuing the same, within the meaning of any
11 constitutional provision or statutory limitation and shall
12 never constitute or give rise to a pecuniary liability
13 of the county, or of the municipality issuing the same.
14 Neither shall such bond and/or interest thereon be a
15 charge against the general credit or taxing powers of
16 the county, or the municipality and such fact shall be
17 plainly stated on the face of each such bond. Such bonds
18 may be executed, issued and delivered at any time and
19 from time to time, may be in such form and denomi-
20 nation; may be of such tenor, must be negotiable but
21 may be registered as to the principal thereof or as to
22 the principal and interest thereof, may be payable in
23 such amounts and at such time or times; may be pay-
24 able at such place or places, may bear interest at such
25 rate or rates payable at such place or places and evidenced
26 in such manner, and may contain such provisions therein
27 not inconsistent herewith, all as shall be provided in the
28 proceedings of the governing body whereunder the bonds
29 shall be authorized to be issued. Said bonds may be
30 sold by the governing body at public or private sale.
31 The said bonds may also be issued and delivered to the
32 owners of an industrial plant in exchange therefor and
33 in payment of the purchase price thereof.

34 The bonds issued pursuant to this article by a county
35 court shall be signed by the president and attested by
36 the clerk of the county court under the seal of the
37 court and the bonds issued by a municipality shall be
38 signed by the mayor or other chief officer thereof and
39 attested by the clerk, recorder, or other official cus-
40 todian of the records of said municipality and under
41 the seal of the municipality. The coupons attached
42 thereto shall bear the facsimile signature of the presi-
43 dent of the county court or the mayor or other chief
44 officer of the municipality. In case any of the officials
45 whose signatures appear on the bonds or coupons shall
46 cease to be such officers before the delivery of such bonds,
47 such signatures shall, nevertheless, be valid and suffi-
48 cient for all purposes to the same extent as if they had
49 remained in office until such delivery.

50 If the proceeds of such bonds by error of calculation
51 or otherwise, shall be less than the cost of the indus-
52 trial plant, additional bonds may in like manner be
53 issued to provide the amount of the deficiency, and unless
54 otherwise provided for in the trust agreement, mortgage,
55 or deed of trust, shall be deemed to be of the same issue,
56 and shall be entitled to payment from the same fund,
57 without preference or priority, and shall be of equal
58 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.

§31-15-6. Powers of authority generally.

§31-15-5. West Virginia industrial development authority
created; composition of board of members; ap-
pointment and term of members; delegation of
authority by ex officio members; compensation and
expenses.

1 There is hereby created a body corporate and politic,
2 constituting a public corporation and government instru-
3 mentality by the name of the "West Virginia Industrial
4 Development Authority," the board of members of which
5 shall be composed of the following: The commissioner
6 of commerce, who shall serve as chairman, the state tax
7 commissioner, the state banking commissioner and the
8 director of the department of natural resources, and their
9 respective successors in office, and five additional mem-
10 bers who shall be appointed by the governor, with the
11 advice and consent of the Senate, who shall represent the
12 general public and the public interest. The members of
13 the authority initially appointed by the governor shall
14 continue in office for terms of one to five years, respec-
15 tively, from the date of their appointment and until their
16 respective successors shall be duly appointed and quali-
17 fied, the term of each appointed member to be designated
18 by the governor at the time of his appointment; but their
19 successors shall each be appointed for a term of five years,
20 except that any person appointed to fill a vacancy shall
21 serve only for the unexpired term, and any appointed

22 member of the authority shall be eligible for reappoint-
23 ment. The commissioner of commerce, the state tax com-
24 missioner, the state banking commissioner or the di-
25 rector of the department of natural resources may, by
26 written memorandum filed with the secretary of the au-
27 thority, delegate, from time to time, to any deputy or
28 other subordinate in his department or office the power
29 to be present and participate, including voting on any
30 question that may arise, as its representative or delegate
31 at any meeting of the authority and its vote shall have
32 the same validity as if the official had voted in person.
33 Said members of the authority shall be entitled to no com-
34 pensation for their services as members, but shall be
35 entitled to reimbursement for all necessary expenses in-
36 curred in connection with the performance of their duties
37 as members.

§31-15-6. Powers of authority generally.

1 The authority, as a public corporation and govern-
2 mental instrumentality exercising public powers of the
3 state, is hereby granted and shall have and may exercise
4 all powers necessary or appropriate to carry out and
5 effectuate the purposes of this article, including the fol-
6 lowing powers, in addition to others herein granted:

7 (a) To make determination and designation of critical
8 economic areas.

9 (b) To cooperate with industrial development agen-
10 cies in the efforts to promote the expansion of industrial
11 and manufacturing activity in critical economic areas.

12 (c) To determine, upon proper application of indus-
13 trial development agencies, whether the declared public
14 purpose of this article has been accomplished or will
15 be accomplished by the establishment by such industrial
16 development agencies of an industrial development proj-
17 ect in a critical economic area.

18 (d) To conduct examinations and investigations and
19 to hear testimony and take proof, under oath or affirma-
20 tion, at public or private hearings, on any matter ma-
21 terial for its information and necessary to determination
22 and designation of critical economic areas and the estab-
23 lishment of industrial development projects therein.

24 (e) To issue subpoenas requiring the attendance of
25 witnesses and the production of books and papers perti-
26 nent to any hearing before such authority, or before one
27 or more members of the authority appointed by it to
28 conduct such hearings.

29 (f) To apply to any court, having territorial jurisdic-
30 tion of the offense, to have punished for contempt any
31 witness who refuses to obey a subpoena, or who refuses
32 to be sworn or affirmed or to testify, or who is guilty of
33 any contempt after summons to appear.

34 (g) To authorize any member or members of such
35 authority to conduct hearings and to administer oaths,
36 take affidavits and issue subpoenas.

37 (h) To make, upon proper application of industrial
38 development agencies, loans to such industrial develop-
39 ment agencies of moneys held in the industrial develop-
40 ment fund for industrial development projects in critical
41 economic areas and to provide for the repayment and
42 redeposit of such allocations and loans in the manner
43 hereinafter provided.

44 (i) To have existence for a term of fifty years.

45 (j) To sue and be sued, implead and be impleaded,
46 complain and defend in all courts.

47 (k) To adopt, use and alter at will a corporate seal.

48 (l) To make bylaws for the management and regula-
49 tion of its affairs.

50 (m) To appoint officers, agents, employees and serv-
51 ants.

52 (n) To make contracts of every name and nature and
53 to execute all instruments necessary or convenient for
54 carrying on its business.

55 (o) Without limitation of the foregoing, accept grants
56 from and enter into contracts or other transactions with
57 any federal agency.

58 (p) To take title by foreclosure to any industrial de-
59 velopment project where such acquisition is necessary to
60 protect any loan previously made therefor by the author-
61 ity and to sell, transfer and convey any such industrial
62 development project to any responsible buyer; in the

63 event such sale, transfer and conveyance cannot be
64 effected with reasonable promptness, the authority may,
65 in order to minimize financial losses and sustain employ-
66 ment, lease such industrial development project to a re-
67 sponsible tenant or tenants; the authority shall not lease
68 industrial development projects except under the condi-
69 tions and for the purposes cited in this section: *Provided,*
70 *however,* That the authority shall have no power at any
71 time to borrow money or in any manner to pledge the
72 credit or taxing power of the state or any of its munic-
73 ipalities or political subdivisions, nor shall any of its
74 obligations be deemed to be obligations of the state or
75 any of its political subdivisions.

76 (q) To participate in any reorganization proceeding
77 pending pursuant to Title II of the United States Bank-
78 ruptcy Act or in any receivership proceeding had in a
79 state or United States court for the purpose of reorgan-
80 ization or liquidation of a responsible buyer or respon-
81 sible tenant. It may file its claim against any such
82 responsible buyer or responsible tenant in any of the
83 foregoing proceedings, vote upon any question pending
84 therein which requires the approval of the creditors par-
85 ticipating in any reorganization proceeding or receiver-
86 ship, exchange any evidence of said indebtedness for
87 any property, security or evidence of indebtedness offered
88 as a part of the reorganization of said responsible buyer
89 or responsible tenant or of any other entity formed to
90 acquire the assets thereof, and may compromise or re-
91 duce the amount of any indebtedness owing to it as a
92 part of any such reorganization.

C

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 to read as follows:

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:

8	(a) Life	\$ 750,000.00
9	(b) Accident and Sickness	\$ 750,000.00
10	(c) Life and Accident and Sickness	\$1,000,000.00
11	(d) Fire and Marine	\$ 250,000.00
12	(e) Casualty	\$ 250,000.00
13	(f) Surety	\$ 600,000.00
14	(g) Accident and Sickness together with	
15	any one or more of the following:	
16	Fire and Marine, Casualty	\$ 750,000.00
17	(h) Fire and Marine and Casualty	\$ 500,000.00
18	(i) Surety together with any one or more	
19	of the following: Accident and Sick-	
20	ness, Fire and Marine, Casualty	\$ 750,000.00

21 In addition, every insurer applying for said license,
22 after the effective date of this section, shall maintain ad-
23 ditional surplus funds in an amount equal to one half such
24 minimum capital or surplus listed above for the kinds
25 of insurance for which license is requested: *Provided,*
26 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
- 2 or place of business outside the state of West Virginia
- 3 after June one, one thousand nine hundred sixty-nine,
- 4 shall not thereafter be licensed as a domestic insurer in
- 5 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.

1 For all accident and sickness policies the insurer shall
2 maintain an active life reserve which shall place a sound
3 value on its liabilities under such policies and which shall
4 not be less than the reserve according to standards set
5 forth in regulations issued by the commissioner and
6 which,

7 (a) for credit accident and sickness policies, in no
8 event shall be less than the unearned premium reserve
9 for such policies calculated on the sum of the digits
10 formula, commonly known as the "Rule of 78";

11 (b) for all other accident and sickness policies, in no
12 event shall be less than the pro rata gross unearned
13 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
- 2 line brokers shall expire at midnight on the May thirty-
- 3 first next following the date of issuance. The commis-
- 4 sioner shall renew annually the license of all such licen-
- 5 sees 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
- 2 to an employer, or to a labor union, or to the trustees of
- 3 a fund established in whole or in part by an employer
- 4 or a labor union, which provides term insurance on any
- 5 person which together with any other term insurance
- 6 under any group life insurance policy or policies issued
- 7 to the employer or employers of such person or to a
- 8 labor union or labor unions of which such person is a
- 9 member or to the trustees of a fund or funds established
- 10 in whole or in part by such employer or employers or

11 such labor union or labor unions, exceeds twenty thou-
12 sand dollars, unless two hundred percent of the annual
13 compensation of such person from his employer or em-
14 ployers exceeds twenty thousand dollars, in which event
15 all such term insurance shall not exceed fifty thousand
16 dollars or two hundred percent of such annual compen-
17 sation, 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, desig-
nated section twenty-eight, relating to assignment of
interests in group life insurance policies, including conver-
sion 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, desig-
nated 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
2 be interpreted so as to prohibit a person whose life is
3 insured under any policy of group life insurance from
4 making an assignment of all or any part of his incidents
5 of ownership under such policy including specifically, but
6 not by way of limitation, any right to designate a bene-
7 ficiary or beneficiaries thereunder and any right to have
8 an individual policy issued to him in accordance with

9 sections sixteen and seventeen of this article. Subject to
10 the terms of the policy relating to assignment of inci-
11 dents of ownership thereunder, such an assignment by
12 the insured, made either before or after the effective date
13 of this section, is valid for the purpose of vesting in the
14 assignee, in accordance with any provisions included
15 therein as to the time at which it is to be effective, all of
16 such incidents of ownership so assigned, but without prej-
17 udice to the insurer on account of any payment it may
18 make or individual policy it may issue in accordance with
19 other provisions of this article prior to receipt of notice
20 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.

- 1 (a) Every such corporation operating within this state
- 2 shall be subject to the provisions of this article.

3 (b) Every hospital or other health agency in this
4 state meeting the standards prescribed by the board of
5 directors of each such corporation shall be eligible for
6 participation in any hospital service plan operating in
7 this state. Every duly licensed physician, duly licensed
8 dentist, duly licensed chiropodists-podiatrists or other
9 health agency in this state meeting the standards pre-
10 scribed by the board of directors of each such corpora-
11 tion shall be eligible for participation in any medical
12 service plan operating in this state. Every duly licensed
13 dentist or duly licensed physician in this state meeting
14 the standards prescribed by the board of directors of
15 each such corporation shall be eligible for participation
16 in any dental service plan operating in this state. The
17 board of directors of every such corporation may also
18 prescribe standards for hospitals, physicians, dentists,
19 chiropodists-podiatrists and other health agencies located
20 in states adjoining this state, and all such hospitals, phy-
21 sicians, dentists, chiropodists-podiatrists and other health
22 agencies meeting such standards shall be eligible for
23 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, treat-
2 ment and rehabilitation of alcoholics, the commissioner
3 in the exercise of his authority under section nine of
4 this article is hereby directed to increase the price of
5 alcoholic liquors in addition to the price increases pro-
6 vided in sections nine, nine-a and nine-b hereof on or
7 before the last day of March, one thousand nine hun-
8 dred sixty-nine, in an amount sufficient to produce an
9 additional annual revenue of one million dollars on an
10 annual volume of business equal to the average for the
11 last three years. Such revenue shall be deposited in the
12 state fund general revenue as provided in section seven-
13 teen 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.]

AN ACT to amend and reenact section fifteen, article five, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the auditing and payment of claims of justices and constables, the annual statement of the sheriff of fines and costs received from justices, payment into the state treasury and the determination of the net proceeds of fines and costs; and providing that periodic payments for the establishment of a jail improvement fund may be taken into account in determining the net proceeds of fines and costs.

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
2 in misdemeanor proceedings in the county, instituted
3 before them on and after the effective date of this section
4 (January 17, 1935), shall be audited and examined by the
5 county court, and if found correct and if submitted, as
6 provided in section fourteen, article seventeen, chapter
7 fifty of this code, the county court shall cause orders to be
8 issued therefor on the sheriff to be paid out of the general
9 school fund or out of the general county fund, as the court
10 may direct. The sheriff shall annually, during the month
11 of January, render under oath to the auditor a true state-
12 ment of the account of all fines and costs collected by
13 justices and transmitted to him and pay into the treasury
14 of the state, the net proceeds of such fines and costs
15 as exhibited by such account, to be appropriated as di-
16 rected by the fifth section of article twelve of the con-
17 stitution; failure so to do shall be deemed a breach of
18 his official duty. For the purposes of this section, the
19 net proceeds of such fines and costs shall be deemed to
20 be the proceeds remaining after deducting therefrom the
21 lawful fees of constables and justices of the peace; the cost
22 of auditing the accounts of justices of the peace and con-
23 stables by the chief inspector's office; the expenses for
24 operation and maintenance of the county jail; the costs of
25 constructing, reconstructing and renovating any jail
26 facility used for county prisoners; and periodic payments,
27 if any, for the establishment of a jail improvement fund,
28 in the manner provided by section nine, article one of
29 this chapter, for constructing, reconstructing or renovat-
30 ing any jail facility used for county prisoners.

CHAPTER 74

(Senate Bill No. 116—By Mr. Sharpe and Mr. Holliday)

[Passed February 21, 1969; in effect from passage. Approved by the Governor.]

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
2 provisions of section two of this article, he may be at any
3 time readmitted to the hospital on the basis of the orig-
4 inal commitment. If there is reason to believe that it is
5 to the best interest of the patient to be hospitalized, the
6 superintendent of the state hospital may issue an order
7 for the immediate rehospitalization of the patient. This
8 order shall be sent to the mental hygiene commission or
9 to the clerk of the court which ordered his admission, as
10 the case may be, and to the clerk of the county court of
11 the county of the patient's residence. Upon receipt of such
12 order and without further endorsement, the clerk shall
13 authorize any health officer or police officer to take the
14 patient into custody and transport him to the state hos-
15 pital where the order originated.

CHAPTER 75

(Senate Bill No. 301—By Mr. Jackson, Mr. President,
and Mr. Hedrick)

[Passed March 8, 1969; in effect July 1, 1969. Approved by the Governor.]

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.**

3. Open-pit Mines, Cement Manufacturing Plants and Underground Limestone and Sandstone 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
2 instructors. To be eligible for employment as a mine
3 safety instructor the applicant shall be: (1) A citizen of
4 West Virginia, in good health, not less than twenty-five
5 nor more than sixty years of age, and of good character,
6 reputation and temperate habits; and (2) a person who
7 has had at least five years' experience in first aid and
8 mine rescue work and who has had practical experience
9 with dangerous gases found in coal mines, and who has
10 a practical knowledge of mines, mining methods, mine
11 ventilation, sound safety practices and applicable mining
12 laws.

13 In order to qualify for appointment as a mine safety
14 instructor an eligible applicant shall submit to a written
15 and oral examination given by the mine inspectors'
16 examining board. The examination shall relate to the
17 duties to be performed by a safety instructor and may,
18 subject to the approval of the mine inspectors' examining
19 board, be prepared by the director of West Virginia de-
20 partment of mines.

21 If the board finds after investigation and examination
22 that the applicant (1) is eligible for appointment and
23 (2) has passed all oral and written examinations with a
24 grade of at least eighty percent, the board shall add such
25 applicant's name and grade to a register of qualified
26 eligible candidates and certify its action to the director
27 of the department of mines. The director may then ap-

28 point one of the candidates from the three having the
29 highest grade.

30 The salary for a mine safety instructor shall be not
31 less than seventy-two hundred dollars per year and shall
32 be fixed by the director of the department of mines, who
33 shall take into consideration ability, performance of
34 duty, and experience. Such instructor shall devote all
35 of his time to the duties of his office. No reimbursement
36 for traveling expenses shall be made except on an itemiz-
37 ed accounting for such expenses submitted by the instruc-
38 tor, who shall verify upon oath that such expenses were
39 actually incurred in the discharge of his official duties.

40 Mine safety instructors serving as such on the effective
41 date of this section may continue to serve for a pro-
42 bationary period not exceeding one year and, if eligible,
43 may qualify for permanent appointment during such
44 probationary period in accordance with the provisions of
45 this section. Mine safety instructors, before entering upon
46 the discharge of their duties, shall take and subscribe
47 to the oath and shall execute a bond in the same penal
48 sum, with surety approved by the director of the depart-
49 ment of mines, all as is required by this article in the
50 case of mine inspectors.

51 Except as expressly provided in this section to the con-
52 trary, all provisions of this article relating to the eligi-
53 bility, qualification, appointment, tenure and removal of
54 mine inspectors shall be applicable to mine safety in-
55 structors.

**§22-1-7b. Mine inspectors—May be appointed to fill vacancy
in department; permanent tenure benefits not
affected.**

1 Notwithstanding any other provisions of law, if a va-
2 cancy occurs in any appointive position within the de-
3 partment of mines any mine inspector having permanent
4 tenure, if qualified, may be appointed to such appointive
5 position without forfeiting any of the benefits which have
6 accrued to him because of his permanent tenure as a mine
7 inspector.

§22-1-7c. Employment of electrical inspectors; qualifications; salary and expenses; tenure; oath; bond.

1 The department shall employ five or more electrical in-
2 spectors. To be eligible for employment as an electrical
3 inspector the applicant shall be: (1) A citizen and resi-
4 dent of West Virginia, in good health, not less than twenty-
5 five nor more than fifty-five years of age, and of good
6 character, reputation and of temperate habits; and (2)
7 a person who has had ten years' practical electrical experi-
8 ence in coal mines or a degree from West Virginia Uni-
9 versity or other accredited electrical engineering school.

10 In order to qualify for appointment as a mine electrical
11 inspector, an eligible applicant shall submit to written
12 and oral examination given by the mine inspectors' ex-
13 amining board. The examination shall relate to the duties
14 to be performed by an electrical inspector. If the board
15 finds after investigation and examination that the appli-
16 cant (1) is eligible for appointment and (2) has passed
17 all oral and written examinations with a grade of at least
18 ninety percent, the board shall add such applicant's name
19 and grade to a register of qualified eligible candidates
20 and certify its action to the director of the department
21 of mines. The director may then appoint one of the
22 candidates from the three having the highest grade.

23 The salary of a mine electrical inspector shall be not
24 less than eleven thousand four hundred dollars per year
25 and shall be fixed by the director of the department of
26 mines, who shall take into consideration ability, per-
27 formance of duty and experience. No reimbursement for
28 traveling expenses shall be made except on an itemized
29 accounting for such expense submitted by the electrical
30 inspector, who shall verify upon oath that such expenses
31 were actually incurred in the discharge of his official
32 duties.

33 Mine electrical inspectors serving as such on the effec-
34 tive date of this section may continue to serve for a pro-
35 bationary period not exceeding one year and, if eligible,
36 may qualify for permanent appointment during such pro-
37 bationary period in accordance with the provisions of
38 this section. Mine electrical inspectors, before entering

39 upon the discharge of their duties, shall take and subscribe
40 to the oath and shall execute a bond in the same penal
41 sum, with surety approved by the director of the depart-
42 ment of mines, all as is required by this article in the case
43 of mine inspectors.

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

29 the department of mines. No candidate's name shall re-
30 main in the register for more than three years without re-
31 qualifying.

32 (c) Salaries of district inspectors shall not be less than
33 ten thousand four hundred dollars per annum; assistant in-
34 spectors-at-large not less than eleven thousand dollars per
35 annum; inspectors-at-large not less than twelve thousand
36 dollars per annum, and shall receive mileage at the rate of
37 not less than ten cents for each mile actually traveled in
38 the discharge of his official duties in a privately owned
39 vehicle. Within the limits provided by law, the salary of
40 each inspector shall be fixed by the director of the depart-
41 ment of mines, subject to the approval of the mine
42 inspectors' examining board. In fixing salaries of mine in-
43 spectors, the director of the department of mines shall
44 consider ability, performance of duty and experience. No
45 reimbursement for traveling expenses shall be made ex-
46 cept upon an itemized account of such expenses submitted
47 by the inspector, who shall verify, upon oath, that such
48 expenses were actually incurred in the discharge of his
49 official duties.

50 (d) A mine inspector, after having received a permanent
51 appointment shall be removed from office only for physical
52 or mental impairment, incompetency, neglect of duty,
53 drunkenness, malfeasance in office, or other good cause.

54 Proceedings for the removal of a mine inspector may be
55 initiated by the director of the department of mines
56 whenever he has reasonable cause to believe and does
57 believe that adequate cause exists, warranting removal.
58 Such a proceeding shall be initiated by a verified petition,
59 filed with the board by the director of the department
60 of mines, setting forth with particularity the facts alleged.
61 Not less than twenty reputable citizens, who are operators
62 or employees in mines in the state, may petition the direc-
63 tor of the department of mines for the removal of a mine
64 inspector. If such petition is verified by at least one of
65 the petitioners, based on actual knowledge of the affiant,
66 and alleges facts, which, if true, warrant the removal of
67 the inspector, the director of the department of mines
68 shall cause an investigation of the facts to be made. If,
69 after such investigation, the director finds that there is

70 substantial evidence which, if true, warrants removal of
71 the inspector, he shall file a petition with the board re-
72 questing removal of the inspector.

73 On receipt of a petition by the director of the depart-
74 ment of mines seeking removal of a mine inspector the
75 board shall promptly notify the inspector to appear be-
76 fore it at a time and place designated in said notice,
77 which time shall be not less than fifteen days thereafter.
78 There shall be attached to the copy of the notice served
79 upon the inspector a copy of the petition filed with the
80 board.

81 At the time and place designated in said notice, the
82 board shall hear all evidence offered in support of the
83 petition and on behalf of the inspector. Each witness shall
84 be sworn and a transcript shall be made of all evidence
85 taken and proceedings had at any such hearing. No con-
86 tinuance shall be granted except for good cause shown.

87 The chairman of the board and the director of the de-
88 partment of mines shall have power to administer oaths
89 and subpoena witnesses.

90 Any mine inspector who shall wilfully refuse or fail
91 to appear before the board, or having appeared, shall re-
92 fuse to answer under oath any relevant question on the
93 ground that his testimony or answer might incriminate
94 him, or shall refuse to waive immunity from prosecu-
95 tion on account of any relevant matter about which he
96 may be asked to testify at any such hearing before the
97 board, shall forfeit his position.

98 If, after hearing, the board finds that the inspector
99 should be removed, it shall enter an order to that effect.
100 The decision of the board shall be final and shall not be
101 subject to judicial review.

§22-1-11a. Duties of mine electrical inspectors; findings and orders; reports.

1 In order that the electrical inspector may properly per-
2 form the duties required of him, he shall devote his whole
3 time and attention to the duties of his office, and he shall
4 have the right to enter any coal mine for the purpose of
5 inspecting electrical equipment, and if he finds during
6 his inspection any defects in the electrical equipment

7 which are covered by law and may be detrimental to the
8 lives or health of the workmen, he shall have the au-
9 thority to order the operator, in writing, to remedy such
10 defects within a prescribed time, and to prohibit the con-
11 tinued operation of such electrical equipment after such
12 time, unless such defects have been corrected.

13 The electrical inspector shall examine each mine in his
14 division at least once each year or as often as the director
15 may deem necessary.

16 It shall be the duty of the electrical inspector after
17 completing his examination of a mine to prepare a report
18 describing his findings in said mine in a manner and form
19 designated by the director. The original report shall be
20 forwarded to the operator or his representative whose
21 duty it shall be to post it in some conspicuous place open
22 to examination by any interested person or persons. The
23 report shall show the date of inspection, a list of equip-
24 ment, and any other information that the director may
25 deem necessary.

§22-1-20. Mine rescue crews.

1 The director of the state department of mines is hereby
2 authorized to have trained and employed at the rescue
3 stations operated by that department within the state,
4 such rescue crews as he may deem necessary. Each mem-
5 ber of a rescue crew shall devote four hours each month
6 for training purposes, and shall be available at all times
7 to assist in rescue work at explosions and mine fires.
8 Regular members shall receive for such services the sum
9 of sixteen dollars per month and captains shall receive
10 twenty dollars per month, payable on requisition ap-
11 proved by the director of the department of mines. The
12 director of the department of mines may remove any
13 member of a rescue crew at any time.

14 To qualify for membership of a mine rescue crew an
15 applicant shall: (a) Be not more than fifty years of age;
16 (b) submit evidence of good health satisfactory to the
17 director of the department of mines; (c) satisfactorily
18 complete a course of training prescribed by the director
19 of the department of mines. Each person so qualifying for
20 mine rescue operations and passing a physical examina-

21 tion by a licensed physician shall receive a certificate
22 evidencing such qualification. Annually thereafter such
23 person shall submit evidence to the director that he has
24 been examined by a licensed physician and found phys-
25 ically fit for mine rescue operations.

26 When engaged in rescue work required by an explo-
27 sion, fire or other emergency at a mine, all members of
28 mine rescue teams assigned to rescue operations shall,
29 during the period of their rescue work, be employees of
30 the operator of the mine where the emergency exists;
31 shall be compensated by said operator at the rate estab-
32 lished in the area for such work. In no case shall this
33 rate be less than the prevailing wage rate in the industry
34 for the most skilled class of inside mine labor. During
35 the period of their emergency employment members of
36 mine rescue teams shall be protected by the workmen's
37 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

§22-2-39. General provisions.

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.

1 For the purpose of this article:

2 (1) The term "abandoned workings" shall mean exca-
3 vations, either caved or sealed, that are deserted and in
4 which further mining is not intended, and open workings
5 which are ventilated and not inspected regularly.

6 (2) The term "approved" shall mean in strict com-
7 pliance with mining law or, in the absence of law, ac-
8 cepted by a recognized standardizing body or organization
9 whose approval is generally recognized as authoritative
10 on the subject.

11 (3) The term "armored cable" shall mean a cable pro-
12 vided with a wrapping of metal, usually steel wires or
13 tapes, primarily for the purpose of mechanical protection.

14 (4) The term "assistant mine foreman" shall mean a
15 person designated to assist the mine foreman in the
16 supervision of a portion or the whole of a mine or of the
17 persons employed therein.

18 (5) The term "borehole cable" shall mean a cable
19 designed for vertical suspension in a borehole or shaft
20 and used for power circuits in the mines.

21 (6) The term "branch circuit" shall mean any circuit,
22 alternating current or direct current, connected to and
23 leading from the main power line.

24 (7) The term "cable" shall mean a stranded conductor
25 (single conductor cable) or a combination of conductors
26 insulated from one another (multiple-conductor cable).

27 (8) The term "circuit breaker" shall mean a device for
28 interrupting a circuit between separable contacts under
29 normal or abnormal conditions.

30 (9) The term "delta connected" shall mean a power
31 system in which the windings of transformers or a.c.
32 generators are connected to form a triangular phase re-
33 lationship, and with the phase conductors connected to
34 each point of the triangle.

35 (10) The term "drift" shall mean a horizontal or ap-
36 proximately horizontal opening through strata or in a
37 coal seam and used for the same purposes as a shaft.

38 (11) The term "excavations and workings" shall mean
39 any or all parts of a mine excavated or being excavated,
40 including shafts, slopes, drifts, tunnels, entries, rooms
41 and working places, whether abandoned or in use.

42 (12) The term "effectively grounded" is an expres-
43 sion which means grounded through a grounding con-
44 nection of sufficiently low impedance (inherent or in-
45 tentiously added or both) so that fault grounds which
46 may occur cannot build up voltages in excess of
47 limits established for apparatus, circuits, or systems so
48 grounded.

49 (13) The term "face equipment" shall mean mobile
50 or portable mining machinery having electric motors or
51 accessory equipment normally installed or operated in-
52 by the last open crosscut in an entry or room.

53 (14) The term "fire boss" shall mean any person desig-
54 nated to examine a mine for gas and other dangers.
55 Such person shall have the qualifications required by
56 this article.

57 (15) The term "flame-resistant cable, portable" shall
58 mean a portable flame-resistant cable that has passed
59 the flame tests of the federal bureau of mines.

60 (16) The term "gassy mine" shall mean any mine
61 in which methane has been ignited, or has been de-
62 tected with a permissible flame safety lamp, or by labora-
63 tory analysis of an air sample collected in active workings,
64 in a perceptible air current, taken not less than twelve
65 inches from the roof, face and rib, in an amount of twenty-
66 five hundredths percent or more.

67 (17) The term "grounded (earthed)" shall mean that
68 the system, circuit, or apparatus referred to is provided
69 with a ground.

70 (18) The term "ground or grounding conductor (min-
71 ing)" (also referred to as a safety ground conductor,
72 safety ground, and frame ground) shall mean a metallic
73 conductor used to connect the metal frame or enclosure
74 of an equipment, device or wiring system, with a mine
75 track or other effective grounding medium.

76 (19) The term "high voltage" shall mean voltage hav-
77 ing a nominal value greater than six hundred fifty volts

78 between any two ungrounded conductors of the power
79 system.

80 (20) The term "interested persons" shall include the
81 operator, members of any mine safety committee at the
82 mine affected and other duly authorized representatives
83 of the mine workers, and state mine inspectors.

84 (21) The term "lightning arrestor" shall mean a pro-
85 tective device for limiting surge voltages on equipment
86 by discharging or bypassing surge current; it prevents
87 continued flow of follow current to ground and is capable
88 of repeating these functions as specified.

89 (22) The term "mechanical working section" shall
90 mean an area of a mine (1) in which coal is loaded
91 mechanically, (2) which is comprised of a number of
92 working places that are generally contiguous and (3)
93 which is of such size to permit necessary supervision dur-
94 ing the shift operation, including pre-shift and on-shift
95 examinations and tests required by law.

96 (23) The term "mine" shall include the shafts, slopes,
97 drifts or inclines connected with excavations penetrating
98 coal seams or strata, which excavations are ventilated by
99 one general air current or divisions thereof, and con-
100 nected by one general system of mine haulage over
101 which coal may be delivered to one or more points out-
102 side the mine and the surface structures or equipment
103 connected therewith which contribute directly or in-
104 directly to the mining, preparation or handling of coal.

105 (24) The term "mine foreman" shall mean the person
106 charged with the responsibility of the general supervision
107 of the underground workings of a mine and the persons
108 employed therein. He shall hold a certificate of com-
109 petency for such position issued to him by the department
110 of mines after taking an examination held by the de-
111 partment of mines.

112 (25) The term "mine power center or distribution
113 center" shall mean a combined transformer and distribu-
114 tion unit complete within a metal enclosure from which
115 one or more low-voltage power circuits are taken.

116 (26) The term "neutral point" shall mean the connec-
117 tion point of transformer or generator windings from

118 which the voltage to ground is nominally zero, and is the
119 point generally used for system groundings in a wye-
120 connected a.c. power system.

121 (27) The term "neutral (derived)" shall mean a neutral
122 point or connection established by the addition of a "zig-
123 zag" or grounding transformer to a normally ungrounded
124 delta power system.

125 (28) The term "nongassy mine" shall mean any coal
126 mine which is not classified as gassy.

127 (29) The term "operator" shall mean any firm, cor-
128 poration, partnership, or individual operating any coal
129 mine or part thereof.

130 (30) The term "permissible" shall mean any equip-
131 ment, device, or explosive, that has been approved as
132 permissible by the United States bureau of mines, and
133 meets all requirements, restrictions, exceptions, limita-
134 tions and conditions attached to such classification by
135 said bureau.

136 (31) The term "portable (trailing) cable" shall mean
137 a flexible cable or cord used for connecting mobile,
138 portable or stationary equipment in mines to a trolley
139 system or other external source of electric energy where
140 permanent mine wiring is prohibited or is impracti-
141 cable.

142 (32) The term "shaft" shall mean a vertical opening
143 through the strata that is or may be used for purposes of
144 ventilation, drainage and the hoisting and transportation
145 of men and material, in connection with the mining of
146 coal.

147 (33) The term "shot firer" shall mean any competent
148 person having had at least three years' practical experi-
149 ence in coal mines; who has a knowledge of ventilation,
150 mine roof and timbering; and who has demonstrated
151 knowledge of mine gases and the use of a flame safety
152 lamp, by examination given him by the mine foreman.

153 (34) The term "slope" shall mean a plane or incline
154 roadway, usually driven to a coal seam from the surface
155 and used for the same purposes as a shaft.

156 (35) The term "superintendent" shall mean the person

157 who shall have, on behalf of the operator, immediate
158 supervision of one or more mines.

159 (36) The term "supervisor" shall mean a superin-
160 tendent, mine foreman, assistant mine foreman, or any
161 person specifically designated by the superintendent or
162 mine foreman to supervise work or employees and who
163 is acting pursuant to such specific designation and in-
164 structions.

165 (37) The term "wye-connected" shall mean a power
166 system connection in which one end of each phase winding
167 of transformers or a.c. generators are connected together
168 to form a neutral point, and the other ends of the wind-
169 ings are connected to the phase conductors. A neutral
170 conductor may or may not be connected to the neutral
171 point, and the neutral may or may not be grounded.

172 (38) The term "zig-zag transformer (grounding trans-
173 former)" shall mean a transformer intended primarily
174 to provide a neutral point for grounding purposes.

175 (39) The term "return air" shall mean a volume of
176 air that has passed through and ventilated all the work-
177 ing places in a mine section.

MINE MAPS

**§22-2-2. Supervision by professional engineer or licensed land
surveyor; seal and certification; contents; exten-
sions; availability; traversing; copies; archive; final
survey and maps; penalties.**

1 The mapping of all coal mines shall be supervised by
2 a competent engineer or land surveyor. The work of such
3 engineer or land surveyor shall be supervised by either
4 a civil engineer or a mining engineer certified by the
5 board of engineers, which exists by authority of section
6 three, article thirteen, chapter thirty of this code, or a
7 licensed land surveyor approved by the board of exam-
8 iners of land surveyors as provided by section three,
9 article thirteen-a, chapter thirty of this code. To each
10 map supervised by the said engineer or land surveyor
11 there shall be affixed thereto the seal of a certified or pro-
12 fessional engineer or licensed land surveyor, which shall
13 be identical to the design authorized by the board of
14 engineers, as provided in section nine, article thirteen of

15 the aforesaid chapter thirty of this code or board of ex-
16 aminers of land surveyors as provided by section eleven,
17 article thirteen-a, chapter thirty of this code. Further,
18 every map certified shall have the professional engineer's
19 or land surveyor's signature and certificate, in addition
20 to his seal, in the following form:

21 "I, the undersigned, hereby certify that this map is cor-
22 rect and shows all the information, to the best of my
23 knowledge and belief, required by the laws of this state,
24 and covers the period ending _____

25 _____ P. E.

26 (Either Civil or Mining
27 Engineer or Land Surveyor)."

28 The operator of every underground coal mine shall
29 make, or cause to be made, an accurate map of such mine,
30 on a scale of not less than one hundred, and not more than
31 five hundred feet to the inch. The map of such mine shall
32 show:

33 (1) The shafts, slopes, drifts, tunnels, entries, rooms,
34 crosscuts and all other excavations;

35 (2) As far as practicable the outline of existing and
36 extracted pillars shall be designated;

37 (3) The direction of all air currents, using arrows;

38 (4) The abandoned portion or portions of the mine;

39 (5) The outcrop of the coal bed within the bounds of
40 the property assigned to the mine;

41 (6) The boundary lines of the coal rights assigned to
42 the mine;

43 (7) The known underground workings in the same coal
44 bed on the adjoining properties within one thousand
45 feet of such mine workings and projections;

46 (8) The elevation of the top and bottom of each shaft
47 and slope, all drifts and the bottom of the coal along the
48 haulage entries in each set of main and panel entries at
49 horizontal intervals not exceeding two hundred feet, with
50 contour lines at not more than twenty feet vertical inter-
51 vals;

52 (9) The location of the principle streams and bodies of
53 water on the surface;

54 (10) The location of any impounded bodies of water
55 inside the mine;

56 (11) The location of all boreholes penetrating the coal
57 bed mined;

58 (12) The location of all oil and gas wells, high pressure
59 pipelines, high voltage power lines and principal roads;
60 and

61 (13) Where the overburden is less than one hundred
62 feet, occupied dwellings shall be designated.

63 The operator of every underground coal mine shall
64 extend, or cause to be extended and filed, on or before
65 the first day of March and on or before the first day of
66 September of each year, such mine map thereof to ac-
67 curately show the progress of the workings as of the
68 first day of July and the first day of January of each year.

69 A copy of the most recent revision of the map of such
70 mine shall be available in the mine office for the use of the
71 state mine inspectors and mine officials. Any employee in
72 such mine may, in the presence of the mine foreman or an
73 assistant, examine such map if he has reason to believe
74 that a working place is in the proximity to other workings
75 that may contain impounded water or noxious gases.

76 Surveying calculations and mapping of underground
77 coal mines which are opened or reopened after the effec-
78 tive date of this section, shall be done by the rectangular
79 coordinate traversing method and meridians carried
80 through and tied between at least two parallel entries
81 of each development panel and panels or workings adja-
82 cent to mine boundaries or abandoned workings. These
83 surveys shall originate from at least three permanent
84 survey monuments on the surface of the mine property.
85 The monuments shall be clearly referenced and described
86 in the coal mine operator's records. Elevations shall be
87 tied to either the United States geological survey or the
88 United States coast and geodetic survey bench mark
89 system, be clearly referenced and described on such map.

90 Underground coal mines operating on the effective date
91 of this section, and not using the rectangular coordinate
92 traversing method shall, within two years of the effective
93 date of this section, convert to this procedure for survey-

94 ing calculations and mapping. Meridians shall be carried
95 through and tied between at least two parallel entries of
96 each development panel and panels or workings adjacent
97 to mine boundaries or abandoned workings. These sur-
98 veys shall originate from at least three permanent sur-
99 vey monuments on the surface of the mine property.
100 The monuments shall be clearly referenced and described
101 in the coal mine operator's records. Elevations shall be
102 tied to either the United States geological survey or the
103 United States coast and geodetic survey bench mark sys-
104 tem, be clearly referenced and described on such map.

105 The operator of such underground coal mine shall, by
106 reasonable proof, demonstrate to the director of the de-
107 partment of mines or his authorized agent, at anytime,
108 that a diligent search was made for all existing and avail-
109 able maps and survey data for the workings on the ad-
110 joining properties. The operator shall further be able to
111 show proof to the director of the department of mines
112 or his authorized agent that a suitable method was used
113 to insure accuracy in the methods used in transposing
114 other workings to the map of such mine.

115 The operator of every underground coal mine shall,
116 after the completion of each extension required by this
117 section, submit by certified mail, a true copy of such coal
118 mine map to the mine inspector for the district in which
119 such mine is located. The mine inspector shall not copy,
120 consent to have copied, nor use the map of any coal mine
121 for any purpose other than that for which intended by
122 this article.

123 There shall be an archive of underground coal mine
124 maps maintained at the office of the director of the de-
125 partment of mines. The archive shall:

- 126 (1) Be secured in a fireproof and burglarproof vault;
- 127 (2) Have an appropriate map identification system;
- 128 (3) Have adequate map microfilming facilities;
- 129 (4) Be open to any person having a valid interest in
130 information that mine maps may provide; and
- 131 (5) At the discretion of the director, provide, at cost,
132 a copy of any map for which a person may have a sound
133 reason to possess.

134 When any underground coal mine is worked out,
135 abandoned or closed indefinitely the operator of such mine
136 shall, within fifteen days after the cessation of the produc-
137 tion of coal, have completed, or cause to have completed,
138 a final survey of such mine. Not longer than thirty days
139 after coal production ceased, the operator shall have
140 extended, or caused to have extended, the map of such
141 mine to accurately show all excavations in such mine and
142 a true copy of such mine map sent, by certified mail, to
143 the archive of underground coal mine maps, office of the
144 director of the department of mines, state capitol, Charles-
145 ton. Final coal mine maps shall have thereon descriptions
146 of all survey monuments.

147 Any person having a map or surveying data of any
148 worked out or abandoned underground coal mine shall
149 make such map or data available to the department of
150 mines to copy or reproduce such material.

151 Any person who fails or refuses to discharge any duty
152 imposed upon him by this section shall be guilty of a
153 misdemeanor, and, upon conviction thereof, shall be pun-
154 ished by a fine of not less than five hundred dollars nor
155 more than one thousand dollars.

VENTILATION

§22-2-5. Ventilation of mines in general.

1 The operator or mine foreman of every coal mine,
2 whether worked by shaft, slope or drift, shall provide
3 and hereafter maintain for every such mine adequate
4 ventilation. In all mines the quantity of air passing
5 through the last open crosscut between the intake and
6 return in any set of entries shall be not less than six
7 thousand cubic feet of air per minute and as much more
8 as is necessary to dilute and render harmless and carry
9 away flammable and harmful gases: *Provided*, That the
10 quantity of air reaching the last crosscut in pillar sec-
11 tions may be less than six thousand cubic feet per min-
12 ute if at least six thousand cubic feet of air per minute
13 is being delivered to the intake of the pillar line. The
14 air current shall under any conditions have a sufficient
15 volume and velocity to reduce and carry away smoke
16 from blasting and any flammable or harmful gases. All

17 active underground working places in a mine shall be
18 ventilated by a current of air containing not less than
19 nineteen and five-tenths percent of oxygen, not more than
20 one percent of carbon dioxide, and no harmful quantities
21 of other noxious or poisonous gases.

22 Each working section newly developed in virgin coal
23 hereafter shall be ventilated by a separate split of air:
24 *Provided*, That areas already under development and in
25 areas where physical conditions prevent compliance with
26 this provision the director of the department of mines
27 may grant temporary relief from compliance until such
28 time as physical conditions make compliance possible.
29 The quantity of air reaching the last crosscut shall not
30 be less than six thousand cubic feet of air per minute
31 and shall under any conditions have a sufficient volume
32 and velocity to reduce and carry away smoke and flam-
33 mable or harmful gases from each working face in the
34 section.

35 As working places advance, crosscuts for air shall be
36 made not more than eighty feet apart. Where necessary
37 to render harmless and carry away noxious or flammable
38 gases, line brattice or other approved methods of venti-
39 lation shall be used so as to properly ventilate the face.
40 All crosscuts between the main intake and return airways
41 not required for passage of air and equipment shall be
42 closed with stoppings substantially built with incom-
43 bustible or fire-resistive material so as to keep working
44 places well vented: *Provided*, That in mines where it
45 becomes necessary to provide larger pillars for adequate
46 roof support, working places shall not be driven more
47 than two hundred feet without providing a connection
48 that will allow the free flow of air currents. In such
49 cases a minimum of twelve thousand cubic feet of air a
50 minute shall be delivered to the last open crosscut and
51 as much more as is necessary to dilute and render harm-
52 less and carry away flammable and noxious gases.

53 In special instances for the construction of sidetracks,
54 haulageways, airways, or openings in shaft bottom or
55 slope bottom layout where the size and strength of
56 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.

96 Where practicable, a crosscut shall be provided at or
97 near the face of each entry or room before such places
98 are abandoned.

99 Rooms, entries, airways, or other working places shall
100 not be driven in advance of air currents. Such provisions
101 shall not prohibit, as the room, entry or aircourse ad-
102 vances, the "necking" of any place for a distance not
103 exceeding that actually required for the installation of
104 mining equipment in use at this location: *Provided*,
105 That such room necks or entries are kept free of accumu-
106 lations of methane by use of line brattice or other ade-
107 quate means.

CLASSIFICATION OF MINES AND EXAMINATIONS

§22-2-7. Examination of gassy and nongassy mines.

1 In a gassy mine, within four hours immediately pre-
2 ceding the beginning of a coal-producing shift, and be-
3 fore any workman in such shift, other than those who
4 may be designated to make the examinations, enters the
5 underground areas of such mine, a certified foreman or
6 fire boss, designated by the operator of such mine to do
7 so, shall make an examination of such areas.

8 In a gassy mine, on a noncoal-producing shift, within
9 four hours of the time when noncertified men enter the
10 mine, the areas where they are assigned to work, and
11 the entrances to adjacent areas shall be examined by a
12 certified foreman or fire boss for gas and other dangerous
13 conditions; no uncertified man shall enter any area which
14 has not been properly examined by a certified foreman
15 or fire boss; all energized trolley lines and bare feeder
16 lines along haulageways shall be examined at least once
17 every eight hours by a certified foreman or fire boss. All
18 areas not being so examined shall have an approved
19 danger board posted at the entrance or entrances.

20 In nongassy mines examinations, which shall include
21 tests for explosive gas or oxygen deficiency made with
22 an approved flame safety lamp, shall be made at the
23 same times as are required for a gassy mine. The person
24 making such examinations unless he be a certified foreman
25 or fire boss shall be competent and certified in the same

26 manner as is prescribed by the director for certifying mine
27 foremen and fire bosses.

MOVEMENT OF EQUIPMENT

§22-2-7a. Movement of mining equipment.

1 Mining equipment being transported or trammed un-
2 derground, other than ordinary sectional movements,
3 shall be transported or trammed by qualified personnel
4 under the supervision of a certified foreman. To avoid
5 accidental contact with power lines, face equipment shall
6 be insulated and assemblies removed, if necessary, so as
7 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 em-
2 ployed in a period of twenty-four hours, the operator
3 shall employ a mine foreman who shall be a competent
4 and practical person, holding a certificate of competency
5 for such position issued to him by the department of
6 mines after an examination by such department. In order
7 to receive a certificate of competency to qualify as mine
8 foreman, he shall at the time he takes the examination,
9 be a citizen, resident or employed in a mine in this state,
10 of good moral character and temperate habits, having
11 had at least three years' experience in the underground
12 working, ventilation and drainage of coal mines, or be
13 a graduate of the school of mines of West Virginia Uni-
14 versity or of another accredited mining engineering
15 school and have had one year's practical experience in
16 coal mines: *Provided, however,* That in order to serve
17 as a mine foreman he shall have had at least five years'
18 practical experience, and if such service be at a gassy
19 mine then at least two years of such experience shall
20 have been in a gassy mine: *Provided further,* That any
21 person holding a mine foreman's certificate issued by
22 any other state may act in the capacity of mine foreman
23 in any mine in this state until the next regular mine
24 foreman's examination held by the department, but not
25 to exceed a maximum of ninety days.

26 In mines in which the operations are so extensive that
27 all the duties devolving upon the mine foreman cannot
28 be discharged by one man, competent persons having
29 had at least three years' experience in coal mines may be
30 designated as assistants, who shall act under the mine
31 foreman's instructions and the mine foreman shall be
32 responsible for their conduct in the discharge of their
33 duties under such designation.

§22-2-11. Signals on haulways; lights at mouth and bottom of shaft; operation of cages.

1 On all haulways, where hauling is done by machinery
2 of any kind, the mine foreman shall provide for a proper
3 system of signals, and a conspicuous light or approved
4 trip reflector on the rear of every trip or train of cars
5 when in motion in a mine. When hoisting or lowering
6 of men occurs in the morning before daylight, or in the
7 evening after darkness, at any mine operated by shaft,
8 the mine foreman shall provide and maintain at the
9 shaft mouth a light of stationary character sufficient
10 to show the landing and all surrounding objects dis-
11 tinctly and sufficient light of a stationary character shall
12 be located at the bottom of the shaft so that persons
13 coming to the bottom may clearly discern the cages and
14 other objects contiguous thereto. The mine foreman shall
15 require that no cages on which men are riding shall be
16 lifted or lowered at a rate of speed greater than one
17 thousand feet per minute, and that no mine cars, either
18 empty or loaded, shall be hoisted while men are being
19 lowered or hoisted, and no cage having an unstable self-
20 dump platform shall be used for the carrying of work-
21 men unless the same is provided with some device by
22 which it may be securely locked when men are being
23 hoisted or lowered into the mine: *Provided, however,*
24 That during the initial development of a new mine per-
25 sons may be permitted to ride upon cages carrying empty
26 cars.

§22-2-13. Instruction of employees; annual examination of persons using flame safety lamps; records of examination.

1 The department of mines shall prescribe and establish

2 a course of instruction in mine safety and particularly in
3 dangers incident to such employment in mines and in
4 mining laws and rules, which course of instruction shall
5 be successfully completed within twelve weeks after any
6 person shall be first employed as a miner. It shall further
7 be the duty and responsibility of the department of mines
8 to see that such course shall be given to all persons as
9 above provided after their first being employed in any
10 mine in this state.

11 It shall be the duty of the mine foreman, or the assistant
12 mine foreman, of every coal mine in this state, to see
13 that every person employed to work in such mine shall,
14 before beginning work therein, be instructed in the parti-
15 cular danger incident to his work in such mine, and be
16 furnished a copy of the mining laws and rules of such
17 mine. Every inexperienced person so employed shall work
18 under the direction of the mine foreman, his assistant, or
19 such other experienced worker as may be designated by
20 the mine foreman or assistant, until he is familiar with the
21 danger incident to his work.

22 Persons whose duties require them to use a flame safety
23 lamp and other approved methane detectors shall be
24 examined at least annually as to their competence by a
25 certified man and a record that such examination was
26 given, together with pertinent data relating thereto, shall
27 be kept on file by the operator and a copy shall be furn-
28 ished to the department of mines.

FIRE BOSS

§22-2-21. When fire boss to be employed; qualifications.

1 Every operator whose mines are classified as gassy,
2 shall employ a fire boss, who shall hold a certificate of
3 competency for such position issued to him by the de-
4 partment of mines after taking an examination held by
5 the department of mines. In order to receive a certificate
6 of competency to qualify as a fire boss, he shall at the time
7 he takes the examination, be a citizen, resident or em-
8 ployed in a mine in this state, having had at least three
9 years' experience in the underground working, ventila-
10 tion and drainage of coal mines, and shall have had at
11 least two years' experience in mines liberating explo-
12 sive gas; he shall have such knowledge of methane and

13 other dangerous gas or gases as to be able to detect the
14 same with a permissible flame safety lamp; he shall
15 have a practical knowledge of the subject of ventilation
16 of mines and the machinery and appliances used for that
17 purpose; and he shall also be a person of good moral
18 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
2 suitable to the roof conditions and mining system of each
3 mine or part of a mine shall be adopted and complied
4 with. A copy of the adopted roof support plan shall be
5 posted at the mine and a copy furnished to the district
6 mine inspector. Additional timbering or supporting shall
7 be used when and where necessary. It shall be the duty
8 of the mine foreman or his subordinate supervisors to
9 instruct all workmen in proper methods of setting tim-
10 bers or placing roof supports; and, it shall be the duty
11 of the workmen to comply with the instruction in setting
12 timbers and roof supports. The roof in all underground
13 working places, unless self-supporting, shall be secured
14 to protect employees from falls. Safety posts, jacks, or
15 temporary crossbars shall be set close to the face when
16 necessary for safety before other operations are begun
17 and as needed thereafter. Where roof supports are re-
18 quired at the working faces, persons shall not advance
19 beyond supported roof, except those who are assigned
20 to install supports. Timbering or roof support materials
21 to be used as required in supporting the roof in under-
22 ground workings shall be delivered at or near the work-
23 ing faces. In hand loading mines, the miner shall order
24 timbers and roof support materials at least one day in
25 advance in order to have in his working place a sufficient
26 supply for his needs. He shall place his order with his
27 supervisor stating his requirements. Roof bolts shall not
28 be used in lieu of conventional timbering unless a per-
29 mit has been issued by the state department of mines.
30 Roof bolts shall not be recovered where complete ex-
31 traction of pillars is attempted; nor shall bolts be re-

32 moved adjacent to clay veins; nor at the location of other
33 irregularities that introduce abnormal hazards. Where
34 roof bolt recovery is practiced, it shall be done only by
35 reasonable methods approved by the director of the de-
36 partment of mines. Recovery of roof supports shall not
37 be done except by experienced persons and only where
38 adequate temporary support is provided.

39 All unattended underground permanent belt conveyor
40 drives shall be provided with an automatic spray system
41 or its equivalent for fire protection. Any equipment that
42 has been installed for a period of one year shall be con-
43 sidered a permanent installation.

ELECTRICITY

§22-2-39. General provisions.

1 Operators of coal mines in which electricity is used as
2 a means of power shall comply with the following pro-
3 visions:

4 All surface transformers, unless of a construction which
5 will eliminate shock hazards, or unless installed at least
6 eight feet above ground, shall be enclosed in a house or
7 surrounded by a fence at least six feet high. If the enclo-
8 sure is of metal, it shall be grounded effectively. The gate
9 or door to the enclosure shall be kept locked at all
10 times, unless authorized persons are present.

11 Underground transformers purchased after the effective
12 date of this article, shall be air cooled or cooled with
13 noninflammable liquid or inert gas.

14 Underground stations containing transformers or cir-
15 cuit breakers filled with inflammable oil shall be provided
16 with door sills or their equivalent, which will confine the
17 oil if leakage or explosion occurs, and shall be of fire-
18 proof construction.

19 Transformers shall be provided with adequate overload
20 protection.

21 Portable or semiportable battery charging units shall
22 be operated on a separate split of air: *Provided*, That
23 such units may be operated on intake air if a minimum
24 of fifteen thousand cubic feet per minute is circulating
25 for one tray of batteries and five thousand cubic feet per

26 minute additional for each tray added. The rate of charg-
27 ing by such units shall not be less than four hours to
28 fully charge a tray of batteries.

29 Battery charging stations, motor generator sets, rotary
30 converters and oil filled transformers and switches, used
31 underground shall be housed in fireproof buildings venti-
32 lated by a separate split of air direct to the main return
33 (rectifiers excepted).

34 All power wires and cables entering a mine shall be
35 provided with lightning arrestors at points of entry.

36 "Danger—high voltage" signs shall be posted conspicu-
37 ously on all transformer enclosures, high-potential switch-
38 boards and other high-potential installations.

39 Circuit breakers or other overload devices shall be
40 provided to protect power circuits.

41 Insulating platforms of wood, rubber, or other suitable
42 nonconductive material shall be kept in place at each
43 switchboard and at stationary machinery where shock
44 hazards exist.

45 All power wires and cables in hoisting shafts, slopes
46 and power boreholes shall be properly insulated, pro-
47 vided with lightning arrestors, substantially installed
48 and well maintained.

49 All power wires, except training cables, especially de-
50 signed cable used as electrical conductors to underground-
51 rectifier or transformer stations, portable power cables
52 or bare or insulated ground and return wires, shall be
53 supported on well-installed insulators and shall not con-
54 tact combustible material, roof or ribs.

55 Trolley and feeder wires shall be installed as follows:
56 Where installed on permanent haulage, after the effective
57 date of this article, they shall be: (1) At least six inches
58 outside the track gauge line; (2) provided with cutout
59 switches at intervals of not more than two thousand feet
60 and near the beginning of all branch lines; and (3) kept
61 taut and not permitted to touch the roof, rib, or crossbars.
62 Particular care shall be taken where they pass through
63 door openings to preclude bare wires from coming in
64 contact with combustible material.

65 Trolley or bare feeder cables shall be guarded ade-
66 quately where it is necessary for men to pass or work
67 under them regularly unless the wires are more than six
68 and one-half feet above the top of the rail. They shall also
69 be guarded adequately on both sides of doors, at all
70 stations designated for the loading and unloading of man
71 trips, and at sandboxes.

72 After the effective date of this article, in new under-
73 ground installations of electric face equipment in new
74 mines the difference in potential between any two points
75 in the electrical circuits, or between any point in the
76 electrical circuits and the ground, shall not exceed six
77 hundred and fifty volts. No provision of this section shall
78 prohibit the use of higher voltages of alternating current
79 on service lines to rectifiers, converters, transformers
80 or switches connected thereto located in areas out by the
81 immediate face regions: *Provided*, That electrically face-
82 operated equipment used in underground mines may be
83 operated at higher voltages if the conductor in the trailing
84 cable is surrounded by a flexible grounded metallic sheath,
85 ground current is limited by acceptable methods, and the
86 ground circuit is continuously monitored in a method
87 approved by the director of the department of mines.

88 In a gassy mine, trolley, feeder wires, mine power cen-
89 ters, rectifiers and distribution centers shall not extend
90 beyond the last open crosscut and shall be kept at least
91 one hundred and fifty feet from open pillar workings.
92 Trolley wires and feeder wires shall be anchored securely,
93 insulated, and properly identified at their ends. Metallic
94 frames, casings, and other enclosures of stationary electric
95 equipment that can become "alive" through failure of
96 insulation or by contact with energized parts shall be
97 grounded effectively.

98 Metal frames, supporting structures and enclosures of
99 substations or switching station apparatus shall be
100 grounded effectively.

101 Lightning arrestors suitable for the voltage of the sys-
102 tem shall be installed on each ungrounded conductor for
103 each exposed feeder circuit entering the mine.

104 Capacitors used for power factor correction shall be

105 nonflammable liquid filled. Suitable drain-off resistors or
106 other means to protect workmen against electric shock
107 following removal of power shall be provided.

108 Where a.c. to d.c. conversion equipment is used to
109 supply direct current for shuttle cars or other face
110 equipment, adequate electrical protection shall be pro-
111 vided on either the alternating current side and/or the
112 direct current side of the conversion equipment.

113 Where both a.c. and d.c. equipment is operating in the
114 same mine the grounding systems shall not be inter-
115 connected.

116 The use of "jumpers," as a supplement for feeder or
117 trolley lines, are permitted if they are installed in the
118 same manner as the feeder or trolley line and are of ade-
119 quate capacity.

120 All cables shall be of the approved type and trailing
121 cables shall be flame resistant.

122 Power circuits servicing alternating current face equip-
123 ment shall include a neutral grounding circuit, either
124 direct or derived, the inby end of which shall be connected
125 only to the equipment machine frame.

126 Each individual alternating current power circuit (trail-
127 ing cable) furnishing power to mining equipment shall be
128 protected from short circuits by means of a circuit breaker
129 which will open all three phases of the circuit simul-
130 taneously.

131 Where electric motors are operating inside of any coal
132 mine they shall be provided with correct overload pro-
133 tection.

134 All unattended underground loading points where
135 electric driven hydraulic systems are used shall utilize a
136 fireproof oil or emulsion, unless the electrical wiring and
137 hydraulic systems are separated.

138 When direct current power cables enter a mine by way
139 of a borehole, the bottom or area around the borehole
140 shall be adequately fireproofed.

141 Before major electrical changes are made to permissible
142 equipment for use in a gassy mine, they shall be approved
143 by the director of the department of mines.

144 Where installed after the effective date of this section,
145 high-voltage lines or cables entering a mine shall have
146 circuit breakers or a similar approved protective device.

147 Diodes or similar devices may be used as an equivalent
148 frame grounding device.

149 When two or more trailing cables junction to the same
150 power car or transformer, means shall be provided to
151 eliminate the possibility of cross-connecting or connecting
152 to the wrong size breaker.

153 All power transformers shall be provided with adequate
154 overload protection. A visual and suitable means of dis-
155 connecting the primary line of the transformers shall be
156 provided.

157 In new installations made after the effective date of
158 this section, lightning arrestors shall be connected to a
159 low resistance grounding medium on the surface which
160 shall be separated from system and equipment grounds
161 by a distance of not less than fifty feet.

162 At locations where cables cross regular haulage or
163 travelways, or where equipment must pass, unless pro-
164 tected by sufficient height, the cables shall be installed
165 in a trench in the roof, protected by some mechanical
166 means, or buried at least twelve inches below combustible
167 material and adequately protected from crushing by the
168 weight of equipment passing over it.

169 Underground high-voltage main feeder cables shall
170 extend to high-voltage distribution centers with breakers
171 or disconnect switches supplying the branch circuits. Dis-
172 connecting devices shall be incorporated to provide visual
173 evidence that the circuit is deenergized when the switches
174 are opened.

175 Permanent high-voltage cables shall be installed only
176 in well maintained and accessible passageways of the
177 mine and when installed in haulageways shall be support-
178 ed on hangers and/or messenger wire supported from
179 the roof and/or buried. Extra lengths may be stored in
180 a workmanlike manner, vertically on suitable supports,
181 or horizontally in a protected location.

182 Circuit breakers and disconnecting switches on high-
183 voltage circuits underground shall be adequately marked

184 for identification and location. Where work is to be done
185 on these circuits or equipment, a positive method shall
186 be provided for removing the power in a manner to pre-
187 vent it from returning while the men are working.

188 Reverse current protection shall be provided at storage
189 battery charging stations to prevent the storage batteries
190 from energizing the power circuits in the event of power
191 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.

1 No operator or mine foreman of any coal mine shall
2 employ any person to work in such mine, or permit any
3 persons to be in the mine for the purpose of working
4 therein, unless they are in communication with at least
5 two openings, or outlets, to each seam, separated by
6 natural strata, such openings to be not less than three
7 hundred feet apart, if the mine be worked by shaft; if
8 the mine be worked by shaft and slope, such openings
9 shall be separated by one hundred feet of natural strata;
10 and not less than fifty feet apart at the outlets, if worked
11 by slope or drift; but this requirement of a distance of
12 three hundred feet between openings or outlets to shaft
13 mines shall not apply where such openings or outlets
14 have been made prior to the effective date of this article.
15 To each of the outlets there shall be provided from the
16 interior of the mine a safe and available roadway, prop-
17 erly drained, which shall at all times, while the mine is
18 in operation, be kept free from all obstructions that might
19 prevent travel thereon in case of an emergency. If either
20 of the outlets be by shaft, it shall be fitted with safe
21 and available appliances, such as stairs or hoisting ma-
22 chinery, which shall at all times when men are under-
23 ground be kept in order and ready for immediate use,
24 whereby persons employed in the mine may readily
25 escape in case of accident.

26 There shall be at least two separate and distinct travel-
27 able passageways, one of which may be the haulageway,

28 to be designated as escapeways from each working sec-
29 tion to the surface of every mine. Adequate direction
30 signs shall be posted, escapeways shall be inspected and
31 traveled at least once 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.

10 (d) "Gravel" means an occurrence of waterworn
11 pebbles.

12 (e) "Sandstone" means a compacted or cemented sedi-
13 ment composed chiefly of quartz grains.

14 (f) "Limestone" means a sedimentary rock composed
15 mostly of calcium carbonate.

16 (g) "Clay" means a natural material of mostly small
17 fragments of hydrous aluminum silicates and possessing
18 plastic properties.

19 (h) "Shale" means a laminated sedimentary rock
20 composed chiefly of small particles of a clay grade.

21 (i) "Iron ore" means a mineral or minerals, and
22 gangue when treated will yield iron at a profit.

23 (j) "Manganese ore" means a metalliferous mineral
24 when treated will yield manganese at a profit.

§22-3-2. Applicability of mining laws.

1 All provisions of the mining laws of this state intended
2 for the protection of the health and safety of persons
3 employed within or at any coal mine and for the protec-
4 tion of any coal mining property shall extend to all open-
5 pit mines and any property used in connection there-
6 with for the mining of underground limestone and sand-
7 stone mines, insofar as such laws are applicable thereto.

§22-3-3. Rules and regulations.

1 The director of the department of mines shall promul-
2 gate reasonable rules and regulations, in accordance with
3 and confined to the provisions of chapter twenty-nine-a
4 of this code, for the effective administration of this article.

§22-3-4. Monthly report by operator.

1 The operator of such mine shall, on or before the end
2 of each calendar month, file with the director of the de-
3 partment of mines a report covering the preceding cal-
4 endar month on forms furnished by the director. Such
5 reports shall state the number of accidents which have
6 occurred, the number of persons employed, the days
7 worked and the actual tonnage mined.

§22-3-5. Inspectors.

1 The director of the department of mines shall divide
2 the state into not more than two mining districts and
3 assign one inspector to each district. Such inspector shall
4 be a citizen of West Virginia, in good health, of good
5 character and reputation, temperate in habits, have a
6 minimum of five years of practical experience in such
7 mining operations and at the time of his appointment is
8 not more than fifty-five years of age. To qualify for ap-
9 pointment as such an inspector, an eligible applicant
10 shall submit to a written and oral examination by the
11 mine inspectors' examining board and furnish such evi-
12 dence of good health, character and other facts establish-
13 ing eligibility as the board may require. If the board
14 finds after investigation and examination that an appli-
15 cant: (1) Is eligible for appointment and (2) has passed
16 all written and oral examinations, with a grade of at
17 least ninety percent, the board shall add such applicant's
18 name and grade to the register of qualified eligible candi-
19 dates and certify its action to the director of the depart-
20 ment of mines. Inspectors serving as such on the effec-
21 tive date of this section may continue to serve for a pro-
22 bationary period not exceeding one year and, if eligible,
23 may qualify for permanent appointment during such
24 probationary period in accordance with the provisions of
25 this section. No candidate's name shall remain in the
26 register for more than three years without requalifying.
27 Such inspector shall have the same tenure accorded a
28 mine inspector, as provided in subsection (d), section
29 eight, article one of this chapter and shall be paid not
30 less than eight thousand four hundred dollars per annum.

§22-3-6. Penalties.

1 Any person who fails or refuses to discharge any pro-
2 vision of this article, rule and regulation promulgated or
3 order issued pursuant to the provisions of this article,
4 shall be guilty of a misdemeanor, and, upon conviction
5 thereof, shall be punished by a fine of not less than one
6 hundred nor more than one thousand dollars or by im-
7 prisonment not exceeding six months, or by both.

CHAPTER 76

(Senate Bill No. 24—By Mr. Jackson, Mr. President,
and Mr. Gainer)

[Passed March 8, 1969; in effect July 1, 1969. Approved by the Governor.]

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.

- §22-4-1g. 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.
- §22-4-1h. Review of findings and orders by deputy director for oil and gas; special inspection; annulment, revision, etc., of order; notice.
- §22-4-1i. Requirements for findings, orders and notices; posting of findings and orders.
- §22-4-1k. 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
2 different meaning, as used in this article:

3 (a) "Deputy director" shall mean the deputy director
4 for oil and gas;

5 (b) "Well" shall mean any shaft or hole sunk, drilled,
6 bored or dug into the earth or into underground strata for
7 the extraction or injection or placement of any liquid or

8 gas, or any shaft or hole sunk or used in conjunction with
9 such extraction or injection or placement. The term
10 "well" shall not have included within its meaning any
11 shaft or hole sunk, drilled, bored or dug into the earth for
12 the sole purpose of core drilling or pumping or extracting
13 therefrom potable, fresh or usable water for household,
14 domestic, industrial, agricultural or public use;

15 (c) "Facility" shall mean any facility utilized in the oil
16 and gas industry in this state and specifically named or re-
17 ferred to in this article or in articles five or seven of this
18 chapter, other than a well or well site;

19 (d) "Owner" when used with reference to any such
20 well, shall include any person or persons, firm, partner-
21 ship, partnership association or corporation that owns,
22 manages, operates, controls or possesses such well as
23 principals, or as lessee or contractor, employee or agent
24 of such principal;

25 (e) "Well operator" or "operator" shall include any
26 person or persons, firm, partnership, partnership associa-
27 tion or corporation that proposes to or does locate, drill,
28 operate or abandon any well as herein defined;

29 (f) "Chief" shall mean chief of the division of water
30 resources of the department of natural resources;

31 (g) "Coal operator" shall include any person or per-
32 sons, firm, partnership, partnership association or corpora-
33 tion that proposes to or does operate a coal mine;

34 (h) "Department" or "department of mines" includes
35 the duly constituted authorities under the laws of this
36 state having jurisdiction over coal mining operations;

37 (i) "Plat" means a map, drawing or print showing the
38 location of a well or wells as herein defined;

39 (j) "Casing" means a string or strings of pipe com-
40 monly placed in wells drilled for natural gas or petroleum
41 or both;

42 (k) "Oil" and "gas" are synonyms for petroleum and
43 natural gas respectively;

44 (l) "Cement" means hydraulic cement properly mixed
45 with water only;

46 (m) "Workable coal bed" means a coal bed in fact
47 being operated commercially, or which, in the judgment
48 of the department of mines, can, and that it is reasonably
49 to be expected will, be so operated, and which, when
50 operated, will require protection if wells are drilled
51 through it.

**§22-4-1a. Deputy director for oil and gas—Appointment;
powers and duties generally; departmental records
open to public.**

1 There shall be an employee of the department whose
2 title shall be "deputy director for oil and gas," who shall
3 be appointed by the director to serve at the will and
4 pleasure of the director. The deputy director for oil and
5 gas shall have full charge of the oil and gas matters set
6 out in this article and in articles five and seven of this
7 chapter, subject always to the direct supervision and
8 control of the director of the department of mines. As
9 such, the deputy director for oil and gas shall have the
10 power and duty to:

11 (1) Supervise and direct the execution and enforce-
12 ment of the provisions of this article and articles five
13 and seven of this chapter;

14 (2) Employ a supervising oil and gas inspector and
15 not more than eight district oil and gas inspectors upon
16 approval by the director, such clerks, stenographers and
17 other employees as may be approved by the director,
18 at compensation fixed by the director, except as otherwise
19 provided in this article;

20 (3) Supervise and direct such oil and gas inspectors
21 and supervising inspector in the performance of their
22 duties;

23 (4) Suspend for good cause any oil and gas inspector
24 or supervising inspector without compensation for a
25 period not exceeding thirty days in any calendar year;

26 (5) Prepare report forms to be used by oil and gas
27 inspectors or the supervising inspector in making their
28 findings, orders and notices, upon inspections made in
29 accordance with this chapter;

30 (6) Hear and determine applications made by owners,
31 well operators, and coal operators for the annulment or
32 revision of orders made by oil and gas inspectors or the
33 supervising inspector, and to make inspections, in ac-
34 cordance with the provisions of this article and articles
35 five and seven of this chapter;

36 (7) Cause a properly indexed permanent and public
37 record to be kept of all inspections made by himself or by
38 oil and gas inspectors or the supervising inspector;

39 (8) Make annually a full and complete written report
40 to the director of the department of mines in such form
41 and detail as the director may from time to time request,
42 so that the director can complete the preparation of the
43 director's annual report to the governor of the state;

44 (9) Conduct such research and studies as the director
45 shall deem necessary to aid in protecting the health and
46 safety of persons employed within or at potential or
47 existing oil or gas production fields within this state, to
48 improve drilling and production methods and to provide
49 for the more efficient protection and preservation of oil
50 and gas-bearing rock strata and property used in connec-
51 tion therewith;

52 (10) Perform all other duties which are expressly im-
53 posed upon him by the provisions of this chapter, as well
54 as duties assigned to him by the director of the depart-
55 ment of mines.

56 All records of the department shall be open to the
57 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
2 of mines shall have authority to visit and inspect any
3 well or well site and any other oil and/or gas facility
4 in this state and may call for the assistance of any oil
5 and gas inspector or inspectors or supervising inspector
6 whenever such assistance is necessary in the inspection of
7 any such well or well site or any other oil and/or gas
8 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.

**§22-4-1g. Findings and orders of inspectors concerning viola-
tions; determination of reasonable time for abate-
ment; extensions of time for abatement; special
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

24 facility; and (B) upon expiration of such period of time
25 as originally fixed or as extended, unless the deputy di-
26 rector for oil and gas is satisfied that the violation has
27 been abated. Upon making such special inspection, such
28 oil and gas inspector shall determine whether or not such
29 violation has been totally abated. If he determines that
30 such violation has not been totally abated, he shall de-
31 termine whether or not such period of time as originally
32 fixed, or as so fixed and extended, should be extended.
33 If he determines that such period of time should be ex-
34 tended, he shall determine what a reasonable extension
35 would be. If he determines that such violation has not
36 been totally abated, and if such period of time as orig-
37 inally fixed, or as so fixed and extended, has then expired,
38 and if he also determines that such period of time should
39 not be further extended, he shall thereupon make an
40 order requiring the operator of such well or well site or
41 other oil and/or gas facility to cease further operations
42 of such well, well site or facility, as the case may be.
43 Such findings and order shall contain reference to the
44 specific provisions of this article which are being violated.
45 (c) Notice of each finding and order made under this
46 section shall promptly be given to the operator of the
47 well or well site or other oil and/or gas facility to which
48 it pertains, by the person making such finding or order.
49 (d) No order shall be issued under the authority of
50 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, revi-
sion, etc., of order; notice.**

1 Any operator of a well or well site or other oil and/or
2 gas facility notified of findings or an order made by an oil
3 and gas inspector pursuant to section one-g of this article,
4 may apply to the deputy director for oil and gas for
5 annulment or revision of such order. Upon receipt of
6 such application the deputy director for oil and gas shall
7 make a special inspection of the well, well site or other
8 oil and/or gas facility affected by such order, or cause
9 two duly authorized oil and gas inspectors, other than
10 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.

**§22-4-1i. Requirements for findings, orders and notices; post-
ing 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.

9 (b) Notice of any finding or order required by sections
10 one-g or one-h of this article to be given to an operator
11 shall be given by causing such notice, addressed to the
12 operator of the well, well site or other oil and/or gas
13 facility to which such finding or order pertains, to be
14 delivered to such operator by causing a copy thereof to
15 be sent by registered mail to the permanent address of
16 such operator as filed with the department of mines and
17 by causing a copy thereof to be posted upon the drilling
18 rig or other equipment at the well, well site or other oil
19 and/or gas facility, as the case may be. The requirement
20 of this article that a notice shall be "addressed to the
21 operator of the well, well site or other oil and/or gas
22 facility to which such finding or order pertains," shall not
23 require that the name of the operator for whom it is in-
24 tended shall be specifically set out in such address. Ad-
25 dressing such notice to "Operator of . . .," specifying the
26 well, well site or other oil and/or gas facility sufficiently
27 to identify it, shall satisfy such requirement.

**§22-4-1k. Permits required; application for permit; informa-
tion; responsible agent; drilling permit number;
when permits not to be issued.**

1 It shall be unlawful for any well to be drilled, redrilled,
2 deepened, fractured, pressured, converted or combined
3 unless a permit therefor has been issued by the depart-
4 ment. An application for any such permit shall be filed
5 with the deputy director and shall contain the following:

6 (a) The name and address of the well operator;

7 (b) The name and address of the owner of the surface
8 lands upon which the well is or may be located;

9 (c) The name and address of the agent of the well
10 operator, if any such agent is required to be designated
11 under the provisions of this section;

12 (d) The approximate depth to which the well is to be
13 drilled;

14 (e) The proposed casing program of such well includ-
15 ing the sizes of all such casing, the depth to which all
16 casing is to be run and the extent to which such casing
17 is to be cemented; and,

18 (f) Any other information which the deputy director
19 by rule or regulation may require.

20 If the well operator named in such application is a cor-
21 poration, partnership or a nonresident of the state of West
22 Virginia, then there shall be designated the name and
23 address of an agent for such operator who shall be the
24 attorney in fact for the operator and who shall be a resi-
25 dent of the state of West Virginia upon whom notices,
26 orders or other communications issued pursuant to this
27 article or article five-a, chapter twenty, may be served,
28 and upon whom process may be served. Every well
29 operator required to designate an agent under this section
30 shall within five days after the termination of such
31 designation notify the department of such termination and
32 designate a new agent.

33 The deputy director shall issue with the permit a metal
34 plate containing the drilling permit number as designated
35 by him, which plate shall be permanently affixed in the
36 manner prescribed by the deputy director to the well site
37 upon the completion of the drilling of such well. The
38 metal plate required to be issued by the deputy director
39 shall be of a size and dimension and of such material as he
40 shall establish by rule and regulation.

41 For the purpose of ascertaining whether or not issuance
42 of any permit to drill, redrill, deepen, case, fracture, pres-
43 sure, operate, plug, abandon, convert or combine any well
44 will contribute to an existing pollution problem, the deputy
45 director shall have the right and it shall be his duty to con-
46 sult with the director of the department of natural re-
47 sources. In the event the issuance of any such permit may
48 reasonably be expected to contribute to any such exist-
49 ing pollution then the deputy director will not issue such
50 permit.

51 Any person who violates any provision of this section
52 shall be guilty of a misdemeanor, and, upon conviction
53 thereof, shall be punished by a fine not exceeding two
54 thousand dollars, or imprisonment in jail for not exceed-
55 ing twelve months, or both such fine and imprisonment.

**§22-4-2. Plats prerequisite to drilling or fracturing wells; prep-
aration and contents; notice and information**

furnished to coal operators; issuance of permits; performance bonds or securities in lieu thereof.

1 Before drilling for oil or gas, or before fracturing a well
2 originally drilled before the fifth day of June, one thou-
3 sand nine hundred twenty-nine, on any tract of land, the
4 well operator shall have a plat prepared by a competent
5 land surveyor or engineer showing the district and county
6 in which the tract of land is located, the name and acreage
7 of the same, the names of the owners of adjacent tracts,
8 the proposed or actual location of the well determined
9 by survey, the courses and distances of such location
10 from two permanent points or landmarks on said tract
11 and the number to be given the well (and the date of
12 drilling completion of a well originally drilled before
13 the fifth day of June, one thousand nine hundred twenty-
14 nine, when it is proposed that such well be fractured),
15 and shall forward by registered mail a copy of the plat
16 to the department of mines. In the event the tract of
17 land on which the said well proposed to be drilled or
18 fractured is located is known to be underlaid with one
19 or more workable beds of coal, copies of the plat shall
20 be forwarded by registered mail to each and every coal
21 operator, if any, operating said beds of coal beneath
22 said tract of land, or within five hundred feet of the
23 boundaries of the same, who has mapped the same and
24 filed his maps as required by law. With each of such
25 plats there shall be enclosed a notice (form for which
26 shall be furnished on request by the department of mines)
27 addressed to the department of mines and to each such
28 coal operator, if any, at their respective addresses, in-
29 forming them that such plat and notice are being mailed
30 to them respectively by registered mail, pursuant to
31 the requirements of this article. If no objections are
32 made, or are found by the department, to such pro-
33 posed location or proposed fracturing within ten days
34 from receipt of such plat and notice by the department
35 of mines, the same shall be filed and become a perma-
36 nent record of such location or fracturing subject to
37 inspection at any time by any interested person, and the
38 department may forthwith issue to the well operator
39 a permit reciting the filing of such plat, that no objec-

40 tions have been made by the coal operators, if any, or
41 found thereto by the department, and authorizing the
42 well operator to drill at such location, or to fracture the
43 well originally drilled before the fifth day of June, one
44 thousand nine hundred twenty-nine: *Provided*, That un-
45 less the department has objections to such proposed loca-
46 tion or proposed fracturing, such permit may be issued
47 prior to the expiration of such ten-day period upon the
48 obtaining by the well operator of the consent in writ-
49 ing of the coal operator or operators to whom copies
50 of the plat and notice shall have been mailed as herein
51 required, and upon presentation of such written consent
52 to the department. The notice above provided for may
53 be given to the coal operator by delivering or mailing
54 it as above to any agent or superintendent in actual
55 charge of mines.

56 A permit to drill, or to fracture an oil and/or gas well
57 originally drilled before the fifth day of June, one thou-
58 sand nine hundred twenty-nine, shall not be issued
59 unless the application therefor is accompanied by a
60 bond of the operator in the sum of one thousand dollars,
61 payable to the state of West Virginia, with a corporate
62 bonding and/or surety company authorized to do busi-
63 ness in this state as surety thereon, conditioned on full
64 compliance with all laws, rules and regulations relating
65 to the drilling, redrilling, deepening, casing, plugging
66 and abandonment of wells and for furnishing such reports
67 and information as may be required by the department:
68 *Provided, however*, That when such operator makes or
69 has made application for permits to drill a number of
70 wells and/or fracture a well or wells originally drilled
71 before the fifth day of June, one thousand nine hundred
72 twenty-nine, the operator may in lieu of furnishing a
73 separate bond furnish a blanket bond in the sum of ten
74 thousand dollars, payable to the state of West Virginia,
75 with a corporate bonding or surety company authorized
76 to do business in this state as surety thereon, and con-
77 ditioned as aforesaid: *Provided further*, That in lieu of
78 corporate surety on a separate or blanket bond, as the
79 case may be, the operator may elect to deposit with the
80 deputy director for oil and gas cash or the following

81 collateral securities or any combination thereof: (1)
82 Bonds of the United States or agency thereof, or those
83 guaranteed by, or for which the credit of the United
84 States or agency thereof is pledged for the payment of
85 the principal and interest thereof; (2) direct general
86 obligation bonds of this state, or any other state, or
87 territory of the United States, or the District of Co-
88 lumbia, unconditionally guaranteed as to the principal
89 and interest by such other state or territory of the
90 United States, or the District of Columbia if such other
91 state, territory, or the District of Columbia has the power
92 to levy taxes for the payment of the principal and in-
93 terest of such securities, and if at the time of the deposit
94 such other state, territory, or the District of Columbia
95 is not in default in the payment of any part of the
96 principal or interest owing by it upon any part of its
97 funded indebtedness; (3) direct general obligation bonds
98 of any county, district, city, town, village, school district
99 or other political subdivision of this state issued pur-
100 suant to law and payable from ad valorem taxes levied
101 on all the taxable property located therein, provided that
102 the total indebtedness after deducting sinking funds
103 and all debts incurred for self-sustaining public works
104 does not exceed five percent of the assessed value of all
105 taxable property therein at the time of the last assess-
106 ment made before the date of such deposit, and pro-
107 vided that the issuer has not, within five years prior to
108 the making thereof, been in default for more than ninety
109 days in the payment of any part of the principal or
110 interest on any debt evidenced by its bonds; (4) revenue
111 bonds issued by this state or any agency of this state
112 when such bonds are payable from revenues or earnings
113 specifically pledged for the payment of principal and
114 interest, and a lawful sinking fund or reserve fund has
115 been established and is being maintained for the pay-
116 ment of such bonds; (5) revenue bonds issued by a
117 municipality in this state for the acquisition, construc-
118 tion, improvement, or extension of a waterworks system,
119 or a sewerage system, or a combined waterworks and
120 sewerage system, when such bonds are payable from
121 revenue or earnings specifically pledged for the pay-

122 ment of principal and interest, and a lawful sinking fund
123 or reserve fund has been established and is being main-
124 tained for the payment of such bonds; (6) revenue bonds
125 issued by a public service board of a public service
126 district in this state for the acquisition, construction,
127 improvement or extension of any public service prop-
128 erties, or for the reimbursement or payment of the costs
129 and expenses of creating the district, when such bonds
130 are payable from revenue or earnings specifically pledged
131 for the payment of principal and interest, and a lawful
132 sinking fund or reserve fund has been established and
133 is being maintained for the payment of such bonds; (7)
134 revenue bonds issued by a board of trustees of a sanitary
135 district in this state for the corporate purposes of such
136 district, when such bonds are payable from revenue or
137 earnings specifically pledged for the payment of principal
138 and interest, and a lawful sinking fund or reserve fund
139 has been established and is being maintained for the
140 payment of such bonds; and (8) bonds issued by a federal
141 land bank or home owners' loan corporation. The cash
142 deposit and/or market value of the collateral securities
143 shall be equal to or greater than the penalty of the
144 separate or blanket bond, as the case may be. Upon re-
145 ceipt of any such deposit or cash or collateral securi-
146 ties, the deputy director for oil and gas shall immediately
147 deliver the same to the treasurer of the state of West
148 Virginia. The treasurer shall determine whether any such
149 securities satisfy the requirements of this section. If
150 the securities are approved they shall be accepted by
151 the treasurer. If the securities are not approved, they
152 shall be rejected and returned to the operator and no
153 permit shall be issued until a corporate surety bond is
154 filed or cash or proper collateral securities are filed in
155 lieu of such surety. The treasurer shall hold any cash
156 or securities in the name of the state in trust for the
157 purposes for which the deposit was made. The operator
158 shall be entitled to all interest and income earned on
159 the collateral securities filed by such operator so long
160 as the operator is in full compliance with all laws, rules
161 and regulations relating to the drilling, redrilling, deep-
162 ening, casing, plugging and abandonment of wells and

163 for furnishing such reports and information as may be
164 required by the department. The operator making the
165 deposit shall be entitled from time to time to receive
166 from the treasurer, upon the written order of the deputy
167 director for oil and gas, the whole or any portion of
168 such securities upon depositing with the treasurer in
169 lieu thereof cash equal to or greater than the penalty
170 of the bond, or other approved securities of the classes
171 herein specified having a market value equal to or greater
172 than the penalty of the bond, or a corporate surety bond.

173 Any such bond shall remain in force until released by
174 the department and the department shall release the
175 same when it is satisfied the conditions thereof have
176 been fully performed. Upon the release of any such
177 bond, any cash or collateral securities deposited shall
178 be returned by the deputy director for oil and gas to
179 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.**

1 Before fracturing any well originally drilled on and
2 after the fifth day of June, one thousand nine hundred
3 twenty-nine, and before the effective date of this act,
4 and which is located on any tract of land known to be
5 underlaid with one or more workable beds of coal, the
6 well operator shall, by registered mail, forward a notice
7 of intention to fracture such well to the department of
8 mines and to each and every coal operator operating said
9 beds of coal beneath said tract of land, or within five
10 hundred feet of the boundaries of the same, who has
11 mapped the same and filed his maps as required by law.

12 Nothing contained in this article shall under any cir-
13 cumstances be construed to require any well operator to
14 give a notice of intention to fracture, or to obtain a
15 permit to fracture, a well drilled on and after the effec-
16 tive date of this act. The notice shall be addressed to the
17 department of mines and to each such coal operator at
18 their respective addresses, shall contain the number of
19 the drilling permit for such well and such other in-
20 formation as may be required by the department to en-

21 able the department and the coal operators to locate and
22 identify such well and shall inform them that such
23 notice is being mailed to them respectively by registered
24 mail, pursuant to the requirements of this article. (The
25 form for such notice of intention shall be furnished on
26 request by the department of mines.) If no objections are
27 made, or are found by the department, to such proposed
28 fracturing within ten days from receipt of such notice by
29 the department of mines, the same shall be filed and be-
30 come a permanent record of such fracturing, subject to
31 inspection at any time by any interested person, and the
32 department shall forthwith issue to the well operator a
33 permit reciting the filing of such notice, that no objections
34 have been made by the coal operators, or found thereto
35 by the department, and authorizing the well operator to
36 fracture such well. Unless the department has objections
37 to such proposed fracturing, such permit shall be issued
38 prior to the expiration of such ten-day period upon the
39 obtaining by the well operator of the consent in writing of
40 the coal operator or operators to whom notice of inten-
41 tion to fracture shall have been mailed as herein re-
42 quired, and upon presentation of such written consent
43 to the department. The notice above provided for may
44 be given to the coal operator by delivering or mailing
45 it as above to any agent or superintendent in actual
46 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.**

1 Before drilling a well for the introduction of liquids
2 for the purposes provided for in section ten-a of this
3 article or for the introduction of liquids for the disposal
4 of sewage, industrial waste or other waste or the effluent
5 therefrom on any tract of land, or before converting an
6 existing well for such purposes, the well operator shall
7 have a plat prepared by a competent engineer showing
8 the district and county in which the tract of land is
9 located, the name and acreage of the same, the names

10 of the owners of all adjacent tracts, the proposed or actual
11 location of the well or wells determined by a survey,
12 the courses and distances of such location from two
13 permanent points of land marked on said tract and the
14 number to be given to the well, and shall forward by
15 registered or certified mail the original and one copy of
16 the plat to the department of mines. In addition, the well
17 operator shall provide the following information on the
18 plat or by way of attachment thereto to the department in
19 the manner and form prescribed by the department's
20 rules and regulations: (a) The location of all wells, aban-
21 doned or otherwise located within the area to be affect-
22 ed; (b) where available, the casing records of all such
23 wells; (c) where available, the drilling log of all such
24 wells; (d) the maximum pressure to be introduced; (e)
25 the geological formation into which such liquid or pres-
26 sure is to be introduced; (f) a general description of the
27 liquids to be introduced; (g) the location of all water-
28 bearing horizons above and below the geological forma-
29 tion into which such pressure, liquid or waste is to be
30 introduced; and (h) such other information as the deputy
31 director by rule and regulation may require.

32 In the event the tract of land on which said well pro-
33 posed to be drilled or converted for the purposes pro-
34 vided for in this section is located is known to be
35 underlaid with one or more workable beds of coal, copies
36 of the plat and all information required by this section
37 shall be forwarded by the operator by registered or certi-
38 fied mail to each and every coal operator, if any, operating
39 said beds of coal beneath said tracts of land, or within five
40 hundred feet of the boundaries of the same, who has
41 mapped the same and filed his maps as required by law.
42 With each of such plats, there shall be enclosed a notice
43 (form for which shall be furnished on request by the de-
44 partment of mines) addressed to the department of mines
45 and to each such coal operator, if any, at their respective
46 addresses, informing them that such plat and notice are
47 being mailed to them respectively by registered or certi-
48 fied mail, pursuant to the requirements of this section. The
49 deputy director shall forward a copy of the plat, notice
50 and all other information required by this section to the

51 chief of the division of water resources of the department
52 of natural resources.

53 If no objections are made by any such coal operator or
54 such chief, or are found by the department to such
55 proposed drilling or converting of the well or wells for
56 the purposes provided for in this section within thirty
57 days from the receipt of such plat and notice by the de-
58 partment of mines, the same shall be filed and become a
59 permanent record of such location or well, subject to
60 inspection at any time by any interested person, and
61 the department shall forthwith issue to the well operator
62 a permit reciting the filing of such plat and notice, that
63 no objections have been made by the coal operators,
64 if any, or found thereto by the department of mines or
65 by the chief, and authorizing the well operator to drill
66 at such location or convert such existing well or wells
67 for the purposes provided for in this section. Such per-
68 mit shall be issued prior to the expiration of such
69 thirty-day period upon the obtaining by the well oper-
70 ator of the consent in writing of the coal operator or
71 operators to whom copies of the plat and notices must
72 have been mailed as herein required and upon obtaining
73 the consent in writing of the chief, and upon presenta-
74 tion of such written consent in writing of the chief,
75 and upon presentation of such written consent to the
76 department. The notices above provided for may be given
77 to the coal operator by delivering or mailing it as above
78 to any agent or superintendent in actual charge of the
79 mines.

80 A permit to drill a well or wells or convert an existing
81 well or wells for the purposes provided for in this sec-
82 tion shall not be issued until all of the bonding provi-
83 sions required by the provisions of section two of this
84 article have been fully complied with and all such bond-
85 ing provisions shall apply to all wells drilled or converted
86 for the purposes provided for in this section as if such
87 wells had been drilled for the purposes provided for in
88 section two of this article, except that such bonds shall
89 be conditioned upon full compliance with all laws, rules
90 and regulations relating to the drilling of a well or the
91 converting of an existing well for the purposes provided

92 for in said section ten-a, or introducing of liquids for the
93 disposal of sewage, industrial waste or other waste or the
94 effluent therefrom including the redrilling, deepening,
95 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.

1 In any case wherein a well is proposed to be drilled or
2 converted for the purposes provided for in section two-b
3 of this article and is above or in close proximity to any
4 mine opening, shaft, entry, traveling, air, haulage, drain-
5 age or other passageway, or to any proposed extension
6 thereof, in any operated and abandoned or operating
7 coal mine or coal mine already surveyed and platted, but
8 not yet being operated, so that such well or wells or the
9 pillar of coal about such well or wells necessary to the
10 protection of the mine and of such well itself when drilled
11 or subjected to the introduction of liquid for the purposes
12 provided for in section ten-a of this article or subjected
13 to the introduction of liquid for the disposal of sewage,
14 industrial waste or other waste or the effluent therefrom
15 will interfere with or endanger the use of such mine
16 opening, entries or ways, then the coal operator or oper-
17 ators affected may, and shall, if the drilling or introducing
18 of any and all such liquids of or into a well at such loca-
19 tion will cause a dangerous condition in their mines, file
20 objections in writing (forms for which will be furnished
21 by the department on request) within thirty days from
22 the receipt by the department of mines of the plat and
23 notice required by section two-b of this article to such
24 proposed drilling or converting for the purposes provided
25 for in section two-b of this article, setting out therein as
26 definitely as is reasonably possible the ground or grounds
27 on which such objections are based and, in the case of
28 drilling a well for the purposes provided for in section
29 two-b, where necessary, such coal operator shall indicate
30 the direction and distance from the location shown on the

31 plat from the location originally shown on the plat as the
32 proposed well location is suggested as a new location
33 where such proposed well may be drilled in order to over-
34 come such coal operator's objections, and in the case of
35 converting an existing well for such purposes, such
36 objecting coal operator shall indicate the conditions for
37 the protection of life and property under which the well
38 or wells should be converted or liquid introduced into
39 such well to overcome such objections.

40 In any case wherein a well proposed to be drilled or
41 converted for the purposes provided for in section two-b
42 of this article shall, in the opinion of the chief of the
43 division of water resources of the department of natural
44 resources, affect detrimentally the reasonable standards
45 of purity and quality of the waters of the state, such chief
46 shall, within thirty days from the receipt of the plats and
47 notices required by said section two-b, file with the deputy
48 director his objections in writing to such proposed drilling
49 or conversion, setting out therein as definitely as is rea-
50 sonably possible the ground or grounds upon which such
51 objections are based and indicating the conditions, con-
52 sistent with the provisions of this article and the rules
53 or regulations promulgated thereunder, as may be neces-
54 sary for the protection of the reasonable standards of the
55 purity and quality of such waters under which such
56 proposed drilling or conversion may be completed to
57 overcome such objections.

58 If any objection or objections are so filed by any such
59 coal operator or such chief or are made by the department
60 of mines, the department shall notify the well operator
61 of the character of the objections and by whom made
62 and fix a time and place, not less than ten days from the
63 end of such thirty-day period, at which such objections
64 will be considered, of which time and place the well
65 operator and such chief and all coal operators to whom a
66 copy of the plat and notice required by said section two-b
67 was mailed, whether objecting or not objecting to the
68 proposed drilling or conversion, shall be given at least
69 five days' written notice by the department, by registered
70 or certified mail, and summoned to appear, and, in the

71 case of coal operators, bringing with them their maps
72 and plans showing their mines and mine workings and,
73 in the case of proposed drilling to be prepared to ap-
74 prove or except to such location or locations as the de-
75 partment may, after hearing, approve or itself fix in case
76 no agreement is reached, and, in the case of proposed
77 conversion of a well for the purposes provided for in said
78 section two-b, to be prepared to approve or to except to
79 any conditions under which the conversion is to take
80 place as the department may, for the protection of life
81 and property or for the protection of reasonable standards
82 of purity and quality of the waters of the state, after
83 hearing, approve or itself fix in case no agreement is
84 reached. In the case of proposed drilling or converting
85 of a well for the purposes provided for in said section
86 two-b, at the time and place so fixed, the well operator
87 and the interested coal operators and the chief, or such
88 of them as are present or represented, shall proceed to
89 consider the objections and agree upon either the location
90 (in the case of drilling) as made or so moved as to
91 satisfy all objections and meet the approval of the de-
92 partment, and any change in the original location (in
93 case of drilling) so agreed upon and approved by the
94 department shall be indicated on said plat on file with
95 the department, and the distances and direction of the
96 location of the new location from the original location
97 shall be shown, and, as so altered, the plat shall be filed
98 and become a permanent record, and in the case of pro-
99 posed conversion, to agree upon conditions under which
100 the well is to be converted which will satisfy all objec-
101 tions and meet the approval of the department, at which
102 time the plat and notice required by said section two-b
103 shall be filed and become a permanent record. Whereupon
104 the department shall forthwith issue to the well operator
105 a permit to drill or convert the well or wells, as the case
106 may be, for the purposes provided for in said section
107 two-b, reciting the filing of the plat and notice required
108 by said section two-b, that at a hearing duly held a loca-
109 tion as shown on the plat or the conditions under which
110 the conversion is to take place for the protection of life
111 and property and the reasonable standards of purity and

112 quality of the waters of the state were agreed upon and
113 approved, and that the well operator is authorized to
114 drill at such location or to convert at the site shown on
115 such plat, as the case may be.

116 In case the well operator and the coal operator and
117 the chief, or such of them as are present or represented
118 at such hearing are unable to agree upon a drilling loca-
119 tion, or upon a drilling location that meets the approval
120 of the department of mines, then the department shall
121 fix a drilling location on such tract of land as near to the
122 original location as possible in a pillar of suitable size,
123 through which the well can be drilled safely, taking into
124 consideration the dangers from creeps, squeezes or other
125 disturbances, due to the extraction of coal. Should no
126 such pillar exist, however, the well may be located and
127 drilled through open workings where, in the judgment
128 of the department of mines, it is practicable and safe to
129 do so, taking into consideration the dangers from creeps,
130 squeezes, or other disturbances.

131 In case the well operator and the coal operator and the
132 chief, or such of them as are present or represented at
133 such hearing are unable to agree upon the conditions
134 under which a well is to be converted so as to protect life
135 and property and the reasonable standards of purity and
136 quality of the waters of the state, or upon such conditions
137 of converting that meet the approval of the department
138 of mines, then the department shall fix the conditions
139 under which the well is to be converted, provided the
140 well can be converted safely, taking into consideration
141 the dangers from creeps, squeezes, or other disturbances
142 and taking into consideration the protection of life and
143 property and the reasonable standards of the purity and
144 quality of the waters of the state. Such new drilling
145 location shall be indicated on the plat on file with the
146 department as provided herein, and the department shall
147 forthwith tender to the operator a permit to drill at such
148 location or to convert for the purposes provided for in
149 section two-b of this article at the site shown on the plat,
150 as the case may be, which permit the well operator may
151 accept or refuse to accept and if it accepts such permit,

152 such coal operators or chief having filed objections and
153 appearing or being represented at such hearing may ex-
154 cept to such location or conversion or to the issuance of
155 such drilling or converting permit; and the well operator
156 accepting the same may require the record of the hearing
157 to show that it accepts such drilling permit at the location
158 made by the department as a new or additional location
159 and not in lieu of its original location, or that it accepts
160 such converting permit as to the conditions under which
161 the well is to be converted as fixed by the department
162 as new conditions and not in lieu of the conditions pre-
163 ferred by it, and that it reserved the right to appeal to
164 the circuit court of the county in which its original
165 drilling location, or its conversion site, lies for relief, and
166 that it excepts to the refusal of the department to ap-
167 prove such original location substantially as made or to
168 approve the conditions of converting preferred. In any
169 case, in addition to taking into consideration the dangers
170 from creeps, squeezes or other disturbances, the depart-
171 ment shall at all times consider the protection of life
172 and property and the protection of the reasonable stan-
173 dards of quality and purity of the waters of the state.
174 In any case, either the well operator or the coal operator
175 or the chief may reserve the right to appeal to the circuit
176 court of the county in which the original drilling location
177 or conversion site lies for relief.

178 The department of mines shall number and keep an
179 index of and docket each plat and notice mailed to it as
180 provided in said section two-b, entering in such docket
181 the name of the well operator, names of the coal operators
182 notified and their addresses, the date of receipt of any
183 such plat and notice required by said section two-b, the
184 date and circumstances of a forwarding of a copy of such
185 plat and notice to the chief of the division of water
186 resources, and of all objections filed, dates of hearings
187 and all actions taken by the department, permits issued
188 or refused, which docket shall be open to inspection by
189 the public, and, together with the papers filed, shall
190 constitute the record of each such proceeding before the
191 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.

1 Any coal operator or the chief of the division of water
2 resources of the department of natural resources ex-
3 cepting to any drilling location for the purposes pro-
4 vided for in said section two-b fixed or approved or to
5 the issuance of any drilling permit for such purposes, or
6 other conditions under which a well is to be converted
7 for such purposes as fixed or approved by the depart-
8 ment of mines for the protection of life and property and
9 the reasonable standards of quality and purity of the
10 waters of the state or any other issuance of any such
11 converting permit and any well operator excepting to the
12 refusal of the department to grant any drilling permit
13 for the purposes provided for in said section two-b at
14 the location shown in the plat mailed to the department
15 as provided in said section two-b, or such location so shift-
16 ed as to be substantially the same or the equivalent there-
17 of, or to the refusal of the department to grant such con-
18 verting permit in accordance with the conditions of such
19 converting preferred by the well operator, may at any
20 time within ten days of the taking of such action by the
21 department of mines appeal to the circuit court of the
22 county in which such proposed drilling location or site in-
23 volved lies. The procedure shall be by petition and an-
24 swer, duly verified, and naming the department as one
25 of the respondents. The petition shall briefly set forth
26 the matter in controversy, the ruling of the department
27 and the relief sought. The well operator, the coal operator
28 or the chief making such appeal shall forthwith send a
29 copy of such petition for appeal, by registered or certi-
30 fied mail, to the deputy director for oil and gas. Upon
31 receipt of such copy of such petition for appeal the deputy
32 director for oil and gas shall promptly certify and file in
33 such court a complete transcript of the record upon
34 which the ruling complained of was made, as well as
35 copies of all papers filed with the department. The costs
36 of such transcripts shall be paid by the party making

37 the appeal. The respondents shall be required to answer
38 under oath within ten days after service of copies of the
39 petition upon them, and the procedure shall be expedited,
40 as far as is reasonably possible, having regard to possible
41 drainage or loss of title by the well operator through its
42 failure to complete or convert a well or through its
43 failure to introduce liquids for the purposes provided
44 for in section ten-a of this article within the period fixed
45 by the terms of the lease under which it holds. The court
46 may, by preliminary order, upon proper proof of the
47 necessity therefor and the giving of proper security, stay
48 the drilling or converting of any well, or stay the intro-
49 duction of liquid for the purposes provided for in said
50 section ten-a or stay the disposal of sewage, industrial
51 waste or other waste or the effluent therefrom, until a
52 final decision on the appeal, and after a final hearing,
53 at which any competent and relevant evidence may be
54 introduced, may set aside any action or order of the de-
55 partment and enter such final order and decree as in its
56 judgment is just and right and will best carry out the
57 provisions of this article. From such final orders and
58 decrees of the circuit court an appeal may be taken to
59 the supreme court of appeals. During vacation periods
60 or when for any reason the circuit court is not in session,
61 such proceedings shall be before the judge of an adjoin-
62 ing circuit, who may act until the return of the regular
63 judge to his circuit, whereupon all further proceedings
64 shall be had before the regular judge or circuit court
65 having initial jurisdiction therein, and all proceedings in
66 vacation shall be of like force and effect as if before the
67 court in term.

§22-4-7. Same—Continuance during life of well; dry or abandoned wells.

1 In the event that a well becomes productive of natural
2 gas or petroleum, or is drilled for or converted for the
3 introduction of pressure, whether liquid or gas, or for
4 the introduction of liquid for the purposes provided for in
5 section ten-a of this article or for the disposal of sewage,
6 industrial waste or other wastes or the effluent there-
7 from, all coal-protecting strings of casing and all water-

8 protecting strings of casing shall remain in place until
9 the well is plugged or abandoned. During the life of the
10 well the annular spaces between the various strings of
11 casing adjacent to workable beds of coal shall be kept
12 open, and the top ends of all such strings shall be pro-
13 vided with casing heads, or such other suitable devices
14 as will permit the free passage of gas and prevent filling
15 of such annular spaces with dirt or debris.

16 Any well which is completed as a dry hole or which is
17 not in use for a period of twelve consecutive months shall
18 be presumed to have been abandoned and shall promptly
19 be plugged by the operator in accordance with the provi-
20 sions of this article, unless the operator furnishes satis-
21 factory proof to the deputy director that there is a bona
22 fide future use for such well.

§22-4-8a. Same—Installation of fresh water casings.

1 When a permit has been issued for the drilling of an
2 oil or gas well or both, each well operator shall run and
3 permanently cement a string of casing in the hole through
4 the fresh water bearing strata in such a manner and to
5 the extent provided for in rules and regulations pro-
6 mulgated by the director of the department of mines
7 in accordance with the provisions of chapter twenty-
8 nine-a.

**§22-4-9. Plugging and abandonment of well; notice of inten-
tion; performance bonds or securities in lieu there-
of; affidavit showing time and manner.**

1 All dry or abandoned wells or wells presumed to be
2 abandoned under the provisions of section seven of this
3 article shall be plugged in accordance with this section
4 and the other provisions of this article and in accord-
5 ance with the rules and regulations promulgated by
6 the deputy director.

7 Prior to the abandonment of any well, the well op-
8 erator shall notify, by registered or certified mail, the
9 department of mines and the coal operator or operators,
10 if any, to whom notices are required to be given by sec-
11 tion two of this article and the coal operator or operators
12 to whom notices are required to be given by section
13 two-a of this article of its intention to plug and abandon

14 any such well (using such form of notice as the depart-
15 ment may provide), giving the number of the well and
16 its location and fixing the time at which the work of
17 plugging and filling will be commenced, which time shall
18 be not less than five days after the day on which such
19 notice so mailed is received or in due course should be
20 received by the department of mines, in order that a
21 representative or representatives of the department and
22 the coal operator or operators, if any or of both, may be
23 present at the plugging and filling of the well. Whether
24 such representatives appear or do not appear, the well
25 operator may proceed at the time fixed to plug and fill
26 the well in the manner hereinafter described. Notwith-
27 standing the foregoing, a well operator may proceed
28 to plug and fill a well at any time without giving the
29 aforesaid notice of intention if such operator has first
30 obtained in writing the approval of the department of
31 mines and the coal operator or operators, if any, to
32 whom notices are required to be given by section two
33 of this article and the coal operator or operators to whom
34 notices are required to be given by section two-a of this
35 article. No well shall be plugged or abandoned unless
36 the department is furnished a bond of the operator in
37 the sum of one thousand dollars, payable to the state
38 of West Virginia, with a corporate bonding or surety
39 company authorized to do business in this state as surety
40 thereon, conditioned on full compliance with all laws,
41 rules and regulations relating to the casing, plugging
42 and abandonment of wells and for furnishing such re-
43 ports and information as may be required by the de-
44 partment. When a number of wells are involved, the
45 operator may in lieu of furnishing a separate bond fur-
46 nish a blanket bond in the sum of ten thousand dollars,
47 payable to the state of West Virginia, with a corporate
48 bonding or surety company authorized to do business
49 in this state as surety thereon, and conditioned as afore-
50 said. In lieu of corporate surety on a separate or blanket
51 bond, as the case may be, the operator may elect to
52 deposit with the deputy director for oil and gas cash or
53 collateral securities as specified in section two of this
54 article. All of the provisions of section two dealing with

55 cash or collateral securities in lieu of corporate surety
56 shall be fully applicable hereto except for the condition
57 of the bond with respect to which the operator must
58 be in full compliance in order to be entitled to the interest
59 and income earned on such securities. The operator shall
60 be entitled to such interest and income under this sec-
61 tion so long as the operator is in full compliance with all
62 laws, rules and regulations relating to the casing, plug-
63 ging and abandonment of wells and for furnishing such
64 reports and information as may be required by the
65 department. Any such bond shall remain in force until
66 released by the department and the department shall
67 release the same when it is satisfied the conditions thereof
68 have been fully performed. Notwithstanding the fore-
69 going provisions, any operator who, in accordance with
70 section two of this article, has furnished a separate bond,
71 which has not been released by the department, for the
72 drilling, converting or drilling for the introduction of
73 liquids, for the disposal of sewage, industrial waste or
74 other waste or the effluent therefrom, or introducing
75 pressure, whether liquid or gas, or introducing liquid
76 for the purposes provided for in section ten-a of this
77 article or fracturing of the well it is now proposed be
78 plugged and abandoned, or who, in accordance with the
79 provisions of said section two of this article, has fur-
80 nished a blanket bond which has not been released by
81 the department shall not be required by this section
82 nine to furnish any other bond. When the plugging and
83 filling of a well have been completed, an affidavit, in
84 triplicate, shall be made (on a form to be furnished by
85 the department) by two experienced men who partici-
86 pated in the work, in which affidavit shall be set forth
87 the time and manner in which the well was plugged and
88 filled. One copy of this affidavit shall be retained by the
89 well operator, another (or true copies of same) shall be
90 mailed to the coal operator or operators, if any, and
91 the third to the department of mines.

§22-4-10. Methods of plugging well.

1 Upon the abandonment or cessation of the operation
2 of any well drilled for natural gas or petroleum, or drilled

3 or converted for the introduction of pressure, whether
4 liquid or gas, or for the introduction of liquid for the
5 purposes provided for in section ten-a of this article or
6 for the disposal of sewage, industrial waste or other
7 waste or the effluent therefrom the well operator, at
8 the time of such abandonment, or cessation, shall fill and
9 plug the well in the following manner:

10 (a) Where the well does not penetrate workable coal
11 beds, it shall either be filled with mud, clay or other non-
12 porous material from the bottom of the well to a point
13 twenty feet above the top of its lowest oil, gas or water-
14 bearing stratum; or a permanent bridge shall be anchored
15 thirty feet below its lowest oil, gas or water-bearing
16 stratum, and from such bridge it shall be filled with mud,
17 clay or other nonporous material to a point twenty feet
18 above such stratum; at this point there shall be placed
19 a plug of cement or other suitable material which will
20 completely seal the hole. Between this sealing plug and
21 a point twenty feet above the next higher oil, gas or
22 water-bearing stratum, the hole shall either be filled, or
23 bridged and filled, in the manner just described; and at
24 such point there shall be placed another plug of cement
25 or other suitable material which will completely seal the
26 hole. In like manner the hole shall be filled and plugged,
27 or bridged, filled and plugged with reference to each of
28 its oil, gas or water-bearing strata. However, whenever
29 such strata are not widely separated and are free from
30 water, they may be grouped and treated as a single sand,
31 gas or petroleum horizon, and the aforesaid filling and
32 plugging be performed as though there were but one
33 horizon. After the plugging of all oil, gas or water-
34 bearing strata, as aforesaid, a final plug shall be anchored
35 approximately ten feet below the bottom of the largest
36 casing in the well; from this point to the surface the well
37 shall be filled with mud, clay or other nonporous material.
38 In case any of the oil or gas-bearing strata in a well shall
39 have been shot, thereby creating cavities which cannot
40 readily be filled in the manner above described, the well
41 operator shall follow either of the following methods:

42 (1) Should the stratum which has been shot be the

43 lowest one in the well, there shall be placed, at the
44 nearest suitable point, but not less than twenty feet above
45 the stratum, a plug of cement or other suitable material
46 which will completely seal the hole. In the event, how-
47 ever, that the shooting has been done above one or more
48 oil or gas-bearing strata in the well, plugging in the
49 manner specified shall be done at the nearest suitable
50 points, but not less than twenty feet below and above
51 the stratum shot. Or (2), when such cavity shall be in
52 the lowest oil or gas-bearing stratum in the well, a liner
53 shall be placed which shall extend from below the
54 stratum to a suitable point, but not less than twenty feet
55 above the stratum in which shooting has been done. In
56 the event, however, that the shooting has been done above
57 one or more oil or gas-bearing strata in the well, the liner
58 shall be so placed that it will extend not less than twenty
59 feet above, nor less than twenty feet below, the stratum
60 in which shooting has been done. Following the placing
61 of the liner in the manner here specified it shall be com-
62 pactly filled with cement, mud, clay or other nonporous
63 sealing material;

64 (b) Where the well has penetrated one or more work-
65 able coal beds, it shall be filled and securely plugged in
66 the manner aforesaid, to a point forty feet below the
67 lowest workable coal bed. If, in the judgment of the well
68 operator, the coal operator and the department of mines,
69 a permanent outlet to the surface is required, such outlet
70 shall be provided in the following manner: A plug of
71 cement, or other suitable material, shall be placed in the
72 well at a suitable point, not less than thirty feet below
73 the lowest workable coal bed. In this plug and passing
74 through the center of it shall be securely fastened an
75 open pipe not less than two inches in diameter, which
76 shall extend to the surface. At or above the surface the
77 pipe shall be provided with a device which will permit
78 the free passage of gas, and prevent obstruction of the
79 same. Following the setting of the cement plug and
80 outlet pipe as aforesaid, the hole shall be filled with
81 cement to a point twenty feet above the lowest workable
82 coal bed. From this point the hole shall be filled with
83 mud, clay or other nonporous material to a point thirty

84 feet beneath the next overlying workable coal bed, if
85 such there be, and the next succeeding fifty feet of the
86 hole filled with cement, and similarly, in case there are
87 more overlying workable coal beds. If, in the judgment
88 of the well operator, the coal operator and the depart-
89 ment of mines, no outlet to the surface is considered
90 necessary, the plugging, filling and cementing shall be
91 as last above described.

§22-4-10a. Introducing liquid pressure into producing strata to recover oil contained therein.

1 The owner or operator of any well or wells which pro-
2 duce oil or gas may allow such well or wells to remain
3 open for the purpose of introducing water or other
4 liquid pressure into and upon the producing strata for
5 the purpose of recovering the oil contained therein, and
6 may drill additional wells for like purposes, provided
7 that the introduction of such water or other liquid pres-
8 sure shall be controlled as to volume and pressure and
9 shall be through casing or tubing which shall be so
10 anchored and packed that no water-bearing strata or
11 other oil, or gas-bearing sand or producing stratum, above
12 or below the producing strata into and upon which such
13 pressure is introduced, shall be affected thereby.

§22-4-12a. Special reclamation fund; fees.

1 In addition to any other fees required by the provisions
2 of this article, every applicant for a permit to drill a well
3 shall, before the permit is issued, pay to the deputy di-
4 rector for oil and gas a special reclamation fee of one
5 hundred dollars for each well to be drilled. Such special
6 reclamation fee shall be paid at the time the application
7 for a drilling permit is filed with the deputy director and
8 the payment of such reclamation fee shall be a condition
9 precedent to the issuance of said permit.

10 There is hereby created within the treasury of the state
11 of West Virginia a special fund to be known as the oil and
12 gas reclamation fund, and the deputy director shall de-
13 posit with the state treasurer to the credit of such special
14 fund all special reclamation fees collected. The proceeds

15 of any bond forfeited under the provisions of this article
16 shall inure to the benefit of and shall be deposited in
17 such oil and gas reclamation fund. If at the end of any
18 fiscal year the total amount in the oil and gas reclamation
19 fund is in excess of two hundred thousand dollars, the
20 amount of such excess shall be paid into the general
21 revenue fund.

22 The oil and gas reclamation fund shall be administered
23 by the director of the department of mines. The deputy
24 director for oil and gas shall cause to be prepared plans
25 for the plugging of abandoned wells which have not been
26 plugged or which have been improperly plugged. The
27 director of the department of mines, as funds become
28 available in the oil and gas reclamation fund, shall re-
29 claim, and properly plug all abandoned wells in accord-
30 ance with said plans and specifications and in accordance
31 with the provisions of this article relating to the plugging
32 of wells and all rules and regulations promulgated there-
33 under. Such funds may also be utilized for the purchase
34 of abandoned wells, where such purchase is necessary,
35 and for the reclamation of such abandoned wells, and for
36 any engineering, administrative and research costs as
37 may be necessary to properly effectuate the plugging of
38 all wells, abandoned or otherwise.

39 The director may avail himself of any federal funds
40 provided on a matching basis that may be made available
41 for the purpose of plugging any wells.

42 The director shall make an annual report to the gov-
43 ernor and to the Legislature setting forth the number of
44 wells plugged through the use of the oil and gas reclama-
45 tion fund provided for herein. Such report shall identify
46 each such plugging project, state the number of wells
47 plugged thereby, show the county wherein such wells
48 are located and shall make a detailed accounting of all
49 expenditures from the oil and gas reclamation fund.

50 All wells shall be plugged by contract entered into by
51 the director on a competitive bid basis as provided for
52 under the provisions of article three, chapter five-a of
53 this code and the rules and regulations promulgated
54 thereunder.

§22-4-13. Rules and regulations; hearings before department of mines; appeals.

1 Except as provided for in section eight-a of this article,
2 the department shall prescribe rules of procedure and
3 for offering evidence in all matters brought before it, and
4 shall prepare and, on request, furnish to applicants copies
5 of forms of notices and of other forms that the depart-
6 ment may require to be used, and prescribe the manner
7 of serving the same. The department may also promul-
8 gate such other rules and regulations as it may deem
9 necessary or helpful in securing uniformity of procedure
10 in the administration of this article. Any matter in con-
11 troversy before the department shall, after hearing or
12 hearings, of which all persons interested have had due
13 notice and at which they have been given an opportunity
14 to appear and be heard and to offer evidence and to make
15 argument by counsel if desired, be decided by the de-
16 partment as may seem to it to be just and reasonable
17 and necessary or desirable for the proper enforcement of
18 the provisions of this article.

19 Whether or not it be so expressly stated, an appeal
20 from any final decision or action by the department
21 in administering the provisions of this article may be
22 taken by any aggrieved person within ten days of notice
23 of such action or decision, to the circuit court of the
24 county in which the subject matter of such decision
25 or action is located, and in all cases of appeals to the cir-
26 cuit court, that court shall certify its decisions to the
27 department of mines, and to all such final decisions an
28 appeal shall lie to the supreme court of appeals as now
29 provided by law in cases in equity. Any party feeling
30 aggrieved by the final order of the circuit court affect-
31 ing him or it, may present his or its petition in writing
32 to the supreme court of appeals, or to a judge thereof in
33 vacation, within twenty days after the entry of such
34 order, praying for the suspension or modification of
35 such final order. The applicant shall deliver a copy of
36 such petition to the department of mines and to all other
37 parties of record, before presenting the same to the court
38 or judge. The court or judge shall fix a time for the hear-
39 ing on the application, but such hearing shall not be held

40 sooner than seven days, unless by agreement of the par-
41 ties, after its presentation, and notice of the time and place
42 of such hearing shall be forthwith given to the department
43 of mines and to all other parties of record. If the court or
44 judge, after such hearing, be of opinion that such final
45 order should be suspended or modified, the court or the
46 judge may require bond, upon such conditions and in
47 such penalty, and impose such terms and conditions upon
48 the petitioner as are just and reasonable. For such hear-
49 ing the entire record before the circuit court, or a certified
50 copy thereof, shall be filed in the supreme court, and that
51 court, upon such papers, shall promptly decide the matter
52 in controversy as may seem to it to be just and right,
53 and may award costs in each case as to it may seem just
54 and equitable.

§22-4-17. Offenses; penalties.

1 Any person or persons, firm, partnership, partnership
2 association or corporation violating any provision of this
3 article or rule or regulation promulgated by virtue of
4 this article, for which violation there is no penalty pre-
5 scribed, or any person or persons, firm, partnership,
6 partnership association or corporation wilfully violating
7 any of the provisions of this article which prescribe the
8 manner of drilling and casing or plugging and filling any
9 well, or which prescribe the methods of conserving gas
10 from waste, or which fix the distance from wells within
11 which mining operations shall not be conducted without
12 the approval of the department, or violating the terms of
13 any order of the department allowing mining operations
14 within a lesser distance of any well than that prescribed
15 by the article, shall be guilty of a misdemeanor, and, upon
16 conviction thereof, shall be punished by a fine not exceed-
17 ing two thousand dollars, or imprisonment in jail for not
18 exceeding twelve months, or both, in the discretion of
19 the court, and prosecutions under this section may be
20 brought in the name of the state of West Virginia in the
21 court exercising criminal jurisdiction in the county in
22 which the violation of such provisions of the article or
23 terms of such order was committed, and at the instance
24 and upon the relation of any citizens of this state.

CHAPTER 77

(Senate Bill No. 36—By Mr. Deem)

[Passed March 6, 1969; in effect July 1, 1969. Approved by the Governor.]

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.

1 The deputy director for oil and gas shall be a citizen
2 of West Virginia, shall be a competent person of good
3 reputation and temperate habits and shall possess a
4 degree in either petroleum, chemical, mechanical or civil
5 engineering from an accredited college or university; be
6 a registered professional engineer and shall have had at
7 least ten years' practical experience in the oil and gas
8 industry. A degree in geology or in mining or petroleum
9 engineering from West Virginia University, or any simi-
10 larly accredited school shall be counted as two years'
11 practical experience. The deputy director for oil and gas
12 shall devote all of his time to his duties, and shall not be
13 directly or indirectly interested financially in any oil and/
14 or gas production or drilling or in any coal mine in this
15 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
2 oil and gas inspector or supervising inspector unless, at the
3 time of his probationary appointment he (1) is a citizen of
4 West Virginia, in good health, and of good character,
5 reputation and temperate habits; (2) has had at least ten
6 years' practical experience in the oil and gas industry, at
7 least five years of which, immediately preceding his
8 original appointment shall have been in the oil and gas
9 industry in this state: *Provided*, That a diploma in geol-
10 ogy or in mining or petroleum engineering from West
11 Virginia University, or any similarly accredited school
12 shall be considered the equivalent of five years' practical
13 experience; and (3) has good theoretical and practical
14 knowledge of oil and gas drilling and production methods,
15 practices and techniques, sound safety practices and
16 applicable mining laws.

17 (b) In order to qualify for appointment as an oil and
18 gas inspector or supervising inspector, an eligible appli-
19 cant shall submit to a written and oral examination by
20 the oil and gas inspectors' examining board and shall
21 furnish such evidence of good health, character and other
22 facts establishing eligibility as such board may require.
23 If such board finds after investigation and examination
24 that an applicant (1) is eligible for appointment and (2)
25 has passed all written and oral examinations, the board
26 shall add such applicant's name and grade to the register
27 of qualified eligible candidates and certify its action to
28 the deputy director for oil and gas. No candidate's name
29 shall remain on the register for more than three years
30 without requalifying.

31 (c) The salary of the supervising inspector shall be
32 not less than seven thousand dollars per annum, nor more
33 than eleven thousand dollars per annum, and reasonable
34 traveling expenses. Salaries of inspectors shall not be
35 less than six thousand dollars per annum, nor more than
36 nine thousand four hundred dollars per annum, and
37 reasonable traveling expenses. Within the limits pro-
38 vided by law, the salary of each inspector and of the
39 supervising inspector shall be fixed by the deputy director
40 for oil and gas, subject to the approval of the director of
41 the department of mines and oil and gas inspectors' ex-
42 amining board. In fixing salaries of the oil and gas in-
43 spectors and of the supervising inspector, the deputy
44 director for oil and gas shall consider ability, perform-
45 ance of duty, and experience. No reimbursement for
46 traveling expenses shall be made except upon an item-
47 ized account of such expenses submitted by the inspector
48 or supervising inspector, as the case may be, who shall
49 verify, upon oath, that such expenses were actually in-
50 curred in the discharge of his official duties.

51 (d) An inspector or the supervising inspector, after
52 having received a permanent appointment, shall be re-
53 moved from office only for physical or mental impair-
54 ment, incompetency, neglect of duty, drunkenness, mal-
55 feasance in office, or other good cause.

56 Proceedings for the removal of an oil and gas inspector
57 or the supervising inspector may be initiated by the
58 deputy director for oil and gas or the director of the de-
59 partment of mines whenever either has reasonable
60 grounds to believe and does believe that adequate cause
61 exists warranting removal. Such a proceeding shall be
62 initiated by a verified petition, filed with the oil and gas
63 inspectors' examining board by the deputy director for
64 oil and gas or the director, setting forth with particular-
65 ity the facts alleged. Not less than twenty reputable
66 citizens engaged in oil and/or gas drilling and production
67 operations in the state may petition the deputy director
68 for oil and gas or the director of the department of mines
69 for the removal of an inspector or the supervising inspec-
70 tor. If such petition is verified by at least one of the

71 petitioners, based on actual knowledge of the affiant, and
72 alleges facts which, if true, warrant the removal of the
73 inspector or supervising inspector, the deputy director
74 for oil and gas or the director of the department of mines
75 shall cause an investigation of the facts to be made. If,
76 after such investigation, the deputy director for oil and
77 gas or the director finds that there is substantial evidence
78 which, if true, warrants removal of the inspector or super-
79 vising inspector, he shall file a petition with the oil and
80 gas inspectors' examining board requesting removal
81 of the inspector or supervising inspector.

82 On receipt of a petition by the deputy director for oil
83 and gas or by the director of the department of mines
84 seeking removal of an inspector or the supervising in-
85 spector, the oil and gas inspectors' examining board shall
86 promptly notify the inspector or supervising inspector, as
87 the case may be, to appear before it at a time and place
88 designated in said notice, which time shall be not less than
89 fifteen days nor more than thirty days thereafter. There
90 shall be attached to the copy of the notice served upon
91 the inspector or supervising inspector a copy of the peti-
92 tion filed with such board.

93 At the time and place designated in said notice, the oil
94 and gas inspectors' examining board shall hear all evi-
95 dence offered in support of the petition and on behalf of
96 the inspector or supervising inspector. Each witness shall
97 be sworn and a transcript shall be made of all evidence
98 taken and proceedings had at any such hearing. No con-
99 tinuance shall be granted except for good cause shown.

100 The chairman of the board, the deputy director for oil
101 and gas, and the director of the department of mines shall
102 have power to administer oaths and subpoena witnesses.

103 Any inspector or supervising inspector who shall wil-
104 fully refuse or fail to appear before such board, or having
105 appeared, shall refuse to answer under oath any relevant
106 question on the ground that his testimony or answer
107 might incriminate him, or shall refuse to accept a grant of
108 immunity from prosecution on account of any relevant
109 matter about which he may be asked to testify at such
110 hearing before such board, shall forfeit his position.

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
2 or leased by the state of West Virginia, or any of its de-
3 partments, bureaus, commissions or institutions, except
4 vehicles used by the governor, vehicles operated by the
5 department of public safety, not to exceed six vehicles
6 operated by conservation officers of the department of
7 natural resources, and not to exceed four vehicles oper-
8 ated by the arson investigators of the office of state fire
9 marshal, shall not be operated or driven by any person
10 unless it shall have displayed and attached to the front
11 thereof, in the same manner as regular motor vehicle
12 registration plates are attached, a plate of the same size
13 as the regular registration plate, with white lettering on
14 a green background bearing the words "West Virginia"
15 in one line and the words "State Car" in another line,
16 and the lettering for the words "State Car" shall be
17 of sufficient size to be plainly readable from a distance of
18 one hundred feet during daylight.

19 Such vehicle shall also have attached to the rear a
20 plate bearing a number and such other words and figures
21 as the commissioner of motor vehicles shall prescribe.
22 The rear plate shall also be green with the number in
23 white.

24 On registration plates issued to vehicles owned by coun-
25 ties, the color shall be white on red with the word "Coun-
26 ty" on top of the plate and the words "West Virginia"
27 on the bottom. On any registration plates issued to a city
28 or municipality, the color shall be white on blue with the
29 word "City" on top, and the words "West Virginia" on the
30 bottom. The colors may not be reversed and shall be of
31 reflectorized material. The commissioner is hereby autho-
32 rized to designate the colors and design of any other regis-
33 tration plates that are issued without charge to any other
34 agency in accordance with the motor vehicle laws. The
35 registration plates issued to counties, municipalities and
36 other governmental agencies authorized to receive color-

37 ed plates hereunder shall be affixed to both the front and
38 rear of such vehicles.

39 No other registration plate shall be issued for, or at-
40 tached to, any such state-owned vehicle.

41 The commissioner of motor vehicles shall have a suffi-
42 cient number of both front and rear plates produced
43 to attach to all state-owned cars. The numbered regis-
44 tration plates for such vehicles shall start with the
45 number "five hundred" and the commissioner shall issue
46 consecutive numbers for all state-owned cars.

47 It shall be the duty of each office, department, bureau,
48 commission or institution furnished any such vehicle to
49 have such plates affixed thereto prior to the operation of
50 such vehicle by any official or employee.

51 Any person violating the provisions of this section
52 shall be guilty of a misdemeanor, and, upon conviction
53 thereof, shall be fined not less than fifty dollars nor more
54 than one hundred dollars.

55 Justices of the peace shall have concurrent jurisdiction
56 with circuit and criminal courts for the enforcement of
57 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 recorda-
2 tion upon the face of a certificate of title to any vehicle
3 as provided in this article shall be valid for a period
4 of ten years only from the date of such filing, unless the
5 lien or encumbrance is refiled in the manner provided in
6 this article for filing and recordation in the first instance,
7 in which event the lien or encumbrance shall be valid for
8 successive additional periods of two years from the date of
9 each such refiling.

10 When the last lien or encumbrance shown on a certifi-
11 cate of title becomes invalid by the passage of time as
12 provided in this section, the commissioner of motor
13 vehicles shall not be required to maintain a lien index
14 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.**

1 Upon application therefor on a form prescribed by him
2 the commissioner may issue to the owner of a house
3 trailer a special one-movement sticker of such design
4 and content, as may be prescribed by him: *Provided*, That
5 such special sticker shall not be issued to any house trail-
6 er or trailer dealer. Such sticker shall be valid for the
7 movement of a house trailer one time only over the streets
8 and highways of this state, and no more than one such
9 sticker may be issued for the same house trailer while
10 owned by the same person. A fee of two dollars shall be re-
11 ceived by the department for each special sticker. In
12 order that any holder of a Class K registration plate who
13 is engaged in the business of moving house trailers for
14 hire may move a house trailer at the request of the owner
15 thereof without the delay which would be incident to
16 such owner obtaining a special one-movement sticker,
17 any such holder may from time to time apply to the com-
18 missioner for a supply of said special one-movement
19 stickers, and upon proper application therefor on a form
20 prescribed by the commissioner and payment of the
21 fee for each such sticker hereinbefore in this section
22 prescribed, the commissioner shall issue to such holder
23 a supply of serially numbered stickers, not in excess of
24 twenty-five upon any one application. Before moving
25 any such house trailer, the holder of the Class K registra-
26 tion plate who has obtained a supply of such special one-
27 movement stickers shall issue such a sticker to the owner
28 thereof and shall make certain that such sticker is affixed
29 to the house trailer prior to the movement thereof. No
30 refund or credit of fees paid by the holder of any such
31 Class K registration plate for any such special one-
32 movement sticker shall be made or allowed.

CHAPTER 83

(House Bill No. 524—By Mr. McManus)

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

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 RE-NEWAL.

§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
3 age of eighteen years: *Provided*, That under rules and
4 regulations to be established by the commissioner and
5 in accordance with the provisions hereinafter set forth
6 in this subdivision (1), a junior or probationary oper-
7 ator's license may be issued to any person between the
8 ages of sixteen and eighteen years, who is not otherwise
9 disqualified by law, upon application therefor on a form
10 prescribed by the commissioner and successful comple-
11 tion of all examinations and driving tests required by
12 law for the issuance of an operator's license to a person
13 eighteen years of age or older. The commissioner may
14 impose reasonable conditions or restrictions on the oper-
15 ation of a motor vehicle by a person holding such junior
16 or probationary operator's license, which conditions or
17 restrictions shall be printed on each such license. In
18 addition to all other provisions of this chapter for which
19 a regular operator's or chauffeur's license may be re-
20 voked, suspended or cancelled, whenever a person hold-
21 ing such a junior or probationary operator's license oper-
22 ates a motor vehicle in violation of the conditions or

23 restrictions set forth on such license, or has a record
24 of two convictions for moving violations of the traffic
25 regulations and laws of the road, which convictions have
26 become final, the junior or probationary license of
27 such person shall be permanently revoked, with like
28 effect as if such person had never held a junior or pro-
29 bationary operator's license: *Provided*, That such junior
30 or probationary operator's license shall be revoked upon
31 one final conviction for any offense specified in section
32 five, article three of this chapter. Under no circum-
33 stances shall such a license be revoked for convictions
34 of offenses in violation of any regulation or law govern-
35 ing the standing or parking of motor vehicles. A person
36 whose junior or probationary operator's license has been
37 revoked shall not thereafter receive a junior or pro-
38 bationary operator's license, but such person, upon attain-
39 ing the age of eighteen, shall be eligible, unless other-
40 wise disqualified by law, for examination and driver
41 testing for a regular operator's license or chauffeur's
42 license. No person shall receive a junior or probationary
43 operator's license unless the application therefor is
44 accompanied by a writing, duly acknowledged, con-
45 senting to the issuance of such junior or probationary
46 operator's license and executed (a) by the parents of
47 the applicant, or (b) if only one parent is living, then
48 by such parent, or (c) if the parents be living separate
49 and apart, by the one to whom was awarded the custody
50 of the applicant, or (d) if there is a guardian entitled
51 to the custody of the applicant, then by such guardian.
52 Upon attaining the age of eighteen years, a person hold-
53 ing an unrevoked junior or probationary operator's
54 license shall, upon payment of the prescribed fee, be
55 entitled to receive a regular operator's license or chauff-
56 feur's license without further examination or driver
57 testing. When a junior license is revoked as a result of
58 two convictions for moving violations of the traffic reg-
59 ulations and laws of the road as hereinabove stated, the
60 provisions of section one, article four, chapter seventeen-d
61 shall not apply;

62 (2) To any person, as a chauffeur, who is under the
63 age of eighteen years;

64 (3) To any person, as an operator or chauffeur, whose
65 license has been suspended, during such suspension, nor
66 to any person whose license (other than a junior or
67 probationary operator's license) has been revoked, ex-
68 cept as provided in section eight, article three of this
69 chapter;

70 (4) To any person, as an operator or chauffeur, who
71 is an habitual drunkard, or is addicted to the use of
72 narcotic drugs;

73 (5) To any person, as an operator or chauffeur, who
74 has previously been adjudged to be afflicted with or
75 suffering from any mental disability or disease and who
76 has not at the time of application been restored to com-
77 petency by judicial decree or released from a hospital
78 for the mentally incompetent, upon the certificate of
79 the superintendent of such institution that such person
80 is competent and not then unless the commissioner is
81 satisfied that such person is competent to operate a
82 motor vehicle with safety to persons or property;

83 (6) To any person, as an operator or chauffeur, who
84 is required by this chapter to take an examination,
85 unless such person shall have successfully passed such
86 examination;

87 (7) To any person who is required under the pro-
88 visions of the motor vehicle safety responsibility laws
89 of this state to deposit proof of financial responsibility
90 and who has not deposited such proof;

91 (8) To any person when the commissioner has good
92 cause to believe that the operation of a motor vehicle on
93 the highways by such person would be inimical to public
94 safety or welfare.

— 3 —

CHAPTER 84

(House Bill No. 904—By Mr. Sommerville)

[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
2 the Legislature relating to the licensing of motor vehicle
3 operators shall expire by its own limitation four years
4 from the date of its issuance, except that the operator's
5 license of any person in the armed forces shall be
6 extended to the expiration of a period of six months from
7 date of his separation under honorable circumstances from
8 active duty in the armed forces. Any operator's license
9 issued subsequent to this article shall expire four years
10 from the date of issue except as above provided. Any
11 license so expiring may be thereafter renewable, in the
12 discretion of the commissioner, without examination, for
13 successive periods of four years on or before its expiration
14 date upon application and upon payment of a fee of five
15 dollars for such renewal. If such license has been per-
16 mitted to expire, it may be renewed by complying with
17 the regulations of this section and the payment of an addi-
18 tional fee of one dollar for such renewal and, in the discre-
19 tion of the commissioner, without examination. The com-
20 missioner shall notify by first-class mail not less than
21 thirty days prior to the expiration date, any person
22 whose operator's license is about to expire, giving the
23 expiration date and including therewith a renewal
24 application form. The commissioner may, in his dis-
25 cretion, renew any license without a driving exam-
26 ination.

27 The commissioner shall, upon the application and upon
28 payment of a fee of three dollars, issue a chauffeur's
29 license to any person holding a valid chauffeur's license

30 issued pursuant to the provisions of any prior act of
31 the Legislature. The commissioner may, in his discre-
32 tion, issue such chauffeur's license to any such applicant
33 without examination. Any chauffeur's license issued
34 pursuant to such prior act or the provisions of this chap-
35 ter shall expire by its own limitation one year from
36 the date of its issuance, and shall be thereafter renew-
37 able for successive periods of one year upon application
38 and upon payment of the required fee as hereinbefore
39 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 Virginia, 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 seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 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 inspection; 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

4 for official inspection stations. He shall select and desig-
5 nate such stations and shall issue permits therefor and
6 furnish instructions and all necessary forms thereto for
7 the inspection of vehicles as herein required and the
8 issuance of official certificates of inspection and approval.
9 The certificate of inspection shall be a paper sticker
10 or decal to be affixed to the windshield of a motor
11 vehicle, shall be serially numbered and shall properly
12 identify the official inspection station by which issued.
13 A charge of fifty cents per sticker shall be charged by
14 the department of public safety to the inspection station,
15 and the funds so received shall be deposited into the
16 state treasury and credited to the account of the de-
17 partment of public safety for application in the admin-
18 istration of the provisions of this article. Any balance
19 remaining in the fund on the last day of June of each
20 fiscal year, not required for operating expenses, construc-
21 tion, repairs or alterations of police barracks for the
22 ensuing fiscal year, shall be transferred to the state
23 road fund. The superintendent is authorized to exchange
24 stickers or to make refunds to official inspection stations
25 for stickers on hand when permits are revoked or when,
26 for any reason, the stickers become obsolete.

27 Application for permit shall be made upon an official
28 form prescribed by the superintendent and permits shall
29 be granted only when the superintendent is satisfied
30 that the station is properly equipped, and has com-
31 petent personnel to make such inspections and adjust-
32 ments and that the inspections and adjustments will be
33 properly conducted. The superintendent, before issuing
34 a permit, may require the applicant to file a bond with
35 surety approved by the superintendent, conditioned that
36 such applicant, as a station operator, will make com-
37 pensation for any damage to a vehicle during an inspec-
38 tion or adjustment due to negligence on the part of
39 such station operator or employees thereof.

40 The superintendent shall properly supervise and cause
41 inspections to be made of such stations and shall revoke
42 and require the surrender of the permit issued to a
43 station which he finds is not properly equipped or con-
44 ducted. He shall maintain and post at his office and at

45 such other places as he may select lists of all stations
46 holding permits and of those whose permits have been
47 revoked.

§17C-16-6. Assignment, transfer and posting of official inspection station permit; issuance and record of certificate of inspection; inspection fee.

1 No permit for an official inspection station shall be
2 assigned or transferred or used at any location other
3 than therein designated and every said permit shall be
4 posted in a conspicuous place at the station location
5 designated.

6 The person operating any such station shall issue a
7 certificate of inspection and approval, upon an official
8 form, to the owner of a vehicle upon inspecting such
9 vehicle and determining that its equipment required
10 hereunder is in good condition and proper adjustment,
11 but otherwise no certificate shall be issued, except such
12 as may be issued pursuant to section two of this article.
13 When required by the superintendent, a record and report
14 shall be made of every inspection and every certificate
15 so issued.

16 A fee of not more than three dollars fifty cents may be
17 charged for an inspection and issuance of such certificate,
18 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-

lating to special school zone police officers; relating to a policemen's civil service system; relating to fire fighting; relating to fire companies and departments; relating to a firemen's civil service system; relating to municipal public works; relating to low cost improvements; relating to assessments to improve streets, sidewalks and sewers; relating to the use of unappropriated funds and the issuance of assessment certificates and bonds in connection with assessments to improve streets, sidewalks and sewers; relating to municipal waterworks systems; relating to combined waterworks and sewerage systems; relating to boards of park and recreation commissioners; relating to retirement benefits generally; relating to policemen's pension and relief funds; relating to firemen's pension and relief funds; relating to pension plans for employees of waterworks systems, sewerage systems or combined waterworks and sewerage systems; relating to intergovernmental relations involving municipalities and counties, and in certain instances, other units of government and pertaining to contracting and joint enterprises, urban and rural planning and zoning, regional planning, interstate regional planning, urban mass transportation systems, airports and aviation, regional airports, flood control projects, franchise obligations, contributions to or involvement with nonstock, nonprofit corporations for public purposes, and building commissions; providing for judicial review generally; relating to the dissolution of municipalities; providing for revenue bond financing in connection with various types of governmental projects; providing criminal penalties; providing for injunctive relief; providing for liens and other liabilities under various circumstances and the enforcement thereof; relating to constitutionality and severability; and providing that municipalities and counties shall be liable for injuries to person or property sustained by reason of any road, bridge, street, alley or sidewalk being out of repair only in the event of negligence.

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, 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, 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.
8. Consolidation of Municipalities.
9. Proceedings of Governing Bodies.
10. Powers and Duties of Certain Officers.
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.
13. Taxation and Finance.
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.
19. Municipal Waterworks Systems.
20. Combined Waterworks and Sewerage Systems.
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 1. 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 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.

§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

4 Class IV town or village, heretofore or hereafter incor-
5 porated as a municipal corporation under the laws of this
6 state;

7 (2) "City" is a word of art and shall mean, include and
8 be limited to any Class I, Class II and Class III city, as
9 classified in section three of this article (except in those
10 instances where the context in which used clearly indi-
11 cates that a particular class of city is intended), hereto-
12 fore or hereafter incorporated as a municipal corporation
13 under the laws of this state, however created and whether
14 operating under (i) a special legislative charter, (ii) a
15 home rule charter framed and adopted or revised as a
16 whole or amended under the provisions of former chapter
17 eight-a of this code or under the provisions of article three
18 or article four of this chapter, (iii) general law, or (iv)
19 any combination of the foregoing; and

20 (3) "Town or village" is a term of art and shall, not-
21 withstanding the provisions of section ten, article two,
22 chapter two of this code, mean, include and be limited to
23 any Class IV town or village, as classified in section three
24 of this article, heretofore or hereafter incorporated as a
25 municipal corporation under the laws of this state, how-
26 ever created and whether operating under (i) a special
27 legislative charter, (ii) general law, or (iii) a combination
28 of the foregoing.

29 (b) For the purpose of this chapter, unless the context
30 clearly requires a different meaning:

31 (1) "Governing body" shall mean the mayor and coun-
32 cil together, the council, the board of directors, the com-
33 mission, or other board or body of any municipality, by
34 whatever name called, as the case may be, charged with
35 the responsibility of enacting ordinances and determin-
36 ing the public policy of such municipality; and in certain
37 articles dealing with intergovernmental relations shall
38 also mean the county court of any county or governing
39 board of other units of government referred to in said
40 articles;

41 (2) "Councilmen" shall mean the members of a gov-
42 erning body, by whatever name such members may be
43 called;

44 (3) "Mayor" shall mean the individual called mayor
45 unless as to a particular municipality a commissioner (in
46 a commission form of government) or the city manager
47 (in a manager form of government) is designated or
48 constituted by charter provision as the principal or chief
49 executive officer or chief administrator thereof, in which
50 event the term "mayor" shall mean as to such munici-
51 pality such commissioner or city manager unless as to
52 any particular power, authority, duty or function speci-
53 fied in this chapter to be exercised, discharged or ful-
54 filled by the mayor it is provided by charter provision
55 or ordinance that such particular power, authority, duty
56 or function shall be exercised, discharged or fulfilled by
57 the individual called mayor and not by a commissioner
58 or city manager, in which event such particular power,
59 authority, duty or function shall in fact be exercised,
60 discharged or fulfilled in and for such municipality by
61 the individual called mayor: *Provided*, That in the ex-
62 ercise and discharge of the ex officio justice of the peace,
63 conservator of the peace and mayor's court functions
64 specified in this chapter, the term "mayor" shall always
65 mean the individual called mayor;

66 (4) "Recorder" shall mean the recorder, clerk or other
67 municipal officer, by whatever name called, charged with
68 the responsibility of keeping the journal of the proceed-
69 ings of the governing body of the municipality and other
70 municipal records;

71 (5) "Treasurer" shall mean the treasurer or other
72 municipal officer, by whatever name called, exercising
73 the power and authority commonly exercised by a
74 treasurer;

75 (6) "Administrative authority" shall mean the officer,
76 commission or person responsible for the conduct and
77 management of the affairs of the municipality in accord-
78 ance with the charter, general law and the ordinances,
79 resolutions and orders of the governing body thereof;

80 (7) "Charter" shall mean, except where specific refer-
81 ence is made to a particular type of charter, either a
82 special legislative charter (whether or not amended under

83 the provisions of former chapter eight-a of this code or
84 under article four of this chapter, and although so
85 amended, such special legislative charter shall, for the
86 purposes of this chapter, remain a special legislative
87 charter), or a home rule charter framed and adopted
88 or revised as a whole or amended by a city under the
89 provisions of former chapter eight-a of this code or under
90 the provisions of article three or article four of this
91 chapter;

92 (8) "Ordinances" shall mean the ordinances and laws
93 enacted by the governing body of a municipality in the
94 exercise of its legislative power, and in one or more
95 articles of this chapter, ordinances enacted by a county
96 court;

97 (9) "Inconsistent or in conflict with" shall mean that
98 a charter or ordinance provision is repugnant to the con-
99 stitution of this state or to general law because such pro-
100 vision (i) permits or authorizes that which the constitu-
101 tion or general law forbids or prohibits, or (ii) forbids
102 or prohibits that which the constitution or general law
103 permits or authorizes;

104 (10) "Qualified elector," "elector," "qualified voter"
105 or "legal voter" shall mean any individual who, at the
106 time he offers to vote or at the time he participates in any
107 event or activity (such as signing a petition) under the
108 provisions of this chapter for which he must be a qualified
109 elector, elector, qualified voter or legal voter, is a resident
110 within the corporate limits of the municipality or within
111 the boundaries of a territory referred to in this chapter,
112 as the case may be, and who (i) has been a resident of
113 the state for one year and of the municipality or territory
114 in question for at least sixty days next preceding such
115 election or date pertinent to any such event or activity,
116 and (ii) in the case of a regular municipal election, special
117 municipal election, municipal public question election or
118 any such municipal event or activity, is duly registered
119 on the municipal registration books set up in the office
120 of the clerk of the county court of the county in which
121 the municipality or the major portion of the territory
122 thereof is located under the integration of the municipal

123 registration of voters with the "permanent registration
124 system" of the state, or, in the event there be no such
125 integration of the municipal registration of voters, is duly
126 registered in the county in which he resides to vote in
127 state-county elections, or (iii) in the case of a territory
128 election, general election or any such territory event or
129 activity, is duly registered in the county in which he
130 resides to vote in state-county elections; and any charter
131 provision or ordinance establishing a voting residency re-
132 quirement different than that in this definition provided
133 shall be of no force and effect; and in any case where a
134 particular percentage of the qualified electors, electors,
135 qualified voters or legal voters is required under the pro-
136 visions of this chapter in connection with any such event
137 or activity as aforesaid, the percentage shall be deter-
138 mined on the basis of the number of qualified electors,
139 electors, qualified voters or legal voters, as of the time
140 of such event or activity, unless it is impracticable to de-
141 termine such percentage as of such time and it is provided
142 by ordinance, resolution or order that the percentage shall
143 be determined on the basis of the number of qualified
144 electors, electors, qualified voters or legal voters, as of
145 the date of the last preceding election (whether a general
146 election, regular municipal election or special municipal
147 election and whether or not they voted at such election)
148 held in such municipality or territory, as the case may be;

149 (11) "Public question" shall mean any issue or propo-
150 sition required to be submitted to the qualified voters of
151 a municipality or of a territory referred to in this chapter
152 for decision at an election, as the case may be;

153 (12) "Inhabitant" shall mean any individual who is a
154 resident within the corporate limits of a municipality or
155 within the boundaries of a territory referred to in this
156 chapter, as the case may be;

157 (13) "Resident" shall mean any individual who main-
158 tains a usual and bona fide place of abode within the cor-
159 porate limits of a municipality or within the boundaries of
160 a territory referred to in this chapter, as the case may be;

161 (14) "Freeholder" shall mean any person (and in the
162 case of an individual one who is sui juris and is not under

163 a legal disability) owning a "freehold interest in real
164 property";

165 (15) "Freehold interest in real property" shall mean
166 any fee, life, mineral, coal or oil or gas interest in real
167 property, whether legal or equitable, and whether as a
168 joint tenant or a tenant in common, but shall not include
169 a leasehold interest (other than a mineral, coal or oil or
170 gas leasehold interest), a dower interest, or an interest in
171 a right-of-way or easement, and the freehold interest of a
172 church or other unincorporated association shall be con-
173 sidered as one interest and not as an individual interest
174 of each member thereof;

175 (16) "County court" shall mean the governmental
176 body created by section twenty-two, article eight of the
177 constitution of this state, or any existing tribunal created
178 in lieu of a county court;

179 (17) "Code" shall mean the code of West Virginia, one
180 thousand nine hundred thirty-one, as heretofore and
181 hereafter amended; and

182 (18) "Person" shall mean any individual, firm, part-
183 nership, corporation, company, association, joint-stock as-
184 sociation, or any other entity or organization of whatever
185 character or description.

186 (c) The term "intergovernmental relations" is used in
187 this chapter to mean undertakings and activities which
188 may be undertaken or engaged in by two or more units of
189 government acting jointly, and in certain headings in this
190 chapter to call attention to the fact that the provisions
191 under such headings apply to units of government in
192 addition to municipalities.

193 (d) For the purpose of this chapter, unless the context
194 clearly indicates to the contrary, words importing the
195 masculine gender shall include both the masculine and
196 feminine gender, and the phrase "charter framed and
197 adopted or revised as a whole or amended (or words of
198 like import) under the provisions of former chapter
199 eight-a of this code" shall include a charter framed and
200 adopted or revised as a whole or amended under the pro-
201 visions of former article two of former chapter eight of
202 this code.

PART III. GENERAL PROVISIONS.

§8-1-3. Classification of municipal corporations.

1 Pursuant to the mandate of the "Municipal Home Rule
2 Amendment" to the constitution of this state, all munici-
3 pal corporations are hereby classified by population into
4 four classes, as follows:

5 (1) Every municipal corporation with a population in
6 excess of fifty thousand shall be a Class I city;

7 (2) Every municipal corporation with a population in
8 excess of ten thousand but not in excess of fifty thousand
9 shall be a Class II city;

10 (3) Every municipal corporation with a population in
11 excess of two thousand but not in excess of ten thousand
12 shall be a Class III city; and

13 (4) Every municipal corporation with a population of
14 two thousand or less shall be a Class IV town or village.

15 Transition from one to another class shall occur auto-
16 matically when the requisite population qualification has
17 been met, effective as of the effective date of the census,
18 as specified in section four of this article.

19 The Legislature hereby declares its interpretation of
20 the said "Municipal Home Rule Amendment" to be that
21 a single classification by population of municipal cor-
22 porations in this state is required which shall exclude
23 any other classification of municipal corporations by
24 population for any purpose. It is, therefore, the inten-
25 tion of the Legislature that the classification established
26 in this section shall give effect to the constitutional man-
27 date and shall be the only classification by population
28 applying to municipal corporations in this state. It is
29 the further intention of the Legislature that subsequent
30 legislation affecting municipal corporations in this state
31 shall treat municipal corporations differently upon the
32 basis of population, only in accordance with the general
33 classification established in this section.

§8-1-4. How population determined.

1 For any purpose pertinent to the provisions of this
2 chapter, population shall be determined by reference to

3 the last preceding census taken under the authority of
4 the United States or of the Legislature of West Virginia
5 or by the municipality pursuant to an ordinance adopted
6 thereby, the adoption of any such ordinance being hereby
7 expressly authorized.

§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
2 is hereby confirmed and validated. Except as otherwise
3 provided in section six of this article, any municipality
4 shall have all of the powers, authority, duties and re-
5 sponsibilities conferred by law upon a municipality of
6 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
2 in section one of this article, each municipality is subject
3 to the provisions contained in this chapter and may
4 exercise the power and authority conferred by this chap-
5 ter. In this regard, it is recognized that when the pro-
6 visions of existing special legislative charters are com-
7 pared with and are considered in the light of the provi-
8 sions of this chapter, there are five basic possibilities as
9 to the relationship between such charter provisions and
10 the provisions of this chapter, namely: (1) As to any
11 particular charter provisions, such charter provisions
12 may be inconsistent or in conflict with the pertinent
13 provisions of this chapter; (2) although relating to the
14 same subject matter and although not inconsistent or
15 in conflict with any provisions of this chapter, certain
16 charter provisions may be sufficiently different from per-
17 tinent provisions of this chapter as to indicate, as a matter
18 of practical construction, that either the charter pro-
19 visions or the provisions of this chapter, but not both,
20 should be applicable; (3) although varying in certain

21 respects, certain charter provisions may be similar to
22 and in essential harmony with corresponding provisions
23 of this chapter; (4) as to any particular charter pro-
24 visions, there may be no counterpart of such provisions
25 in this chapter; and (5) as to any provisions of this
26 chapter, there may be no counterpart charter provisions.
27 In view of these possibilities, it becomes necessary for
28 the Legislature to set forth certain rules of construction
29 to be applied in addition to the usual and ordinary rules
30 of statutory construction, and to set forth a substantive
31 provision as to application in connection with possi-
32 bility (2).

33 As to possibility (1), the pertinent provisions of this
34 chapter shall supersede such conflicting or inconsistent
35 charter provisions and shall be deemed amendments to
36 such charters. As to possibility (2), one year from and
37 after the effective date of this section or the effective
38 date of any pertinent amendment to this chapter here-
39 after adopted, such provisions of this chapter shall su-
40 persede such charter provisions and shall be deemed
41 amendments to such charter, unless within such one-
42 year period an ordinance is adopted providing that such
43 charter provisions shall be applicable, in which event
44 such charter provisions shall be applicable so long as
45 said ordinance remains in full force and effect. As to
46 possibility (3), all such charter provisions shall be con-
47 strued so as to conform to and be consistent with the
48 pertinent provisions of this chapter. As to possibility
49 (4), the charter provisions shall remain in operation and
50 effect until amended or repealed by general law here-
51 after enacted or until hereafter supplanted by a new
52 charter or revised as a whole or amended in accordance
53 with the provisions of this chapter. As to possibility (5),
54 the applicable provisions of this chapter shall be deemed
55 amendments to such charter. In determining the rela-
56 tionship between such charter provisions and the pro-
57 visions of this chapter in any situation not included in
58 the possibilities outlined above, the relationship shall
59 be determined in keeping with the general concepts and
60 principles embodied in the rules of construction set forth
61 in this paragraph. The provisions set forth above in

62 this paragraph shall also be applicable to the relation-
63 ship between the pertinent provisions of various local
64 or special acts of the Legislature (other than special leg-
65 islative charters) pertaining to municipal matters and
66 the provisions of this chapter.

67 Notwithstanding any of the foregoing provisions of this
68 section, (1) particular provisions of this chapter shall
69 supersede pertinent charter provisions whenever it is
70 expressly provided in this chapter that such provisions
71 of this chapter shall govern notwithstanding any charter
72 provisions, that such charter provisions shall be of no
73 force and effect, that the provisions of this chapter are
74 the only applicable provisions, or that something may
75 be accomplished only as provided in this chapter; and
76 (2) charter provisions shall govern chapter provisions
77 in those instances where this chapter expressly authorizes
78 other or contrary charter provisions.

79 Any ordinance provision which is inconsistent or in
80 conflict with any provision of this chapter shall be of
81 no force and effect.

82 All individuals holding any office on the effective date
83 of this chapter, and all officers and members of any com-
84 mission, board, authority or other entity, by whatever
85 name called, serving on the effective date of this chapter,
86 and who were elected or appointed and qualified under
87 or pursuant to the provisions of former chapter eight
88 or chapter eight-a of this code, any act repealed by this
89 new chapter eight or any charter provision or ordinance
90 provision made or adopted under or pursuant to such
91 former chapters or acts shall continue to serve, unless
92 a vacancy sooner occurs, until their terms expire and
93 until their successors have been elected or appointed,
94 as the case may be, and have qualified.

95 Notwithstanding any of the foregoing provisions or
96 any other provision of this chapter (even though such
97 other provision is stated to be paramount), transactions
98 validly entered into, causes of action which arose, and civil
99 actions instituted, before the effective date of this chapter
100 and the rights, duties, obligations and interest flowing
101 therefrom remain valid, enforceable and maintainable

102 thereafter and may be terminated, completed, consum-
103 mated, prosecuted, maintained or enforced (1) as required
104 or permitted by any statute or other law (including the
105 provisions of former chapters eight and eight-a of this
106 code and the acts repealed by this chapter) repealed or
107 amended by this chapter as though such repeal or amend-
108 ment had not occurred, or (2) with like effect as though
109 this chapter had not been enacted.

§8-1-7. Construction of powers and authority granted.

1 The enumeration of powers and authority granted in
2 this chapter shall not operate to exclude the exercise of
3 other powers and authority fairly incidental thereto or
4 reasonably implied and within the purposes of this chap-
5 ter; and the provisions of this chapter shall be given full
6 effect without regard to the common-law rule of strict
7 construction, and particularly when the powers and au-
8 thority are exercised by charter provisions framed and
9 adopted or adopted by revision of a charter as a whole or
10 adopted by charter amendment under the provisions of
11 this chapter.

12 Any charter provision framed and adopted or adopted
13 by revision of a charter as a whole or adopted by charter
14 amendment under the provisions of former chapter
15 eight-a of this code or under the provisions of this chapter
16 which is beyond the power and authority of a city and
17 any ordinance provision which is beyond the power and
18 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
2 this code and any reference elsewhere in this code or
3 other law to a provision in this chapter shall be construed
4 to mean the present provision or such provision as the
5 same may be hereafter amended from time to time.
6 Where additional provisions are added to the subject
7 matter of any other provision so referred to, the reference
8 shall include such additional provisions.

9 Wherever in this code, in any act, in general law, else-
10 where in law, in any charter, in any ordinance, resolution
11 or order of a municipality, or in any order, ordinance or

12 resolution of a county court or other unit of government,
13 reference is made to any section, any article, any par-
14 ticular provision or any term of chapter eight of this code
15 as it existed immediately prior to the effective date of this
16 new chapter eight or to any section, any article, any par-
17 ticular provision or any term of former chapter eight-a
18 of this code, such reference shall henceforth be read, con-
19 strued and understood to mean the comparable section,
20 article, particular provision or term in this new chapter
21 eight.

ARTICLE 2. CREATION OF MUNICIPALITIES.

PART I. GENERAL.

- §8-2-1. Requirements for incorporation; size and character of territory; population.
- §8-2-2. Petition; survey and map.
- §8-2-3. Hearing on petition; notice; dismissal.
- §8-2-4. Census; bond; appointment and duties of enumerators.

PART II. ELECTION.

- §8-2-5. Special election—Voting precincts; time for election; supplies; commissioners and clerks; notice.
- §8-2-6. Same—Qualified electors; form of ballot or ballot label; election officials; certification; canvass; declaration of results; recount.
- §8-2-7. Court order declaring boundaries of city; certificate of incorporation of town or village; dismissal of proceeding.

PART III. JUDICIAL REVIEW.

- §8-2-8. Judicial review.

PART I. GENERAL.

- §8-2-1. Requirements for incorporation; size and character of territory; population.

1 Any part of any county or counties, not within any
2 municipality, urban in character, and containing at least
3 one hundred inhabitants (if such part contains less than
4 one square mile), and an average of not less than five
5 hundred inhabitants per square mile (if such part contains
6 one square mile or more), provided such part does not
7 include an amount of territory disproportionate to the
8 number of inhabitants thereof, may be incorporated,
9 depending upon population, as a city, either a Class I,
10 Class II or Class III city, or as a Class IV town or village,
11 as classified in section three, article one of this chapter,
12 upon the conditions and in the manner hereinafter pre-

13 scribed: *Provided*, That the exact extent of the terri-
14 tory or portions thereof to be included or excluded shall
15 be within the reasonable discretion of the county court,
16 taking into consideration the topography thereof, the
17 benefits thereto from incorporation, the amount of unin-
18 habited land required for parks and recreational use and
19 normal growth and development and the present and
20 probable future uses thereof, so as to prevent hardships
21 and inequities.

§8-2-2. Petition; survey and map.

1 A proceeding to incorporate any such city, town or
2 village shall be initiated upon petition addressed to and
3 filed with the county court of the county in which the
4 territory is located, or if in more than one county in
5 which the major portion of the territory is located, indi-
6 cating whether the territory sought to be incorporated
7 will be upon incorporation, depending upon population,
8 a Class I, Class II or Class III city or a Class IV town
9 or village. Such petition shall be signed by at least
10 thirty percent of the freeholders of the territory to be
11 incorporated.

12 Such petition shall be verified by at least one of the
13 petitioners and shall be accompanied by a map made by
14 a professional engineer registered under the laws of this
15 state, which map shall be based upon an actual and
16 accurate survey of the territory to be incorporated show-
17 ing the courses, distances and the area of the territory
18 to be incorporated.

19 Such map shall be verified and shall be left at the resi-
20 dence or place of business within the territory to be
21 incorporated of some individual residing or some person
22 doing business therein, and shall be subject to exami-
23 nation at all reasonable hours by every person interested
24 in such application for a period of at least ten days prior
25 to the hearing on such petition as provided for in sec-
26 tion three of this article.

§8-2-3. Hearing on petition; notice; dismissal.

1 Upon the filing of such petition, the county court shall
2 set the same for hearing not sooner than ten days and not

3 later than thirty days thereafter, and the petitioners shall
4 cause notice of the filing of said petition and of the date,
5 time and place of hearing thereon to be published as a
6 Class II legal advertisement in compliance with the pro-
7 visions of article three, chapter fifty-nine of this code, and
8 the publication area for such publication shall be the
9 territory sought to be incorporated.

10 Upon the date set for hearing, the county court shall
11 hear evidence for and against the proposed incorporation,
12 and if it shall determine that the requirements of sections
13 one and two of this article have not been met, it shall
14 forthwith enter an order dismissing said petition.

§8-2-4. Census; bond; appointment and duties of enumerators.

1 If the court shall determine after hearing that the re-
2 quirements of sections one and two of this article have
3 been met, the petitioners shall provide bond in penalty
4 prescribed by the court, with good and sufficient surety
5 thereon, conditioned to pay all costs of taking a census,
6 determining the qualification of electors, holding an elec-
7 tion and ascertaining the results thereof, in the event a
8 majority of the qualified electors vote against incorpora-
9 tion; and thereupon the court shall fix a day or days for
10 taking a census of the inhabitants and for determining
11 those who are qualified electors of said territory. For the
12 purpose of taking said census, and determining the quali-
13 fications of the electors, said court shall appoint four
14 enumerators for each five hundred inhabitants of said
15 territory based upon the most reliable estimate obtain-
16 able: *Provided*, That if the territory contains less than
17 one square mile and the county court believes the terri-
18 tory contains fewer than five hundred inhabitants, two
19 enumerators shall be appointed. It shall be the duty of
20 the enumerators so appointed to enumerate all of the
21 inhabitants of said territory and to visit each house or
22 dwelling therein, and to obtain the name of each known
23 resident thereof. It shall also be the duty of the enumer-
24 ators to examine the permanent registration records of
25 the county or counties in which the territory is situate to
26 determine which of such inhabitants are qualified electors
27 therein and to compile and file with the county court a

28 list of such qualified electors. Each enumerator shall
29 receive for his services a sum per day, to be fixed by the
30 county court, but not to exceed ten dollars per day, to-
31 gether with all reasonable and necessary expenses actu-
32 ally incurred in the discharge of such duties, which sum
33 and expenses shall be paid by the county court and re-
34 imbursed to it by the city, town or village if and when
35 the city, town or village shall become incorporated, as
36 hereinafter provided; otherwise by the petitioners. The
37 county court shall provide an opportunity for all qualified
38 individuals residing in such territory, who have not been
39 previously registered to vote, to become registered prior
40 to the election hereinafter provided for. Upon the com-
41 pletion of said census and the listing of qualified electors,
42 said enumerators shall make a report under oath to the
43 county court that said enumeration and listing are correct,
44 true and accurate, and do not contain the name of any
45 individual who is not a resident of the territory, and that
46 the list of qualified electors is true and correct, which
47 report shall be filed with the county court within the
48 following number of days after the appointment of said
49 enumerators: Forty days if it is to be a Class I city, twenty
50 days if it is to be a Class II city, ten days if it is to be a
51 Class III city and ten days if it is to be a Class IV town
52 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,
2 the county court shall forthwith fix a date for a special
3 election, not later than thirty days thereafter, on which
4 all qualified electors of the territory shall vote upon the
5 question of incorporation between such hours as may
6 be fixed by order of said court. For the purpose of
7 holding and conducting said election, the county court
8 shall divide the territory into one or more precincts,
9 consisting of not more than five hundred qualified voters
10 in each precinct; shall arrange for and provide at its
11 expense polling places, registration books, challenges and

12 other election supplies as provided for by law in
13 general elections; shall appoint three commissioners of
14 election and two clerks from the qualified electors of said
15 territory for each precinct so established, dividing the
16 election officials as nearly as possible equally between
17 those favoring incorporation and those opposed to incor-
18 poration; and shall give notice of the date and place or
19 places of election and hours for voting by publication of
20 such notice as a Class II-0 legal advertisement in com-
21 pliance with the provisions of article three, chapter fifty-
22 nine of this code, and the publication area for such pub-
23 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; dec-
laration of results; recount.**

1 On the date named in such notice for the taking of
2 the vote, each qualified elector of the territory sought
3 to be incorporated shall have the right to cast his vote
4 for or against such incorporation at the precinct in which
5 he resides, by depositing a ballot in a ballot box, or by use
6 of a voting machine, to be provided by the county court
7 for that purpose. Each ballot, or ballot label where voting
8 machines are used, shall be without party designation
9 and shall have written or printed thereon the following
10 words:

11 ☐ For Incorporation

12 ☐ Against Incorporation

13 The ballot or ballot label shall be a separate, special bal-
14 lot or ballot label.

15 Such election shall be held and conducted under the
16 supervision of the commissioners and clerks of election
17 appointed by the county court as aforesaid and shall be
18 conducted as nearly as may be in accordance with the
19 laws of this state governing general elections. The re-
20 sults of such election shall be certified as in general elec-
21 tions, and the returns shall be canvassed and the results
22 declared by the county court. In the event any commis-
23 sioner or clerk designated to serve in said election shall
24 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 pro-
ceeding.**

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.

§8-2-8. 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; REVISING 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
2 a city, under article two of this chapter, each qualified
3 voter entitled to vote shall also be entitled to vote for
4 a charter board consisting of eleven members if it is to
5 be a Class I or Class II city, and of seven members if
6 it is to be a Class III city. Members shall be elected at
7 large and shall receive no compensation for their services,
8 but shall be reimbursed by the city for all reasonable
9 and necessary expenses actually incurred in the dis-
10 charge of their duties. Any individual who has been a
11 resident of the territory sought to be incorporated for
12 at least two years prior to the date of said election and
13 who shall have been qualified to vote in state-county
14 elections for at least two years prior to the date of said
15 election shall be eligible for membership on said charter
16 board. Nominations for said charter board shall be made
17 by petition to the county court bearing the signatures,
18 written in their own handwriting, of not less than two
19 hundred qualified voters of the territory. All nominating
20 petitions shall be filed with the county court at least

21 twenty days prior to the date of the election on the
22 question of incorporation. In the event of a vacancy in
23 the nominations which shall reduce the number of can-
24 didates below the number of members to be elected, the
25 vacancy shall be filled by the county court. The ballots,
26 or ballot labels where voting machines are used, shall
27 be prepared by or at the direction of the clerk of the
28 county court. The ballots or ballot labels for members
29 of the charter board shall be separate from the ballots
30 or ballot labels on the question of incorporation. Such
31 ballots or ballot labels for members of the charter board
32 shall be special ballots or ballot labels without party
33 designation. The position of the names of the candidates
34 upon the ballots or voting machines shall be inter-
35 changed, as provided in the general election laws of this
36 state. The ballots or voting machine directions shall bear
37 instructions specifying the number of candidates to be
38 voted for, and each qualified voter entitled to vote on
39 the question of framing a charter may cast as many
40 votes for members of the charter board as there are
41 members to be elected. He may cumulate all of his votes
42 for one candidate, or distribute them among several can-
43 didates as he sees fit. The ballots or voting machine di-
44 rections shall bear advice to this effect. Any voter who
45 shall vote against incorporation may, nevertheless, vote
46 for members of the charter board, and the ballots or
47 voting machine directions shall bear advice to this effect.

48 If on the returns being canvassed on the question of
49 incorporation, such canvassing to be done by the county
50 court, a majority of the legal votes cast be against incor-
51 poration, the proceeding shall be dismissed as specified
52 in section seven, article two of this chapter, and no sub-
53 sequent proceeding for incorporation of the same terri-
54 tory or any portion thereof shall be considered or election
55 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.**

1 If on the returns being canvassed on the question of
2 incorporation of a city, such canvassing to be done by the
3 county court, a majority of the legal votes cast be in favor

4 of such incorporation, then the legal votes cast for mem-
5 bers of the charter board shall be counted and canvassed
6 by the county court, and the candidates in the number to
7 be chosen who received the highest number of votes shall
8 be declared elected. The charter board shall be convened
9 at a suitable place within the territory, by the member
10 receiving the highest number of votes, not less than five
11 days nor more than ten days after the canvass of the
12 returns. He shall notify the other members of the board
13 in writing of the time and place of the first meeting of the
14 charter board. At such first meeting, the board shall per-
15 fect its organization by electing a chairman and secretary
16 from its membership and by determining the rules to
17 govern its proceedings. Any vacancy in the membership
18 of the board occurring before a charter is approved by
19 the qualified voters of the incorporated territory shall be
20 filled by appointment by majority action of the remaining
21 members, and any vacancy occurring after approval of a
22 charter as aforesaid shall be filled as specified in section
23 nine of this article. A journal shall be kept by the secre-
24 tary, in which journal shall be entered, upon demand by
25 any member, the vote by ayes and nays on any question.
26 A majority of the members of said board shall constitute
27 a quorum. The board shall specify the manner for nomi-
28 nating and electing candidates for the first elective offices
29 provided for in the proposed charter at the election to be
30 held on the question of approval of the charter. It shall
31 fix the date of said election and it shall do and provide all
32 other things necessary for making nominations and hold-
33 ing and conducting such election. Any qualified voter and
34 any freeholder of the incorporated territory may file with
35 said charter board any written material bearing upon the
36 purposes of the board, and the board shall give such
37 material so filed such consideration as it may deem
38 proper. The charter drafting process may be carried on
39 through committees, but their work shall be advisory
40 only. The charter board shall complete its draft of a
41 charter within ninety days after its first meeting. It shall
42 be the duty of the charter board to provide in the charter
43 so drafted for a form of city government in accordance
44 with one of the following plans:

45 Plan I—“*Mayor-Council Plan.*” Under this plan:

46 (1) There shall be a city council, elected at large or
47 by wards, or both at large and by wards, by the qualified
48 voters of the city; a mayor elected by the qualified voters
49 of the city; and such other elective officers as the charter
50 may prescribe; and

51 (2) The mayor and council shall be the governing
52 body and administrative authority.

53 Plan II—“*Strong-Mayor Plan.*” Under this plan:

54 (1) There shall be a mayor elected by the qualified
55 voters of the city; and a city council elected at large or
56 by wards, or both at large and by wards, by the qualified
57 voters of the city;

58 (2) The council shall be the governing body;

59 (3) The mayor shall be the administrative authority;
60 and

61 (4) Other officers and employees shall be appointed
62 by the mayor or by his order in accordance with this
63 chapter, but such appointments by the mayor or by his
64 order may be made subject to the approval of the council.

65 Plan III—“*Commission Government.*” Under this plan:

66 (1) There shall be, except as hereinafter in this plan
67 provided, a commission of five members elected at large
68 by the qualified voters of the city;

69 (2) The members of the commission shall be a com-
70 missioner of public affairs, a commissioner of finance, a
71 commissioner of public safety, a commissioner of public
72 works and a commissioner of streets: *Provided*, That a
73 charter for a Class I or Class II city may, and a charter
74 for a Class III city shall, provide for a commission of
75 three members, viz., a commissioner of finance, a com-
76 missioner of public works and a commissioner of public
77 safety;

78 (3) The members of the commission shall elect a
79 mayor from among their membership;

80 (4) The commission shall be the governing body and
81 administrative authority; and

82 (5) Officers and employees, other than members of the
83 commission, shall be appointed in accordance with this

84 chapter by the commissioners or by each commissioner
85 with respect to his department, as the charter may pre-
86 scribe.

87 Plan IV—"Manager Plan." Under this plan:

88 (1) There shall be a council of not less than five nor
89 more than eleven members, elected either at large or
90 from such geographical districts as may be established
91 by the charter, or partly at large and partly from such
92 geographical districts, and the charter may empower the
93 council to change, from time to time, such districts with-
94 out amending the charter: *Provided, however,* That the
95 change of such districts shall not take effect during the
96 terms of office of the members of such council making
97 such change;

98 (2) There shall be a mayor elected by the council from
99 among its membership, who shall serve as the presiding
100 officer of the council; and a city manager who shall be
101 appointed by the council;

102 (3) The council shall be the governing body; and

103 (4) The manager shall be the administrative authority.
104 He shall manage the affairs of the city under the super-
105 vision of the council and he shall be responsible
106 to such council. He shall appoint or employ, in accord-
107 ance with this chapter, all subordinates and employees
108 for whose duties or work he is responsible to the coun-
109 cil.

110 The purpose of the provisions of this section pertaining
111 to Plan I, Plan II, Plan III and Plan IV is to establish
112 basic requirements of alternative plans of structure and
113 organization of city government. The structure and or-
114 ganization of a city government may be specified by the
115 charter in respects other than those enumerated, and in
116 elaboration of the basic requirements, insofar as such
117 charter provisions do not conflict with the purpose and
118 the provisions of the alternative plans prescribed.

**§8-3-3. City charters—Approval and certification by attorney
general.**

1 The draft of said charter shall, upon completion, be
2 certified by the secretary of said charter board to the

3 attorney general of the state. It shall be his duty to
4 examine the draft and advise whether it is consistent in
5 all respects with the constitution and general law of this
6 state. The attorney general, if satisfied that the pro-
7 posed charter is consistent in all respects with the con-
8 stitution and general law of this state, shall so certify
9 to the charter board within thirty days after receipt of
10 such draft. If the attorney general is not satisfied that
11 the proposed charter is consistent in all respects with
12 the constitution and general law of this state, he shall
13 certify, within thirty days after receipt of such draft, to
14 the charter board in what respects the same does not
15 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,
4 place and purpose of the hearing to be given by publi-
5 cation thereof at least ten days prior to the date set for
6 the hearing as a Class I legal advertisement in compliance
7 with the provisions of article three, chapter fifty-nine
8 of this code, and the publication area for such publica-
9 tion shall be the incorporated territory. The notice shall
10 state where copies of the draft of the charter may be
11 obtained. The hearing may be continued by the charter
12 board by adjournments over a period not exceeding
13 fourteen days.

§8-3-5. Same—Changes; time for changes; signatures; filing.

1 A charter board shall have thirty days after the con-
2 clusion of the hearing required by section four of this
3 article or receipt of the certificate of the attorney general
4 required by section three of this article, whichever shall
5 occur later, to make any changes it may consider neces-
6 sary or desirable in its charter draft.

7 At least three copies of the completed charter draft shall
8 be signed by at least a majority of the members of the
9 board, and two copies shall be filed with the clerk of
10 the county court.

§8-3-6. Same—Special election; time for election; notice; voting precincts; supplies; officials; certification; canvass; declaration of results; recount.

1 The proposed charter shall be submitted to the qualified
2 voters of the incorporated territory for approval or rejection
3 at a special election ordered by the county court
4 to be held not less than thirty days nor more than ninety
5 days following the date on which the two copies of the
6 completed charter were filed with the clerk of the county
7 court, at which election the officers provided for by said
8 proposed charter and to be elected shall be voted upon in
9 the manner provided in said proposed charter. The county
10 court shall cause notice of the date, hours, place and purpose
11 of such election to be given by publication thereof as
12 a Class II-0 legal advertisement in compliance with the
13 provisions of article three, chapter fifty-nine of this code,
14 and the publication area for such publication shall be
15 the incorporated territory. The first of said publications
16 shall be made not less than thirty days prior to the date
17 fixed for the election. Each such notice of election shall
18 state that upon request any qualified voter and any
19 freeholder of the incorporated territory may obtain a
20 copy of the proposed charter from a designated person
21 at a designated place.

22 For the purpose of holding and conducting said election,
23 the county court shall divide the incorporated territory
24 into one or more precincts, consisting of not more
25 than five hundred qualified voters in each precinct; shall
26 arrange for and provide at its expense polling places,
27 registration books, challenges and other election supplies
28 as provided for by law in general elections; and
29 shall appoint three commissioners of election and two
30 clerks from the qualified voters of said incorporated
31 territory for each precinct so established, subject, however,
32 to the provisions of section eleven, article four of
33 this chapter. Such election shall be held and conducted
34 under the supervision of the commissioners and clerks
35 of election appointed by the county court as aforesaid
36 and shall be conducted as nearly as may be in accordance
37 with the laws of this state governing general elections.
38 The results of such election, both as to approval or re-

39 jection of the proposed charter and the election of offi-
40 cers, shall be certified as in general elections, and the
41 returns shall be canvassed and the results declared by
42 the county court. In the event any commissioner or clerk
43 designated to serve in said election shall fail or refuse
44 to serve, such vacancy may be filled in like manner as
45 such vacancies are filled in general elections under the
46 laws of this state governing general elections. A recount
47 may be had, as in general elections, upon the party or
48 parties desiring such recount providing adequate as-
49 surance to the county court that he or they will pay all
50 costs of such recount.

§8-3-7. Same—Approval; effective date; certification; judicial notice; recordation.

1 If the proposed charter shall be approved by a ma-
2 jority of the legal votes cast at the election thereon,
3 the charter shall take effect on July first next after
4 the date of the election, if the interim exceeds sixty
5 days; otherwise on July first of the second fiscal year
6 after its approval. If approved as aforesaid, one of the
7 signed copies of the charter on file with the clerk of
8 the county court, together with a certified copy of the
9 declaration of the results of the election showing the
10 total legal votes cast for and against approval, shall be
11 certified forthwith by the clerk of the county court to
12 the clerk of the House of Delegates, in his capacity as
13 keeper of the rolls. The same shall be preserved by
14 said clerk of the House of Delegates as an authentic
15 public record. After the effective date of a charter so
16 filed, all courts shall take judicial notice of its provisions.

17 The clerk of the county court shall certify to the
18 county court the other signed copy of the charter
19 previously filed with him, which copy so certified shall
20 be spread upon the records of said court for public
21 examination.

§8-3-8. Same—Rejection; rewriting or altering draft; new charter board.

1 If the proposed charter shall be rejected by a majority
2 of the legal votes cast at the election thereon, the elec-
3 tion of officers shall be void, except that the candidate

4 who shall receive the highest number of legal votes
5 cast for the office of mayor, if a mayor is to be elected,
6 otherwise the candidate for any city office who shall
7 receive the highest number of legal votes cast at the
8 election, shall, within ten days thereafter, require such
9 charter board to reconvene for the purpose of rewrit-
10 ing or altering the draft of the rejected charter in such
11 manner as to it shall seem proper. Any three hundred
12 qualified voters of said incorporated territory may, how-
13 ever, within ten days after the determination of the
14 results of the election at which such charter is rejected,
15 petition the clerk of the county court for the election
16 of a new charter board, in which case the court shall
17 thereupon call a new election for members of the charter
18 board in the same manner as the original election and
19 with nominations to be made and any vacancies to be
20 filled in the same manner as in the first instance, as
21 provided in section one of this article. The duties
22 of the new charter board shall be the same as those of
23 the former board, and as many successive charter boards
24 may be elected as may be necessary until a charter for
25 such territory is framed and approved by the qualified
26 voters of the incorporated territory. The rewritten or
27 altered proposed charter or the charter draft of a new
28 or any succeeding charter board, as the case may be,
29 shall be submitted to the attorney general and the
30 qualified voters of said incorporated territory in the
31 same manner and with like notice and proceedings as
32 required in the first instance, and such proceedings shall
33 continue until the qualified voters of said incorporated
34 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 amend-
ing a charter.**

1 The members of the charter board of a city elected
2 under the provisions of this article whose draft of a
3 charter is approved by the qualified voters of the city
4 shall hold office for a term of six years following the
5 approval of such charter. Any vacancy occurring during

6 that period shall be filled temporarily by appointment
7 by majority action of the remaining members, and a
8 successor shall be elected at the next regular municipal
9 election in the same manner as elective city officers,
10 such successor to hold office for the remainder of the
11 term.

12 During such six-year period as aforesaid, the board
13 shall make a continuing study of the functioning of the
14 city government and may, by a two-thirds vote of its
15 members, not less than four years after such charter
16 shall have taken effect, require the submission to the
17 qualified voters of the city of the question of whether
18 the charter shall be revised as a whole, such submission
19 to be in accordance with the pertinent provisions of
20 article four of this chapter. In the event revision as a
21 whole is voted pursuant to such submission, the board
22 as then constituted shall proceed to prepare a revision
23 of the charter as a whole and the process of revision
24 as a whole as so initiated shall be the same as that for
25 the framing and adoption of a charter under the perti-
26 nent provisions of said article four of this chapter. Dur-
27 ing such six-year period as aforesaid, by a two-thirds
28 vote of its members, at any time not less than one year
29 after such charter shall have taken effect, the board may
30 require the submission of one or more proposed charter
31 amendments to the qualified voters of the city, in accord-
32 ance with the pertinent provisions of article four of
33 this chapter.

PART III. EXPENSES OF INCORPORATION.

§8-3-10. Expenses of incorporation.

1 The first governing body of any municipality incor-
2 porated under the provisions of article two of this chap-
3 ter shall provide for reimbursement to the county court
4 of all costs of incorporation, including, but not limited
5 to, the cost of publishing notices, of taking the enumera-
6 tion of inhabitants, of ascertaining the qualification of
7 electors, and of holding, conducting and superintending
8 the elections called for thereunder and the returning,
9 certifying and canvassing of the results thereof. The
10 first governing body of any city incorporated under

11 said article two shall also provide for reimbursement
12 of the charter board or boards and the members thereof
13 for all reasonable and necessary expenses actually in-
14 curred in the performance of its and their duties.

**ARTICLE 4. FRAMING AND ADOPTING A CHARTER OTHER THAN
IMMEDIATELY FOLLOWING INCORPORATION; RE-
VISING 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.

- 1 (a) The governing body of a city may provide by
2 ordinance for the submission to the qualified voters of
3 the city at a general election or at a regular municipal
4 election, or at a special municipal election if the gov-
5 erning body by the affirmative vote of two thirds of its
6 members shall determine and specify that a special
7 municipal election is necessary, of the question, "Shall
8 a charter be framed by representatives of the people?".
- 9 (b) The governing body of a city shall, upon petition
10 therefor bearing the signatures, written in their own
11 handwriting, of fifteen percent of the qualified voters

12 of the city, if a Class I or Class II city, or ten percent
13 of the qualified voters of the city, if a Class III city,
14 provide by ordinance for the submission to the qualified
15 voters of the city at a general election or at a regular
16 municipal election of the question, "Shall a charter be
17 framed by representatives of the people?"

18 (c) The governing body of a city shall provide by
19 ordinance for a special municipal election on said question
20 if a petition bearing the signatures, written in their own
21 handwriting, of fifteen percent of the qualified voters
22 of the city, if a Class I or Class II city, or ten percent
23 of the qualified voters of the city, if a Class III city,
24 expressly requesting that a special municipal election
25 be called for the purpose be presented to the governing
26 body more than one hundred twenty days prior to the
27 date of the next general election or next regular municip-
28 al election.

29 (d) If the question is to be submitted at a general
30 election or a regular municipal election and not a special
31 municipal election, then in determining the general elec-
32 tion or regular municipal election at which the question
33 shall be submitted, the following provisions of this sub-
34 section (d) shall govern and control:

35 (1) If the question is to be submitted under the pro-
36 visions of subsection (a) of this section, the question shall
37 be submitted at the next general election or next regular
38 municipal election, whichever first occurs after the ordi-
39 nance is adopted under the provisions of said subsection
40 (a); or

41 (2) If the question is to be submitted under the pro-
42 visions of subsection (b) of this section, the question shall
43 be submitted at the next general election or next regular
44 municipal election, whichever first occurs after the peti-
45 tion is filed under the provisions of said subsection (b),
46 if there is at least one hundred twenty days between the
47 filing of the petition and the date of the election, and
48 otherwise, at the next general election or next regular
49 municipal election occurring after said interval of at least
50 one hundred twenty days after the filing of said petition.

51 (e) Any special municipal election held in accordance
52 with the provisions of subsection (a) of this section shall
53 be held not less than thirty nor more than sixty days
54 after the ordinance providing for same shall have been
55 adopted, and any special municipal election held in ac-
56 cordance with the provisions of subsection (b) of this
57 section shall be held not less than thirty nor more than
58 sixty days after the petition shall have been presented to
59 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.**

1 The ordinance providing for submission to the qualified
2 voters of the city of the question of whether a charter
3 shall be framed shall make provision for voting for a
4 charter board concurrently with the voting on the ques-
5 tion of whether a charter shall be framed. A charter
6 board shall consist of eleven members in a Class I or
7 Class II city and seven members in a Class III city. Mem-
8 bers shall be elected at large and shall receive no com-
9 pensation for their services, but shall be reimbursed by
10 the city for all reasonable and necessary expenses actu-
11 ally incurred in the discharge of their duties. Any in-
12 dividual who has been a resident and qualified voter
13 of the city for at least two years prior to the date of
14 election of members shall be eligible for membership
15 on said charter board.

16 In the initiatory ordinance, the governing body of a Class
17 I or Class II city may nominate five candidates, and that of
18 a Class III city three candidates, for membership on the
19 charter board. Other nominations, or all of the nomina-
20 tions if the governing body does not make any, shall be
21 made by petition to the governing body bearing the signa-
22 tures, written in their own handwriting, of not less than
23 two hundred qualified voters of the city. Nominating peti-
24 tions may be filed at any time after the adoption of the
25 initiatory ordinance and not less than twenty days prior
26 to the date of the election. In the event of a vacancy in
27 the nominations which shall reduce the number of candi-

28 dates below the number of members to be elected, the
29 vacancy shall be filled by the governing body.

30 Notice of any election at which the question of whether
31 a charter shall be framed shall be voted upon shall
32 consist of the initiatory ordinance and a brief prefatory
33 statement setting out the date and hours of the election,
34 naming the candidates, if any, nominated by the gov-
35 erning body for membership on the charter board as
36 above provided and stating how and within what time
37 limit other nominations may be made. The governing
38 body shall cause such notice to be published as a Class
39 II-0 legal advertisement in compliance with the provi-
40 sions of article three, chapter fifty-nine of this code, and
41 the publication area for such publication shall be the
42 city. The first publication shall be made not less than
43 thirty days prior to the date of the election.

44 Each qualified voter entitled to vote on the question
45 of framing a charter may cast as many votes for mem-
46 bers of the charter board as there are members to be
47 elected. He may cumulate all his votes for one candidate
48 or distribute them among the several candidates as he
49 sees fit.

50 The ballots, or ballot labels where voting machines are
51 used, pertaining to the question of framing a charter
52 shall be separate from the ballots or ballot labels for
53 members of the charter board. The position of the names
54 of the candidates upon the ballots or voting machines
55 shall be interchanged, as provided in the general election
56 laws of this state. A voter who shall vote "No" on the
57 question may, nevertheless, vote for such candidates.
58 The ballots or voting machine directions shall bear in-
59 structions to this effect, and also instructions which shall
60 indicate the number of candidates for which the voter
61 may vote (which shall be the same as the number of
62 members to be elected), and that cumulative voting is
63 permitted. Special ballots or ballot labels without party
64 designation shall be used at every election held under this
65 article even though the election is held at the same time as
66 some other election. The ballots or ballot labels shall be
67 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; exceptions.

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

24 copies of the proposed charter with the recorder of the
25 city, and (2) if the proposed charter under the provisions
26 of this article four is rejected by a majority of the legal
27 votes cast at the election thereon, the duties and responsi-
28 bilities of such board shall be at an end, nor shall a new
29 charter board be then elected.

§8-4-4. Submission of proposed charter to qualified voters.

1 The proposed charter shall be submitted to the quali-
2 fied voters of the city in like fashion and with like notice
3 as provided for a proposed charter of a newly incor-
4 porated city as set forth in article three of this chapter,
5 except that the proposed charter shall be submitted at
6 the next regular municipal election instead of a special
7 election, unless (1) the governing body by the affirma-
8 tive vote of two thirds of its members shall determine
9 and specify that a special municipal election is necessary,
10 or (2) a petition bearing the signatures, written in their
11 own handwriting, of fifteen percent of the qualified
12 voters of the city, if a Class I or Class II city, or ten
13 percent of the qualified voters of the city, if a Class III
14 city, expressly requesting that a special municipal elec-
15 tion be called for the purpose be presented to the gov-
16 erning body more than one hundred twenty days prior
17 to the date of the next regular municipal election.

**§8-4-5. Approval of charter; effective date; certification; judi-
cial notice; recordation; effect of rejection.**

1 If the proposed charter shall be approved by a majority
2 of the legal votes cast at the election thereon, the charter
3 shall take effect on July first next after the date of the
4 election, if the interim exceeds sixty days; otherwise
5 on July first of the second fiscal year after its approval.
6 If approved as aforesaid, one of the signed copies of the
7 charter on file with the recorder of the city, together
8 with a certified copy of the declaration of the results of
9 the election showing the total legal votes cast for and
10 against approval, shall be certified forthwith by such
11 recorder to the clerk of the House of Delegates, in his
12 capacity as keeper of the rolls. The same shall be pre-
13 served by said clerk of the House of Delegates as an

14 authentic public record. After the effective date of a
15 charter so filed, all courts shall take judicial notice of
16 its provisions.

17 If the charter is approved as aforesaid, a certified copy
18 of the declaration of the results of the election showing
19 the total legal votes cast for and against approval shall
20 be forwarded by the recorder of the city to the clerk of
21 the county court for filing with the signed copy of the
22 charter previously filed with him.

23 Rejection of the proposed charter by a majority of
24 the legal votes cast shall have the same effect as a
25 majority vote against the question of framing a charter
26 as specified in section two of this article, and no further
27 effort shall be made to have a charter approved until
28 the question of framing a charter is again submitted to
29 the qualified voters of the city and is approved by a
30 majority vote, subject to the two-year limitation set
31 forth in said section two of this article.

§8-4-6. New charter supersedes existing charter; effect on ordinances and administrative law.

1 A new charter shall entirely supersede the prior charter
2 of a city. All ordinances and administrative acts or rules
3 theretofore adopted by the governing body or adminis-
4 trative agencies of a city which are in conflict with or
5 are inconsistent with a new charter shall continue in
6 force for sixty days after the effective date of the new
7 charter, unless sooner modified or repealed by competent
8 authority; but at the end of this period shall, to the
9 extent of such conflict or inconsistency, be of no further
10 force or effect.

PART II. REVISING OR AMENDING A CHARTER.

§8-4-7. Revising or amending a charter—Generally.

1 A special legislative charter or a charter framed and
2 adopted or revised as a whole under the provisions of
3 former chapter eight-a of this code, under article three
4 of this chapter or under this article four, as the case
5 may be, may be revised as a whole in like manner as a

6 charter may be framed and adopted under the provisions
7 of this article four, except that the question submitted
8 shall be "Shall the charter be revised as a whole by
9 representatives of the people?", but no such revision
10 as a whole shall be made within four years of the effective
11 date of such a charter or of the last preceding revision
12 as a whole, whichever be later, as the case may be. A
13 revision as a whole may also be initiated in the manner
14 specified in section nine, article three of this chapter
15 or in the manner specified in said section nine considered
16 in pari materia with the provisions of section three of
17 this article four. If a majority of the legal votes cast
18 on the question be in the negative or if the proposed
19 charter revised as a whole is rejected by a majority
20 of the legal votes cast at the election thereon, the pro-
21 visions of sections two and three of this article relating
22 to a negative vote on the question of framing a charter
23 and to rejection of a proposed charter shall govern and
24 control.

25 The qualified voters of a city may amend a special
26 legislative charter or a charter framed and adopted or
27 revised as a whole under the provisions of former chapter
28 eight-a of this code, under article three of this chapter
29 or under this article four, as the case may be, but no
30 amendment shall be made within one year of the effective
31 date of such a charter or of the last preceding revision
32 of such charter as a whole, whichever be later, as the
33 case may be. An amendment or amendments may be
34 initiated in the same manner provided in this article for
35 the framing of a charter, in the manner specified in
36 section nine, article three of this chapter, or in the man-
37 ner specified in said section nine considered in pari
38 materia with the provisions of section three of this
39 article four. The governing body of a city shall provide
40 by ordinance for a special municipal election to pass
41 upon a proposed charter amendment or amendments if
42 (1) such governing body by the affirmative vote of two
43 thirds of its members shall determine and specify that
44 a special municipal election is necessary; or (2) a petition
45 bearing the signatures, written in their own handwrit-
46 ing, of fifteen percent of the qualified voters of the city,

47 if a Class I or Class II city, or ten percent of the quali-
48 fied voters of the city, if a Class III city, expressly re-
49 questing that a special municipal election be called for
50 the purpose has been filed with the governing body more
51 than one hundred twenty days prior to the date of the
52 next regular municipal election. In all other cases, a
53 proposed charter amendment or amendments shall be
54 submitted by ordinance at the next regular municipal
55 election. Any proposed amendment or amendments shall
56 be set out in full in the ordinance submitting same. The
57 date of any special municipal election for the purpose
58 shall be fixed by the ordinance providing for same, but
59 any such special municipal election shall be held not
60 less than thirty nor more than sixty days after such
61 ordinance shall have been adopted. Notice of any elec-
62 tion at which a proposed amendment or amendments
63 shall be voted upon shall state the date and hours thereof,
64 and shall set out the proposed amendment or amendments
65 at length or state that copies may be obtained by any
66 qualified voter or any freeholder of the city from a
67 designated person at a stated place, upon request. Such
68 notice shall be published as in the case of a notice of
69 an election on the question of whether a charter shall
70 be framed, as specified in section two of this article. A
71 charter amendment or amendments approved, or such
72 of them as may be approved, by a majority of the
73 legal votes cast at the election thereon shall take effect
74 on the date that the declaration of the results showing
75 approval by the voters has been made by the govern-
76 ing body and entered in the minutes of the governing
77 body. One copy of the amendment or amendments, to-
78 gether with a certified copy of the declaration of results
79 attached thereto, shall be certified forthwith by the
80 recorder of the city to the clerk of the House of Dele-
81 gates, as keeper of the rolls, and another to the clerk
82 of the county court for recording in the office of such
83 clerk of the county court. The same shall be preserved
84 by said clerk of the House of Delegates as an authentic
85 public record. After the effective date of an amend-
86 ment or amendments so filed, all courts shall take judi-
87 cial notice of such amendment or amendments.

88 If a majority of the legal votes cast at the election
89 thereon be against any amendment, such proposed amend-
90 ment shall not be submitted again, without a petition
91 of the qualified voters as provided for in subsection (b),
92 section one of this article considered in pari materia with
93 the provisions of this section seven, for at least one year.

§8-4-8. Same—An alternate plan.

1 Whenever the governing body of any city shall deem
2 it expedient to amend the charter of any such city
3 (whether such charter be a special legislative charter
4 or a charter framed and adopted or revised as a whole
5 under the provisions of former chapter eight-a of this
6 code, under article three of this chapter or under this
7 article four, as the case may be), it shall, by ordinance,
8 set out in its proper record book the proposed amend-
9 ment or amendments in full. The governing body shall
10 set a date, time and place for a public hearing thereon,
11 which date shall not be less than thirty days after the
12 date of the first publication hereinafter required. The
13 governing body shall cause the proposed amendment or
14 amendments, together with a notice of the date, time and
15 place fixed for the hearing thereon, to be published as a
16 Class II-0 legal advertisement in compliance with the pro-
17 visions of article three, chapter fifty-nine of this code,
18 and the publication area for such publication shall be
19 the city. The notice shall state that the proposed amend-
20 ment or amendments will be considered on the date
21 and at the time and place fixed by the governing body
22 and that any qualified voter or any freeholder of the
23 city may appear and file objections, in writing, and also
24 that if no objections are filed the said amendment or
25 amendments shall become operative on and after a date
26 fixed in the notice, which date shall be not less than ten
27 days after the date of the hearing. If no objections are
28 filed, or if objections are filed and are withdrawn at the
29 time of the hearing, or within ten days thereafter, the
30 governing body shall, by ordinance, adopt the amendment
31 or amendments as an amendment or amendments to the
32 charter, and cause a copy of the amendment or amend-
33 ments, ordinance and transcript of the proceedings to

34 be certified to the clerk of the House of Delegates, as
35 keeper of the rolls, and to be recorded in the office of
36 the clerk of the county court. The same shall be pre-
37 served by such clerk of the House of Delegates as an
38 authentic public record. The amendment or amend-
39 ments shall take effect on the effective date specified in
40 the notice as aforesaid. After the effective date, all courts
41 shall take judicial notice of such amendment or amend-
42 ments.

43 If, on the date and at the time and place set for the
44 hearing, objections to the amendment or amendments
45 are filed and are not withdrawn then or within ten days
46 thereafter, the governing body may abandon the pro-
47 posed amendment or amendments to which objections
48 have been filed, or it may submit the proposed amendment
49 or amendments, either as a unit or separately, at the
50 next regular municipal election, or at a special mu-
51 nicipal election if such governing body by the affirmative
52 vote of two thirds of its members shall determine and
53 specify that a special municipal election is necessary
54 and if the date of such regular municipal election shall
55 be more than six months from such date, for ratification
56 or rejection. Notice of any election at which the proposed
57 amendment or amendments shall be voted upon shall
58 state the date and hours thereof and shall set out the
59 proposed amendment or amendments at length or state
60 that copies may be obtained by any qualified voter or
61 any freeholder of the city from a designated person at
62 a stated place, upon request. The governing body shall
63 cause such notice to be published as a Class II-0 legal
64 advertisement in compliance with the provisions of article
65 three, chapter fifty-nine of this code, and the publication
66 area for such publication shall be the city. The amend-
67 ment or amendments approved, or such of them as may
68 be approved, by a majority of the legal votes cast at the
69 election thereon shall take effect on the date that the
70 declaration of the results showing approval by the voters
71 has been made by the governing body and entered in
72 the minutes of the governing body. One copy of the
73 amendment or amendments, together with a certified
74 copy of the declaration of results attached thereto, shall

75 be certified forthwith by the recorder of the city to the
76 clerk of the House of Delegates, as keeper of the rolls,
77 and another to the clerk of the county court for recording
78 in the office of such clerk of the county court. The same
79 shall be preserved by said clerk of the House of Dele-
80 gates as an authentic public record. After the effective
81 date of an amendment or amendments so filed, all courts
82 shall take judicial notice of such amendment or amend-
83 ments. If a majority of the legal votes cast at the elec-
84 tion thereon be against any proposed amendment, the
85 same shall not be proposed again under the provisions
86 of this section for at least one year.

87 The method of charter amendment provided for in
88 this section is not in lieu of but is in addition to the
89 other methods prescribed in this chapter.

§8-4-9. Submission of alternative provisions.

1 A charter revision as a whole or a charter amendment
2 or amendments may be proposed with alternative pro-
3 visions for submission to the qualified voters and the
4 same may be voted upon separately without prejudice to
5 the primary question of whether the proposed charter
6 revision as a whole or the amendment or amendments
7 shall be adopted and without prejudice to the other pro-
8 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
2 within relatively the same time with reference to an
3 election held under the provisions of this article and in
4 the same manner as county courts are required to do with
5 respect to general elections, and shall declare the results
6 of any such election. This requirement shall apply to any
7 election held under the provisions of this article, whether
8 it be a special municipal election or voting conducted in
9 conjunction with a general election or a regular municipal
10 election. The canvass and declaration of results shall be

11 entered in the minutes of the governing body on the date
12 made. Unless otherwise provided by charter provision,
13 any such special municipal election or voting conducted
14 in conjunction with a general election or a regular municipi-
15 pal election shall be held and conducted under the super-
16 vision at each precinct of three commissioners of election
17 and two clerks who shall be appointed by the governing
18 body and shall be conducted as nearly as may be in ac-
19 cordance with the laws of this state governing general
20 elections, subject, however, in the case of a special munic-
21 ipal election to the provisions of section eleven of this
22 article. For any special municipal election or voting con-
23 ducted in conjunction with a general election or a regular
24 municipal election, in accordance with the provisions of
25 this article, the governing body shall arrange for and
26 provide at its expense registration books, challenges and
27 other election supplies as provided by law in general elec-
28 tions, and polling places in any such special municipal
29 election or with respect to any such voting conducted in
30 conjunction with a regular municipal election. In the
31 event any commissioner or clerk appointed by the gov-
32 erning body shall fail or refuse to serve, such vacancy
33 may be filled in like manner as such vacancies are filled
34 in general elections under the laws of this state governing
35 general elections, except that the governing body shall
36 act in the place and stead of the county court. A recount
37 may be had, as in general elections, upon the party or
38 parties desiring such recount providing adequate assur-
39 ance to the governing body that he or they will pay all
40 costs of such recount.

§8-4-11. Special election and special municipal election officials.

1 In any special election upon the question of the ap-
2 proval or rejection of a proposed charter to be held under
3 the provisions of article three of this chapter and in any
4 special municipal election to be held under the provisions
5 of this article four, the proponents and opponents of the
6 proposed charter, the question of framing or revising a
7 charter, the proposed charter revision as a whole or the
8 proposed charter amendment or amendments, as the case
9 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 municip-
19 al 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

49 charter, the proposed charter revision as a whole or the
50 proposed charter amendment or amendments, as the case
51 may be, and of persons known to be opposed to the pro-
52 posed charter, the question of framing or revising a
53 charter, the proposed charter revision as a whole or the
54 proposed charter amendment or amendments, as the case
55 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-
3 ducting any election or voting under the provisions of
4 this article and all other proper expenses incurred in
5 complying with the provisions of this article, including
6 the expenses of a charter board and the members thereof,
7 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.
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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, con-
2 ducted, superintended, returned, certified and canvassed
3 in such manner as is provided in article three of this
4 chapter for the first charter election of such city. All
5 officers elected at such first charter election, which first
6 charter election is held after the effective date of this
7 article, shall be elected for a term which shall expire on
8 the thirtieth of June of the second or fourth year follow-
9 ing such election, as the charter may provide.

**§8-5-2. First election of officers of a town or village; commis-
sioners of election.**

1 At the time of ordering the issuance of the certificate of
2 incorporation of a town or village as specified in section
3 seven, article two of this chapter, the county court shall

4 appoint three qualified voters of such incorporated terri-
5 tory who shall act as commissioners of election at the
6 first election of officers to be held in such town or village,
7 as hereinafter provided, and, in case they shall fail or
8 refuse to act, such election may be held, conducted, super-
9 intended, returned and certified by any three qualified
10 voters of such incorporated territory appointed for that
11 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
2 election of officers thereof shall be held on the first
3 Tuesday in June of the appropriate year, unless other-
4 wise provided in the charter thereof, at which election
5 officers shall be elected for a two-year or four-year term,
6 as the charter may provide, unless some other term is
7 provided in the charter. Officers of a city may be elected
8 for a four-year term at the same election at which a
9 proposed charter, proposed charter revision as a whole
10 or charter amendment, as the case may be, providing
11 for four-year terms is voted upon and approved by a
12 majority of the legal votes cast, but the ballots, or ballot
13 labels where voting machines are used, for the election
14 of officers must bear information to the effect that the
15 officers are being elected for four-year terms in the event
16 the proposed charter, the proposed charter revision as
17 a whole or charter amendment, as the case may be, is
18 approved as aforesaid.

19 After the first election of officers of a town or village,
20 the regular election of officers thereof shall be held on
21 the first Tuesday in June of the appropriate year, unless
22 otherwise provided in the special legislative charter
23 thereof, at which election officers shall be elected for
24 a two-year term, unless some other term is provided in
25 such special legislative charter: *Provided*, That officers
26 of a town or village may be elected for a four-year term
27 upon submission to the qualified voters of the town or
28 village at a regular municipal election of a proposition
29 calling for four-year terms and approval of such propo-
30 sition by a majority of the legal votes cast with respect
31 thereto. Officers of a town or village may be elected for
32 a four-year term at the same election at which the propo-
33 sition calling for four-year terms is voted upon and
34 approved by a majority of the legal votes cast, but the
35 ballots, or ballot labels where voting machines are used,
36 for the election of officers must bear information to
37 the effect that the officers are being elected for four-

38 year terms in the event the proposition is approved as
39 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
2 as a whole under the provisions of article three or article
3 four of this chapter, as the case may be, shall provide a
4 method and time for the filing of certificates of candidacy,
5 nominating candidates, conducting primary and regular
6 municipal elections, and determining and certifying the
7 results of such elections. Except as otherwise provided
8 in the charter of any municipality, the provisions of gen-
9 eral law with respect to the method and time for the filing
10 of certificates of candidacy, nominating candidates, con-
11 ducting primary and regular municipal elections, and
12 determining and certifying the results of such elections,
13 so far as applicable, shall apply to municipal elections:
14 *Provided*, That the provisions of section thirteen of this
15 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
2 municipality, there shall be elected a mayor and council-
3 men, who together shall form the governing body of the
4 municipality, and a recorder.

5 (b) When a municipality has not been divided into
6 wards or election districts, there shall be at least five
7 councilmen, but when the municipality has been divided
8 into wards or election districts, the governing body may,
9 by ordinance, determine the number of councilmen to be
10 elected from each ward or election district. When it is
11 deemed necessary, the governing body may, by ordinance,
12 increase the number of wards or election districts and
13 change the boundaries thereof, such wards or election

14 districts to be made as nearly equal as may be, in
15 population, and when the municipality shall be divided
16 into wards or election districts, or there shall be an
17 increase in the number of wards or election districts
18 as aforesaid, the governing body may increase the number
19 of councilmen and direct an election to be held at the next
20 regular municipal election in such ward or wards or elec-
21 tion district or districts so that each ward or election
22 district may have its full number of councilmen residing
23 therein and may have equal representation on the gov-
24 erning body. When a municipality has been divided into
25 wards or election districts, the governing body may, by
26 ordinance, also provide for the election of councilmen at
27 large in addition to the councilmen to be elected from
28 each ward or election district. The provisions of this sub-
29 section (b) shall be applicable to any municipality except
30 to the extent otherwise provided in the charter of such
31 municipality.

32 (c) Unless otherwise provided by charter provision or
33 ordinance, the mayor, recorder and councilmen must be
34 residents of the municipality, must be qualified voters
35 entitled to vote for members of its governing body, and
36 for the year preceding their election must have been
37 assessed with and paid real or personal property taxes to
38 the municipality upon at least one hundred dollars' worth
39 of property therein, except that the city manager in a
40 manager form of government need only be a resident of
41 the city at the time of his appointment: *Provided, That*
42 *for two years after the date of his discharge, the eligibility*
43 *of any honorably discharged veteran of the armed forces*
44 *of the United States for any of such offices in any munici-*
45 *pality shall not be affected or impaired by reason of his*
46 *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
2 municipality shall, unless otherwise provided in the

3 charter thereof, within twenty days after his election or
4 appointment and before he shall enter upon the duties
5 of his office, take and subscribe to the oath of office pre-
6 scribed for district officers, which may be done before
7 any person authorized by law to administer oaths, or
8 before the mayor or recorder of such municipality. The
9 oath, together with the certificate of the officer adminis-
10 tering the same, shall be filed, recorded and preserved
11 in the office of the recorder of the municipality, and a
12 certified copy of such oath and certificate shall be filed
13 and recorded in the office of the clerk of the county court
14 of the county in which the municipality or the major
15 portion of the territory thereof is located.

§8-5-9. Terms of office.

1 Except as otherwise provided in the charter of any
2 municipality, the terms of all officers elected after the
3 first election in municipalities holding biennial elections
4 shall commence on the first day of July following their
5 election and shall be for two years, and in municipalities
6 holding quadrennial elections the terms of all elected
7 officers shall commence on the first day of July following
8 their election and shall be for four years.

9 All municipal officers, whether elected at the first
10 election of officers or at regular municipal elections, or
11 appointed, shall hold their offices until their successors
12 are elected or appointed and qualified according to law,
13 unless sooner removed from office according to law.
14 Officers in office when this article becomes effective shall
15 hold their offices subject to the provisions of the imme-
16 diately preceding sentence hereof.

§8-5-10. Vacancies in elective offices; how filled.

1 Unless otherwise provided by charter provision or
2 ordinance, when a vacancy shall occur from any cause
3 in any municipal elective office, the vacancy, until the
4 next succeeding regular municipal election and until the
5 qualification of an elected successor, shall be filled by
6 appointment by the governing body from among the
7 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.

1 Subject to the provisions of the constitution of this
2 state, the provisions of this article, and other applicable
3 provisions of this chapter, any city may by charter pro-
4 vision, and the governing body of any municipality, con-
5 sistent with the provisions of its charter, if any, may
6 by ordinance, determine and prescribe the officers or
7 positions which are to be filled by election, appointment
8 or employment, the number, method of selection, tenure,
9 qualifications, residency requirements, powers and duties
10 of municipal officers and employees, and the method of
11 filling any vacancies which may occur.

§8-5-12. Compensation of officers and employees.

1 Notwithstanding any charter provision to the contrary,
2 the governing body of every municipality shall by ordi-
3 nance fix or cause to be fixed the salary or compensation
4 of every municipal officer and employee: *Provided*, That
5 the salary of any officer shall not be increased or dimin-
6 ished during his term.

7 The governing body of every municipality shall have
8 plenary power and authority to provide by ordinance
9 for the allowance of time off of officers and employees
10 with pay for vacations and illness, as additional con-
11 sideration for their services and employment.

PART VII. ELECTIONS AND PETITIONS GENERALLY.

§8-5-13. Integration of municipal elections with system of permanent registration.

1 Notwithstanding any charter provision to the contrary,
2 it shall be the duty of each city by charter provision or
3 each municipality by ordinance to make provision for
4 integrating the conduct of all municipal elections with the
5 system of "permanent registration of voters." Such
6 charter provision or ordinance shall, to the extent reason-
7 ably applicable, parallel the provisions of chapter three
8 of this code which integrate county-state elections with
9 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.

1 Except as otherwise provided by charter provision or
2 ordinance or this code, municipal executive committees
3 shall exercise similar functions and be governed by the
4 same laws in regard to municipal primary elections and
5 regular municipal elections as county executive committees
6 in regard to county-state primary and general elections,
7 so far as the same may be applicable. All expenses
8 of conducting municipal primary elections and regular
9 municipal elections shall be paid by the municipality. The
10 provisions of chapter three of this code, referring more
11 particularly to primary elections and general elections,
12 shall, so far as the same can be applied and so far as not
13 otherwise provided by charter provision or ordinance,
14 govern the conduct of municipal primary elections and
15 regular municipal elections, as the case may be. No municipal
16 primary election shall be held on the day of the
17 county-state primary election nor less than twenty-five
18 days immediately preceding the regular municipal election,
19 unless a shorter period of time is established by
20 charter or ordinance.

§8-5-15. Tie vote.

1 Whenever two or more individuals shall receive an
2 equal number of legal votes for the same office, if such
3 number be the highest cast for such office, the individuals
4 under whose supervision the election is held shall decide
5 by lot which of them shall be returned as elected, and
6 shall make their return accordingly.

§8-5-16. Judicial review.

1 A writ of error shall lie to the circuit court in accordance
2 with the provisions of article three, chapter fifty-eight
3 of this code from any order of a county court ordering
4 an election to be held under the provisions of this
5 chapter. Upon the filing of a petition for a writ of error,

6 all proceedings shall be suspended or stayed pending final
7 adjudication of the matters involved.

8 The order of any municipality ordering an election to
9 be held under the provisions of this chapter shall be re-
10 viewable by the circuit court of the county in which the
11 municipality or the major portion of the territory thereof
12 is located upon certiorari to the governing body thereof,
13 in accordance with the provisions of article three, chapter
14 fifty-three of this code. Upon the filing of a petition for
15 a writ of certiorari, all proceedings shall be suspended or
16 stayed pending final adjudication of the matters involved.

§8-5-17. Canvassing of elections; contested elections.

1 All elections ordered and held by a county court under
2 the provisions of this chapter shall be canvassed by such
3 county court. All elections ordered and held by a mu-
4 nicipality under the provisions of this chapter shall be
5 canvassed by the governing body of such municipality.

6 Any contest of a public question election ordered and
7 held by a county court, or by a municipality, under the
8 provisions of this chapter, shall be heard and decided by
9 the county court or governing body of the municipality,
10 as the case may be, and any such contest shall be con-
11 ducted in the manner to be provided in article seven,
12 chapter three of this code for contests of an election on a
13 public question. Any such election may be contested by
14 a qualified elector or voter or by a freeholder interested
15 therein.

16 Any contest by any candidate or candidates of an elec-
17 tion of charter board members or of the first officers of a
18 city, which election is held under the provisions of article
19 three of this chapter, shall be heard and decided by the
20 county court, and any such contest shall be conducted in
21 the manner provided in said article seven, chapter three
22 of this code for election contests for county or district
23 officers in general elections.

24 Any contest by any candidate or candidates of an elec-
25 tion of charter board members, which election is held
26 under the provisions of article four of this chapter, or of
27 officers of a municipality (other than the first officers of

28 a city) shall be heard and decided by the governing body
29 thereof, and any such contest shall be conducted in the
30 manner provided in said article seven, chapter three of
31 this code for election contests for county or district
32 officers in general elections.

§8-5-18. Determination as to sufficiency of a petition filed under this chapter.

1 It shall be the right and duty of the county court, the
2 governing body of a municipality, or other body or offi-
3 cer, to which or to whom any petition is presented under
4 the provisions of this chapter, as the case may be, to
5 determine the sufficiency of any such petition, and where
6 no time limit is prescribed for the making of such de-
7 termination, the same shall be accomplished within a
8 reasonable period of time. Any such determination, where
9 there is no other express right of judicial review pro-
10 vided, shall be reviewable by the circuit court of the
11 county upon certiorari to the county court, governing
12 body, or other body or officer, as the case may be, in
13 accordance with the provisions of article three, chapter
14 fifty-three of this code; and in the case of a governing
15 body, the appropriate circuit court shall be the circuit
16 court of the county in which the municipality or the
17 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.

1 Every city shall have plenary power and authority
2 to provide by charter provision, and every municipality
3 shall have plenary power and authority to provide by
4 ordinance, that it shall be unlawful for the governing
5 body, or any member thereof, or other officer or officers
6 thereof, to be interested personally, either directly or
7 indirectly, or as a member, manager, officer or stock-
8 holder of any partnership, business, firm or corporation,
9 in any contract furnishing material, services or supplies
10 to the municipality, or to any contractor, or workmen
11 for the municipality, or in any manner whatsoever,
12 whereby the taxpayers of such municipality shall become

13 the paymaster, either directly or indirectly, or to adopt
14 any other provisions, deemed appropriate, pertaining
15 to conflict of interest or possible conflict of interest. Any
16 violation of any such charter or ordinance provision by
17 any member of the governing body or other officer or
18 officers thereof, shall be a misdemeanor, and, upon con-
19 viction thereof, such member or officer shall be fined not
20 less than fifty nor more than five hundred dollars, and
21 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 VALORUM 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-

8 vey map showing the territory which would be annexed
9 to the corporate limits by the proposed change. The gov-
10 erning body, upon bond in penalty prescribed by the gov-
11 erning body with good and sufficient surety being given
12 by petitioners, and conditioned to pay the costs of such
13 election if a majority of the legal votes cast are against
14 the proposed change in boundary, shall thereupon order
15 a vote of the qualified voters of such municipality to be
16 taken upon the proposed change on a date and at a time
17 and place therein to be named in the order, not less than
18 twenty nor more than thirty days from the date thereof.
19 The governing body shall, at the same time, order a vote
20 of all of the qualified voters of the additional territory,
21 and of all of the freeholders of such additional territory,
22 whether they reside or have a place of business therein or
23 not, to be taken upon the question on the same day, at
24 some convenient place in or near such additional terri-
25 tory: *Provided*, That the additional territory to be in-
26 cluded shall conform to the requirements of section one,
27 article two of this chapter, and the determination that the
28 additional territory does so conform shall be reviewable
29 by the circuit court of the county in which the municipal-
30 ity or the major portion of the territory thereof, including
31 the area proposed to be annexed, is located upon cer-
32 tiorari to the governing body, in accordance with the
33 provisions of article three, chapter fifty-three of this
34 code. The governing body shall cause the order to be
35 published, at the cost of the municipality, as a Class II-0
36 legal advertisement in compliance with the provisions
37 of article three, chapter fifty-nine of this code, and the
38 publication area for such publication shall be the mu-
39 nicipality and the additional territory. The first publi-
40 cation must be at least fourteen days prior to the date
41 upon which the vote is to be taken. The order so pub-
42 lished shall contain an accurate description by metes and
43 bounds of the additional territory proposed to be an-
44 nexed to the corporate limits by the proposed change,
45 and, if practicable, shall also contain a popular descrip-
46 tion of such additional territory.

47 The election shall be held, superintended and con-
48 ducted, and the results thereof ascertained, certified,

49 returned and canvassed in the same manner and by the
50 same individuals as elections for municipal officers. The
51 ballots, or ballot labels where voting machines are used,
52 shall have written or printed on them the words:

53 ☐ For Annexation

54 ☐ Against Annexation

55 Any freeholder which is a firm or corporation may vote
56 by its manager, president, or executive officer duly desig-
57 nated in writing by such firm or corporation. Even though
58 an individual who is a qualified voter of the municipality
59 or the territory is also a freeholder of the territory, such
60 person shall be entitled to vote only once.

61 When an election is held in any municipality in ac-
62 cordance with the provisions of this section, another
63 such election relating to the same proposed change or
64 any part thereof shall not be held for a period of one
65 year.

66 If a majority of all of the legal votes cast both in the
67 municipality and in the territory are in favor of the
68 proposed annexation, then the governing body shall pro-
69 ceed as specified in the immediately succeeding section
70 of this article.

**§8-6-3. Governing body of municipality to certify annexation;
order.**

1 The governing body of such municipality shall enter
2 the results of such election in its minutes, and, when the
3 annexation proposed is adopted, as provided in the im-
4 mediately preceding section of this article, shall forward
5 a certificate to such effect to the county court of the
6 county wherein the municipality or the major portion of
7 the territory thereof, including the annexed territory, is
8 located; and such court shall thereupon enter an order in
9 substance as follows:

10 "A certificate of the governing body of the municipality
11 of was this day filed showing that an
12 annexation has been made, in the manner required by
13 law, to the corporate limits thereof, and that by such
14 annexation the said corporate limits are as follows:

15 "Beginning at (here recite the boundaries as changed).
16 It is, therefore, ordered that such annexation to said cor-
17 porate limits be, and the same is hereby approved and
18 confirmed, and the clerk of this court is directed to de-
19 liver to the said governing body a certified copy of this
20 order as soon as practicable after the rising of this court."

21 After the date of such order, the corporate limits of the
22 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
2 provide for the annexation of additional territory without
3 ordering a vote on the question if (1) sixty percent of the
4 qualified voters of such additional territory file with the
5 governing body their petition to be annexed, and (2)
6 sixty percent of all freeholders of such additional terri-
7 tory, whether they reside or have a place of business
8 therein or not, file with the governing body their petition
9 to be annexed: *Provided*, That the additional territory
10 shall conform to the requirements of section one, article
11 two of this chapter, and the determination that the addi-
12 tional territory does so conform or that the requisite
13 number of petitioners have filed the required petitions
14 shall be reviewable by the circuit court of the county in
15 which the municipality or the major portion of the terri-
16 tory thereof, including the area proposed to be annexed,
17 is located upon certiorari to the governing body, in ac-
18 cordance with the provisions of article three, chapter fifty-
19 three of this code. A qualified voter of the additional terri-
20 tory who is also a freeholder of the additional territory
21 may join only in the voters' petition of such additional ter-
22 ritory. It shall be the responsibility of the governing body
23 to enumerate and verify the total number of eligible peti-
24 tioners, in each category, from the additional territory. In
25 determining the total number of eligible petitioners, in
26 each category, a qualified voter of the additional territory
27 who is also a freeholder of the additional territory shall
28 be counted only as a qualified voter and if all of the
29 eligible petitioners are qualified voters, then only a voters'
30 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

27 be reviewed by the circuit court as an order of a county
28 court ordering an election may be reviewed under section
29 sixteen, article five of this chapter. After the date of
30 such order, the corporate limits of the municipality shall
31 be as set forth therein, unless judicial review is sought
32 under the provisions of said section sixteen. If the pro-
33 posed change is substantially opposed at the hearing by
34 any such freeholder, the court shall dismiss the applica-
35 tion. Dismissal of any such application shall not preclude
36 proceedings in accordance with the provisions of sec-
37 tions two and three or section four of this article. The
38 municipality shall pay the costs of all proceedings under
39 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
2 provisions of this article, it shall be the duty of the gov-
3 erning body of the municipality to notify the county
4 assessor of such annexation, and upon being so notified,
5 it shall be the duty of such assessor to see to it that the
6 properties situate within the newly annexed area are
7 assessed with the municipal ad valorem taxes for the
8 current fiscal year and subsequent fiscal years or the
9 ensuing and subsequent fiscal years, depending upon the
10 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.

PART I. GENERAL.

§8-7-1. Decrease of corporate limits.

1 The corporate limits of a municipality may be de-
2 creased only in accordance with the provisions of this
3 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 munici-
2 pality desiring to decrease the corporate limits thereof
3 may 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
8 survey map showing the territory which would be elimi-
9 nated from the corporate limits by the proposed change.
10 The governing body, upon bond in penalty prescribed
11 by the governing body with good and sufficient surety
12 being given by petitioners, and conditioned to pay the
13 costs of such election if a majority of the legal votes
14 cast are against the proposed change in boundary, shall
15 thereupon order a vote of the qualified voters of such
16 municipality to be taken upon the proposed change on
17 a date and at a time and place therein to be named in
18 the order, not less than twenty nor more than thirty
19 days from the date thereof. The governing body shall
20 cause the order to be published, at the cost of the
21 municipality, as a Class II-0 legal advertisement in com-
22 pliance with the provisions of article three, chapter fifty-
23 nine of this code, and the publication area for such pub-
24 lication shall be the municipality. The first publication
25 must be at least fourteen days prior to the date upon
26 which the vote is to be taken. The order so published
27 shall contain an accurate description by metes and bounds
28 of the territory which would be eliminated from the
29 corporate limits by the proposed change, and, if prac-
30 ticable, shall also contain a popular description of such
31 territory.

32 The election shall be held, superintended and con-
33 ducted, and the results thereof ascertained, certified, re-
34 turned and canvassed in the same manner and by the
35 same individuals as elections for municipal officers. The
36 ballots, or ballot labels where voting machines are used,
37 shall have written or printed on them the words:

38 ☐ For Decrease of Corporate Limits

39 ☐ Against Decrease of Corporate Limits

40 When an election is held in any municipality in ac-
41 cordance with the provisions of this section, another such
42 election relating to the same proposed change or any
43 part thereof shall not be held for a period of one year.

44 If a majority of all of the legal votes cast within such
45 municipality are in favor of the proposed change, then
46 the governing body shall proceed as specified in the
47 immediately succeeding section of this article.

**§8-7-3. Governing body of municipality to certify decrease in
corporate limits; order.**

1 The governing body of such municipality shall enter
2 the results of such election in its minutes, and, when the
3 decrease proposed is adopted, as provided in the imme-
4 diately preceding section of this article, shall forward
5 a certificate to such effect to the county court of the
6 county wherein the municipality or the major portion
7 of the territory thereof is located; and such court shall
8 thereupon enter an order in substance as follows:

9 "A certificate of the governing body of the munici-
10 pality of _____ was this day filed showing that
11 a decrease has been made, in the manner required by
12 law, in the corporate limits thereof, and that by such
13 decrease the said corporate limits are as follows:

14 "Beginning at (here recite the boundaries as changed).
15 It is, therefore, ordered that such decrease in said cor-
16 porate limits be, and the same is hereby approved and
17 confirmed, and the clerk of this court is directed to deliver
18 to the said governing body a certified copy of this order
19 as soon as practicable after the rising of this court."

20 After the date of such order, the corporate limits of
21 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
2 corporate limits by making a minor boundary adjust-
3 ment, the governing body of such municipality may apply
4 to the county court of the county wherein the munici-
5 pality or the major portion of the territory thereof is
6 located for permission to effect such decrease in the cor-
7 porate limits by minor boundary adjustment.

8 Such application shall disclose the number of indi-
9 viduals residing in the territory which would be elimi-
10 nated from the corporate limits by the proposed change,
11 and shall have attached thereto an accurate map show-
12 ing the metes and bounds of such territory.

13 If satisfied that the change sought is only a minor
14 boundary adjustment, the county court shall order pub-
15 lication of a notice of the proposed decrease in the cor-
16 porate limits and of the date and time set by the court
17 for a hearing on such proposal. Publication shall be as
18 in the case of an order calling for an election, as set
19 forth in section two of this article. A like notice shall
20 be prominently posted at not less than five public places
21 within the territory which would be eliminated from
22 the corporate limits by the proposed change.

23 If the freeholders of such territory who are present
24 or are represented at the hearing are not substantially
25 opposed to the proposed boundary change, the court may
26 enter an order decreasing the corporate limits of the
27 municipality as requested, which order may be reviewed
28 by the circuit court as an order of a county court order-
29 ing an election may be reviewed under section sixteen,
30 article five of this chapter. After the date of such order,
31 the corporate limits of the municipality shall be as set
32 forth therein, unless judicial review is sought under the
33 provisions of said section sixteen. If the proposed change
34 is substantially opposed at the hearing by any such free-
35 holder, the court shall dismiss the application. Dismissal
36 of any such application shall not preclude proceedings

37 in accordance with the provisions of sections two and
38 three of this article. The municipality shall pay the costs
39 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
- 2 state may consolidate and become one municipality only
- 3 in the manner provided in this article.

§8-8-2. Petition and resolution.

- 1 Upon the presentation to the governing body of a
- 2 municipality of a petition, signed in their own hand-
- 3 writing by twenty percent of the qualified voters thereof,
- 4 requesting consolidation with one or more municipalities

5 and setting forth the name by which it is proposed the
6 consolidated municipality be known, the governing body
7 shall forthwith adopt a resolution proposing such con-
8 solidation.

§8-8-3. Order for elections.

1 The governing body shall forthwith present a copy
2 of the resolution to the county court of the county
3 wherein the municipality or the portion thereof greatest
4 in population is located. If the court receives a copy
5 or copies of a like resolution or resolutions from the
6 governing body or bodies of one or more municipalities
7 also proposing such consolidation, it shall be the duty
8 of the court to call, by written order, a special election
9 to be held within such municipalities for a determina-
10 tion, by the qualified voters of the respective munici-
11 palities, upon the question of consolidation. When two or
12 more adjoining municipalities in different counties in this
13 state desire to consolidate and become one municipality,
14 the county court or clerk thereof referred to in this arti-
15 cle shall be the court or clerk of the county wherein the
16 consolidating municipality having the greatest population
17 is located or if such consolidating municipality is itself
18 located in more than one county, the county wherein the
19 portion thereof greatest in population is located. The
20 order shall set the date for the special elections, which
21 date shall be not less than thirty nor more than sixty
22 days from the date of the order, and shall be the same
23 date in each of the municipalities concerned.

24 The order shall state the names of the municipalities,
25 the object of the special elections, and the name by which
26 it is proposed the consolidated municipality be known.

27 The order shall forthwith be filed in the office of the
28 clerk of the county court, and true copies shall at once
29 be served upon the recorder of each of the municipalities
30 concerned.

§8-8-4. How special elections are held; limitation on submission of question again.

1 Except as otherwise provided in this article, the special
2 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
7 to be published as a Class I legal advertisement in
8 compliance with the provisions of article three, chapter
9 fifty-nine of this code, and the publication area for such
10 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
3 elections unless the first day of such fiscal year is less than
4 ninety days from and after the date of such special elec-
5 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 municipality.

1 When the consolidation becomes effective, the consoli-
2 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-
7 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-
10 tions in force in the consolidating municipality having the
11 greatest population when the consolidation becomes effec-
12 tive, shall extend to and be in force throughout the new
13 municipality, until they are supplanted, and the ordi-
14 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-
5 pality shall be entitled to representation upon the gov-
6 erning body of the new municipality.

7 The commission provided for in section eleven of this
8 article shall give careful attention to the provisions of
9 this section before proceeding with its prescribed duties.

PART 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 pro-
2 vided for in section seven of this article, a joint commis-
3 sion shall be formed consisting of the mayor and the
4 recorder of each municipality, and three inhabitants of
5 each municipality appointed by the governing body
6 thereof.

7 The commission shall be called together by the mayor
8 of the consolidating municipality greatest in population,
9 on a date and at a time and place fixed by him, but not
10 later than ten days from the formation of the commission.
11 The commission shall organize by selecting a chairman
12 and clerk. The clerk shall keep a record of all proceedings
13 and expenses and shall file the same, not more than four-
14 teen days after the commission has filed its report and
15 certificate hereinafter prescribed, in the office of the clerk
16 of the county court, together with an affidavit as to the
17 truth and correctness thereof.

18 The commission shall fix and determine the ward lines
19 (if the municipality with the greatest population is so
20 divided) and election districts of the new municipality.
21 The commission shall, within forty-five days from the
22 date of its organization, make a report and certificate over
23 the signatures of a majority of its members, and shall file
24 the same in the office of the clerk of the county court.
25 The certificate shall set forth and accurately describe the
26 ward lines, if any, and election district lines fixed by the
27 commission, and shall contain a proper map of the new
28 municipality with such lines set out thereon. The clerk
29 of the commission shall cause a copy of the certificate to
30 be filed in the office of the secretary of state.

31 The lines fixed and determined by the commission shall
32 be those of the new municipality until changed in ac-
33 cordance with law. Wards, if any, shall be formed of
34 contiguous territory. No election district shall be in more

35 than one ward. In dividing the new municipality into
36 wards and election districts, the commission shall have
37 regard for, and shall take into consideration, the elec-
38 tion laws of this state, as well as the population in all
39 wards and election districts, and shall divide and ar-
40 range the same so that each will contain, as nearly as
41 possible, an equal number of inhabitants.

42 A notice setting forth the ward lines, if any, and election
43 district lines as fixed by the commission shall be pub-
44 lished by the clerk thereof as a Class I legal advertise-
45 ment in compliance with the provisions of article three,
46 chapter fifty-nine of this code, and the publication area
47 for such publication shall be each of the municipalities
48 concerned. The notice shall be published within seven
49 consecutive days next succeeding the filing of the certifi-
50 cate with the clerk of the county court. The expenses of
51 the publication shall be paid by the new municipality.
52 Upon the completion of the publication, the wards, if any,
53 and election districts of the consolidating municipalities
54 shall be superseded. The commission shall appoint, in
55 accordance with the charter of the new municipality, if
56 any, election officials to serve at the election provided for
57 by section twelve of this article.

58 The commission may employ an engineer and an at-
59 torney to assist in performing its duties. The commission
60 may provide for compensation to be allowed to its clerk,
61 engineer and attorney, which shall be paid by the new
62 municipality. The commission members shall not receive
63 compensation for their services, but all reasonable and
64 necessary expenses actually incurred by them in the per-
65 formance of their duties, when itemized and sworn to by
66 the chairman and clerk, shall be paid by the new munici-
67 pality.

PART IV. ELECTION OF NEW OFFICERS.

§8-8-12. Election of new officers.

1 Notwithstanding any provision to the contrary in the
2 charter, if any, which shall apply to the new municipality,
3 an election shall be held on the first Tuesday in June
4 next preceding the date when the consolidation becomes

5 effective for the election of officers for the new munici-
6 pality. The officers shall be elected and the election shall
7 be conducted otherwise in accordance with the charter,
8 if any, which shall apply to the new municipality and
9 as though the consolidation had become effective and
10 if there be no charter, then in accordance with the pro-
11 visions of article five of this chapter governing regular
12 municipal elections.

13 Individuals elected to office at the election held under
14 the provisions of this section shall take office upon the
15 day the consolidation becomes effective, for the term
16 specified by the charter, if any, applying to the new mu-
17 nicipality, and if there be no charter, then for such term
18 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
2 of office of all officers and officials of the consolidating
3 municipalities, elected or appointed, shall, except as
4 herein otherwise provided, cease and be at an end.

5 Policemen and firemen of the consolidating munici-
6 palities shall, when the consolidation becomes effective,
7 continue as policemen and firemen of the new munici-
8 pality. They shall be subject to the orders and control
9 of the mayor of the new municipality, until the heads
10 of the police and fire departments are chosen and placed
11 in charge thereof.

12 Tenure of office and pension laws applicable to the
13 employees of the consolidating municipalities shall not
14 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 mu- nicipalities.

1 The new municipality shall, when the consolidation
2 becomes effective, be vested with all the rights and prop-
3 erties of the municipalities of which it was formed, and
4 shall be responsible and liable for all contracts, debts

5 and obligations of such municipalities. However, the
6 lands and property in a municipality superseded under
7 this article shall not be taxed or assessed for the debts
8 or obligations of another municipality thus superseded.
9 The lands and properties in each of the constituent and
10 superseded municipalities shall be taxed and assessed
11 for the debts and obligations of its superseded govern-
12 ment until the same shall be paid and satisfied.

§8-8-15. Taxes and obligations of superseded municipalities.

1 The taxes and assessments levied or imposed by one
2 of the superseded municipalities and remaining out-
3 standing and unpaid, and all other moneys due and
4 owing such municipality, when the consolidation becomes
5 effective shall be collected by the new municipality and
6 shall be applied to the purposes for which raised or
7 owing, and if not raised or owing for a specific purpose,
8 shall be applied to the reduction or payment of the
9 bonded or other indebtedness, if any, of the superseded
10 municipality.

11 Proceedings pending to enforce the payment or col-
12 lection of taxes and assessments in any of the super-
13 seded municipalities shall be carried to completion by
14 the proper officers of the new municipality; and all taxes
15 and assessments theretofore levied and assessed by any
16 of the superseded municipalities shall be valid and ef-
17 fectual as if originally levied and assessed by the new
18 municipality. The governing body of the new munici-
19 pality is authorized to perform all necessary acts to con-
20 firm and effectuate such levies and assessments.

§8-8-16. Transfer of funds and property.

1 Immediately upon the installation of the new municipal
2 government, the officers having custody of the funds of
3 the superseded municipalities shall deliver all funds in
4 their possession into the custody of the proper fiscal
5 officer of the new municipality, who shall acknowledge
6 delivery by giving his receipt therefor.

7 The mayor of the new municipality shall supervise and
8 direct the transfer of all personal property, books, papers,
9 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 municipi-
palities.**

1 Permits and licenses granted to any place or person by
2 any of the superseded municipalities shall, subject to
3 their conditions, remain in full force and effect and be
4 recognized by the new municipality until the expiration
5 of the term for which they were granted. However, this
6 section shall not be construed to prevent the revocation
7 of any such permit or license before its expiration in any
8 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-
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;
interested member of governing body not to vote.**

1 Unless otherwise provided by charter provision, the
2 governing body of every municipality shall be presided
3 over at its meetings by the mayor, or, in his absence, by
4 the recorder, or, in the absence of both the mayor and the
5 recorder, by one of its members selected by a majority of

6 the members of the governing body present. A majority
7 of the members of the governing body shall be necessary
8 to constitute a quorum for the transaction of business.
9 No member of the governing body of any municipality
10 shall vote upon any ordinance, order, measure, resolution
11 or proposition, in which he may be interested other than
12 as a citizen of such municipality.

§8-9-2. Mayor and recorder may vote; tie vote.

1 The mayor and recorder shall, unless otherwise pro-
2 vided by charter provision, have votes as members of the
3 governing body, and, in case of a tie, the presiding officer
4 at the time shall cast the tie-breaking vote, unless he has
5 previously voted.

§8-9-3. Governing body to keep records; minutes of proceedings; voting.

1 The governing body of every municipality shall cause
2 to be kept, in a well-bound book, an accurate record of
3 all of its proceedings, ordinances, orders, bylaws, acts,
4 resolutions, rules and regulations which shall be fully
5 indexed and open to inspection by anyone who is required
6 to pay taxes to such municipality.

7 At each meeting of the governing body, a journal of the
8 proceedings of the last meeting shall be read, and cor-
9 rected, if erroneous, and signed by the presiding officer
10 for the time being: *Provided*, That the reading of the
11 journal of the proceedings of the last meeting may be
12 dispensed with by majority vote of the governing body
13 if the members thereof have received and examined a
14 copy of the journal or a synopsis thereof prior to the
15 meeting at which the journal is signed. Upon the call of
16 any member, the yeas and nays on any question shall be
17 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.

PART I. MAYOR.

§8-10-1. Powers and duties of mayor.

1 When not otherwise provided by charter provision or
2 general law, the mayor of every municipality shall be
3 the chief executive officer of such municipality, shall have
4 the powers and authority granted in this section, and
5 shall see that the ordinances, orders, bylaws, acts, reso-
6 lutions, rules and regulations of the governing body
7 thereof are faithfully executed. He shall have jurisdic-
8 tion to hear and determine any and all alleged violations
9 thereof and to convict and sentence persons therefor. He
10 shall also be ex officio a justice and conservator of the
11 peace within the municipality, and shall, within the
12 same, have and exercise all of the powers, both civil
13 and criminal, and perform all duties vested by law in
14 a justice of the peace, except that he shall have no juris-
15 diction in civil cases or causes of action arising without
16 the corporate limits of the municipality. He shall have
17 the same power to issue attachments in civil suits as a
18 justice of his county has, though the cause of action
19 arose without the corporate limits of his municipality,
20 but he shall have no power to try the same and such
21 attachments shall be returnable and be heard before
22 some justice of his county. Upon complaint he shall
23 have authority to issue a search warrant in connection
24 with the violation of a municipal ordinance. Any search
25 warrant, warrant of arrest or other process issued by
26 him may be directed to the chief of police or any mem-
27 ber of the police department or force of the municipality,
28 and the same may be executed at any place within the
29 county or counties in which the municipality is lo-
30 cated. He shall have control of the police of the munic-
31 ipality and may appoint special police officers whenever
32 he deems it necessary, except when otherwise provided
33 by law, and subject to the police civil service provisions
34 of article fourteen of this chapter if such civil service
35 provisions are applicable to his municipality, and it shall
36 be his duty especially to see that the peace and good
37 order of the municipality are preserved, and that persons
38 and property therein are protected; and to this end he

39 may cause the arrest and detention of all riotous and
40 disorderly individuals in the municipality before issuing
41 his warrant therefor. He shall have power to issue
42 executions for all fines, penalties and costs imposed by
43 him, or he may require the immediate payment thereof,
44 and, in default of such payment, he may commit the
45 party in default to the jail of the county or counties in
46 which such municipality is located, or other place of
47 imprisonment within the corporate limits of such mu-
48 nicipality, if there be one, until the fine or penalty and
49 costs shall be paid, but the term of imprisonment in
50 such case shall not exceed thirty days. He shall, from
51 time to time, recommend to the governing body such
52 measures as he may deem needful for the welfare of
53 the municipality. The expense of maintaining any indi-
54 vidual committed to a county jail by him, except it be
55 to answer an indictment, or be under the provisions of
56 sections eight and nine, article eighteen, chapter fifty
57 of this code, shall be paid by the municipality and taxed
58 as part of the costs of the proceeding. The mayor shall
59 not receive any money belonging to the state or to indi-
60 viduals, unless he shall give the bond and security re-
61 quired of a justice of the peace and all of the provisions
62 of article one, chapter fifty of this code relating to moneys
63 received by justices shall apply to like moneys received
64 by such mayor.

PART II. POLICE COURT OR MUNICIPAL JUDGE.

§8-10-2. Police court or municipal judge for cities.

1 Any city may provide by charter provision or ordi-
2 nance for the creation and maintenance of a police or
3 municipal court, for the appointment or election of an
4 officer to be known as police court judge or municipal
5 court judge, and for his compensation, and authorize the
6 exercise by such court or judge of such of the jurisdiction,
7 powers, authority and duties set forth in section one of
8 this article and similar or related powers, authority and
9 duties enumerated in any applicable charter provisions,
10 as set forth in the charter or ordinance. Such court or
11 judge shall in all events have the criminal jurisdiction
12 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 munici-
2 pality to keep the journal of the proceedings of the gov-
3 erning body thereof, and he shall have charge of and
4 preserve the records of the municipality. Unless other-
5 wise provided by charter provision or general law, when-
6 ever the mayor is unable because of illness or absence
7 from the municipality to perform the duties of his office,
8 and during any vacancy in the office of mayor, the re-
9 corder shall perform the duties of the mayor and be in-
10 vested 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
2 upon any municipality or its governing body by the pro-
3 visions of this chapter or any past or future act of the
4 Legislature of this state, the governing body shall have
5 plenary power and authority to make and pass all needful
6 ordinances, orders, bylaws, acts, resolutions, rules and
7 regulations, not contrary to the constitution and laws of
8 this state; and, for a violation thereof, to prescribe reason-
9 able penalties in the form of fines, forfeitures and im-
10 prisonment in the county jail or the place of imprison-
11 ment in such municipality, if there be one, for a term not
12 exceeding thirty days. Such fines, forfeitures and im-
13 prisonment shall be recovered, imposed or enforced under
14 the judgment of the mayor of such municipality or the
15 individual lawfully exercising his functions, or the police
16 court judge or municipal court judge of a city, if there be
17 one, and may be suspended upon such reasonable condi-
18 tions as may be imposed by such mayor, other authorized

19 individual or judge. Any municipality may also maintain
20 a civil action in the name of the municipality in the circuit
21 court of the county in which the municipality or the
22 major portion of the territory thereof is located to obtain
23 an injunction to compel compliance with, or to enjoin a
24 violation or threatened violation of, any ordinance of
25 such municipality, and such circuit court shall have juris-
26 diction to grant the relief sought.

§8-11-2. Validity of ordinances delegating discretion.

1 The fact that an ordinance vests in the governing body
2 or some other body or officer a discretion to do, or refuse
3 to do, a given thing, shall not invalidate such ordinance
4 when it would be impractical to lay down by ordinance
5 for all cases a uniform guide for exercising such discre-
6 tion. This section shall not be construed to mean that a
7 delegation of discretion in any other case shall necessarily
8 invalidate an ordinance. However, if, in any case, a dele-
9 gated discretion is exercised in an arbitrary or discrimi-
10 natory manner, such ordinance, as so applied, shall be
11 unlawful and void.

§8-11-3. Cases requiring enactment of ordinance.

1 In the following enumerated cases, the action of a gov-
2 erning body shall, except where otherwise provided in
3 this code, be by ordinance:

- 4 (1) Levying taxes or providing for the collection of
5 fees of any kind;
- 6 (2) Requiring a license to do business;
- 7 (3) Relating to offenses and penalties;
- 8 (4) Authorizing the issuance of bonds or other forms
9 of indebtedness;
- 10 (5) Providing for a public improvement;
- 11 (6) Providing for the purchase of private property by
12 the municipality or for the sale of property belonging to
13 the municipality;
- 14 (7) Laying out or vacating a public street, avenue,
15 road, alley or way;
- 16 (8) Relating to planning and zoning;
- 17 (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

32 vote on adoption, and the place or places within the
33 municipality where such proposed ordinance may be in-
34 spected by the public. A reasonable number of copies of
35 the proposed ordinance shall be kept at such place or
36 places and be made available for public inspection. Said
37 notice shall also advise that interested parties may appear
38 at the meeting and be heard with respect to the proposed
39 ordinance.

40 (3) A proposed ordinance shall not be materially
41 amended at the same meeting at which finally adopted.

42 (b) Notwithstanding any charter provision to the con-
43 trary, which charter provision was in effect on the effec-
44 tive date of this section, the governing body of any munic-
45 ipality may adopt, by ordinance, building codes, housing
46 codes, plumbing codes, sanitary codes, electrical codes,
47 fire prevention codes, or any other technical codes dealing
48 with general public health, safety or welfare, or a combi-
49 nation of the same, or a comprehensive code of ordi-
50 nances, in the manner prescribed in this subsection (b).
51 Before any such ordinance shall be adopted, the code
52 shall be either printed or typewritten and shall be pre-
53 sented in pamphlet form to the governing body of the
54 municipality at a regular meeting, and copies of such code
55 shall be made available for public inspection. The ordi-
56 nance adopting such code shall not set out said code in
57 full, but shall merely identify the same. The vote on
58 adoption of said ordinance shall be the same as on any
59 other ordinance. After adoption of the ordinance, such
60 code or codes shall be certified by the mayor and shall be
61 filed as a permanent record in the office of the recorder,
62 who shall not be required to transcribe and record the
63 same in the ordinance book as other ordinances are tran-
64 scribed and recorded. Consistent with the provisions of
65 subsection (a) of this section, it shall not be necessary
66 that any such ordinance, either as proposed or after
67 adoption, be published in any newspaper, and it shall not
68 be necessary that the code itself be so published, but
69 before final adoption of any such proposed ordinance,
70 notice of the proposed adoption of such ordinance and
71 code shall be given by publication as herein provided
72 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 MUNICIPAL-
ITIES.**

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
- 2 municipality shall have plenary power and authority:
- 3 (1) To have and use a common seal;
- 4 (2) To contract and be contracted with;
- 5 (3) To institute, maintain and defend any civil action
- 6 or other proceeding in any court;
- 7 (4) To take, purchase, hold and lease as lessee (on
- 8 an annual fiscal year basis where tax revenues are to be
- 9 used to make the rental payments required under any

10 such lease, with or without an option to renew such
11 lease each year for another such period), for any mu-
12 nicipal purpose, real or personal property within or with-
13 out the corporate limits of the municipality, and to acquire
14 by condemnation real or personal property within or
15 without the corporate limits of the municipality for the
16 purposes set forth in and in accordance with the pro-
17 visions of chapter fifty-four of this code, subject, however,
18 to any limitations or qualifications set forth in this chap-
19 ter eight; and

20 (5) To take by gift, donation, grant, bequest or devise
21 and to hold and administer, real or personal property
22 within or without the corporate limits of the munici-
23 pality, absolutely, in trust or otherwise, for any public,
24 charitable or municipal purpose, and to do all things
25 necessary, useful, convenient or incidental to carry out
26 the purpose of such gift, donation, grant, bequest, devise
27 or trust, and to manage, sell, lease or otherwise dispose
28 of the same in accordance with such terms and condi-
29 tions as may be prescribed by the donor, grantor or
30 testator and accepted by the municipality.

PART II. HOME RULE POWERS FOR CITIES.

§8-12-2. Home rule powers for all cities.

1 (a) In accordance with the provisions of the "Mu-
2 nicipal Home Rule Amendment" to the constitution of
3 this state, and in addition to the powers and authority
4 granted by (i) such constitution, (ii) other provisions
5 of this chapter, (iii) other general law, and (iv) any
6 existing charter, any city shall have plenary power
7 and authority by charter provision not inconsistent or
8 in conflict with such constitution, other provisions of this
9 chapter or other general law, or by ordinance not in-
10 consistent or in conflict with such constitution, other
11 provisions of this chapter, other general law or any
12 existing charter, to provide for the government, regu-
13 lation and control of the city's municipal affairs, includ-
14 ing, but not limited to, the following:

15 (1) The creation or discontinuance of departments of
16 the city's government and the prescription, modification
17 or repeal of their powers and duties;

- 18 (2) The transaction of the city's business;
- 19 (3) The incurring of the city's obligations;
- 20 (4) The presentation, ascertainment, disposition and
21 discharge of claims against the city;
- 22 (5) The acquisition, care, management and use of the
23 city's streets, avenues, roads, alleys, ways and prop-
24 erty;
- 25 (6) The levy, assessment, collection and administra-
26 tion of such taxes and such special assessments for bene-
27 fits conferred, as have been or may be specifically au-
28 thorized by the Legislature;
- 29 (7) The operation and maintenance of passenger
30 transportation services and facilities, if authorized
31 by the public service commission, and if so autho-
32 rized, such transportation system may be operated
33 without the corporate limits of such city, but may
34 not be operated within the corporate limits of another
35 municipality without the consent of the governing body
36 thereof;
- 37 (8) The furnishing of all local public services;
- 38 (9) The government, protection, order, conduct, safety
39 and health of persons or property therein;
- 40 (10) The adoption and enforcement of local police, sani-
41 tary and other similar regulations; and
- 42 (11) The imposition and enforcement of penalties for
43 the violation of any of the provisions of its charter or
44 of any of its ordinances.
- 45 (b) By charter provision, a civil service system may
46 be provided for all or any class of city employees in
47 addition to those classes for which a civil service system
48 is made mandatory by general law.
- 49 (c) Any city is hereby authorized and empowered to
50 require, for the purpose of inquiring into and investi-
51 gating matters of concern to the city or its inhabitants,
52 the attendance and testimony of witnesses and the pro-
53 duction of evidence. In case of the failure or refusal of
54 a witness to appear and testify or to produce evidence,
55 the governing body may invoke the aid of the circuit
56 court of the county in which the city or the major

57 portion of the territory thereof is located. Upon proper
58 showing, the circuit court shall issue an order requiring
59 the witness to appear and give testimony and produce
60 evidence concerning the matter in question. A person
61 who fails or refuses to obey the order of the circuit court
62 may be punished by the court as for contempt. A claim
63 that any such testimony or evidence may tend to in-
64 criminate the person giving the testimony or evidence
65 shall not excuse the witness, but such testimony or evi-
66 dence shall not be used against the witness in any
67 criminal prosecution.

68 (d) Any city is hereby authorized and empowered
69 to provide for a sealer of weights and measures who
70 shall exercise his powers in accordance with the pro-
71 visions of article one, chapter forty-seven of this code.

§8-12-3. Creation by charter provision of certain independent city boards.

1 In selecting or changing to a form of government based
2 on any of the four plans set forth in section two, article
3 three of this chapter, a city may by charter provision
4 withdraw from the governing body and administrative
5 authority of the city the municipal powers and authority
6 and duties pertaining to a city gas system, city electric
7 system, any municipal public works in accordance with
8 the provisions of article sixteen of this chapter, a city
9 waterworks system in accordance with the provisions of
10 article nineteen of this chapter, a city sewage treatment
11 and disposal works, or a combined city waterworks and
12 sewerage system in accordance with the provisions of
13 article twenty of this chapter, or any combination of the
14 foregoing, and confer such powers and authority and
15 duties upon one or more independent boards created by
16 charter provision, whose members shall be elected by the
17 qualified voters of the city, or appointed, in the manner
18 provided by charter provision. Unless and until abolished
19 by other charter provision, such board or boards so
20 created shall have complete and exclusive jurisdiction of
21 the exercise and discharge of the municipal powers and
22 authority and duties so conferred upon it or them, inde-
23 pendent of control by the governing body and adminis-

24 trative authority of the city. Such boards shall have the
25 powers and authority and perform the duties conferred
26 and required by general law.

27 The provisions of this section shall be construed as
28 conferring additional powers and authority upon cities,
29 and shall not be construed as affecting any powers and
30 authority heretofore conferred upon any city by general,
31 special or local law or by special legislative charter, or
32 parts thereof; however, whenever a board is established
33 by charter provision in accordance with the provisions of
34 this section in connection with a municipal public works,
35 a city waterworks system, or combined city waterworks
36 and sewerage system, as aforesaid, such board shall act
37 in lieu of the governing body of the city with respect
38 thereto, and the provisions of said articles sixteen, nine-
39 teen and twenty of this chapter authorizing the establish-
40 ment of a board with respect to any such public works,
41 waterworks system or combined waterworks and sewer-
42 age system shall not be applicable.

**§8-12-4. Power to provide by charter for initiative, referendum
and recall.**

1 Any city may by charter provision provide for any or
2 all of the following:

3 (1) The initiation of ordinances by petition bearing
4 the signatures, written in their own handwriting, of not
5 less than ten percent of the qualified voters of such city;

6 (2) The submission to the qualified voters of such city
7 of a proposed ordinance at a regular municipal election
8 or special municipal election upon petition bearing the
9 signatures, written in their own handwriting, of not less
10 than ten percent of the qualified voters of such city or
11 upon resolution of the governing body of such city; and

12 (3) The holding of a special municipal election to sub-
13 mit to the qualified voters of such city the question of the
14 recall of an elected officer upon petition bearing the
15 signatures, written in their own handwriting, of not less
16 than twenty percent of the qualified voters of such city.
17 Not more than one recall election shall be held with
18 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;

37 (6) To establish, construct, alter, operate and main-
38 tain, or discontinue, bridges, tunnels and ferries and ap-
39 proaches thereto;

40 (7) To provide for the construction and maintenance
41 of water drains, the drainage of swamps or marshlands
42 and drainage systems;

43 (8) To provide for the construction, maintenance and
44 covering over of watercourses;

45 (9) To control and administer the waterfront and
46 waterways of the municipality, and to acquire, establish,
47 construct, operate and maintain and regulate flood control
48 works, wharves and public landings, warehouses and all
49 adjuncts and facilities for navigation and commerce and
50 the utilization of the waterfront and waterways and
51 adjacent property;

52 (10) To prohibit the accumulation and require the dis-
53 posal of garbage, refuse, wastes, ashes, trash and other
54 similar matters;

55 (11) To construct, establish, acquire, equip, maintain
56 and operate incinerator plants and equipment and all
57 other facilities for the efficient removal and destruction of
58 garbage, refuse, wastes, ashes, trash and other similar
59 matters;

60 (12) To regulate or prohibit the purchase or sale of
61 articles intended for human use or consumption which
62 are unfit for such use or consumption, or which may be
63 contaminated or otherwise unsanitary;

64 (13) To prevent injury or annoyance to the public or
65 individuals from anything dangerous, offensive or un-
66 wholesome;

67 (14) To regulate the keeping of gunpowder and other
68 combustibles;

69 (15) To make regulations guarding against danger or
70 damage by fire;

71 (16) To arrest, convict and punish any individual for
72 carrying about his person any revolver or other pistol,
73 dirk, bowie knife, razor, slungshot, billy, metallic or
74 other false knuckles, or any other dangerous or other
75 deadly weapon of like kind or character;

76 (17) To arrest, convict and punish any person for im-
77 porting, printing, publishing, selling or distributing any
78 pornographic publications;

79 (18) To arrest, convict and punish any person for
80 keeping a house of ill fame, or for letting to another per-
81 son any house or other building for the purpose of being
82 used or kept as a house of ill fame, or for knowingly per-
83 mitting any house owned by him or under his control to
84 be kept or used as a house of ill fame, or for loafing, board-
85 ing or loitering in a house of ill fame, or frequenting
86 same;

87 (19) To prevent and suppress conduct and practices
88 which are immoral, disorderly, lewd, obscene and
89 indecent;

90 (20) To prevent the illegal sale of intoxicating liquors,
91 drinks, mixtures and preparations;

92 (21) To arrest, convict and punish any individual for
93 driving or operating a motor vehicle while intoxicated or
94 under the influence of liquor, drugs or narcotics;

95 (22) To arrest, convict and punish any person for
96 gambling or keeping any gaming table, commonly called
97 “A, B, C,” or “E, O,” table or faro bank or keno table, or
98 table of like kind, under any denomination, whether the
99 gaming table be played with cards, dice or otherwise, or
100 any person who shall be a partner or concerned in in-
101 terest, in keeping or exhibiting such table or bank, or
102 keeping or maintaining any gaming house or place, or
103 betting or gambling for money or anything of value;

104 (23) To provide for the elimination of hazards to
105 public health and safety and to abate or cause to be abated
106 anything which in the opinion of a majority of the gov-
107 erning body is a public nuisance;

108 (24) To license, or for good cause to refuse to license
109 in a particular case, or in its discretion to prohibit in all
110 cases, the operation of pool and billiard rooms and the
111 maintaining for hire of pool and billiard tables notwith-
112 standing the general law as to state licenses for any such
113 business and the provisions of section four, article thirteen
114 of this chapter; and when the municipality, in the exer-
115 cise of its discretion, shall have refused to grant a license

116 to operate a pool or billiard room, mandamus shall not
117 lie to compel such municipality to grant such license,
118 unless it shall clearly appear that the refusal of the
119 municipality to grant such license is discriminatory or
120 arbitrary; and in the event that the municipality deter-
121 mines to license any such business, the municipality shall
122 have plenary power and authority, and it shall be the
123 duty of its governing body, to make and enforce reason-
124 able ordinances regulating the licensing and operation of
125 such businesses;

126 (25) To protect places of divine worship and to preserve
127 peace and order in and about the premises where held;

128 (26) To regulate or prohibit the keeping of animals or
129 fowls and to provide for the impounding, sale or destruc-
130 tion of animals or fowls kept contrary to law or found
131 running at large;

132 (27) To arrest, convict and punish any person for cruel-
133 ly, unnecessarily or needlessly beating, torturing, muti-
134 lating, killing or overloading or overdriving, or wilfully
135 depriving of necessary sustenance, any domestic animal;

136 (28) To provide for the regular building of houses or
137 other structures, for the making of division fences by the
138 owners of adjacent premises and for the drainage of lots
139 by proper drains and ditches;

140 (29) To provide for the protection and conservation of
141 shade or ornamental trees, whether on public or private
142 property, and for the removal of trees or limbs of trees
143 in a dangerous condition;

144 (30) To prohibit with or without zoning the location
145 of occupied house trailers or mobile homes in certain
146 residential areas;

147 (31) To regulate the location and placing of signs,
148 billboards, posters and similar advertising;

149 (32) To erect, establish, construct, acquire, improve,
150 maintain and operate a gas system, an electric system, a
151 waterworks system, or sewer system and sewage treat-
152 ment and disposal system, or any combination of the
153 foregoing (subject to all of the pertinent provisions of
154 articles nineteen and twenty of this chapter and particu-

155 larly to the limitations or qualifications on the right of
156 eminent domain set forth in said articles nineteen and
157 twenty), within or without the corporate limits of the
158 municipality, or partly within and partly without the
159 corporate limits of the municipality, except that the mu-
160 nicipality shall not erect any such system partly without
161 the corporate limits of the municipality to serve persons
162 already obtaining service from an existing system of the
163 character proposed, and where such system is by the
164 municipality erected, or has heretofore been so erected,
165 partly within and partly without the corporate limits of
166 the municipality, the municipality shall have the right to
167 lay and collect charges for service rendered to those
168 served within and those served without the corporate
169 limits of the municipality, and to prevent injury to such
170 system or the pollution of the water thereof and its main-
171 tenance in a healthful condition for public use within the
172 corporate limits of the municipality;

173 (33) To acquire watersheds, water and riparian rights,
174 plant sites, right-of-ways and any and all other property
175 and appurtenances necessary, appropriate, useful, con-
176 venient or incidental to any such system, waterworks or
177 sewage treatment and disposal works, as aforesaid, sub-
178 ject to all of the pertinent provisions of articles nineteen
179 and twenty of this chapter;

180 (34) To establish, construct, acquire, maintain and
181 operate and regulate markets, and prescribe the time of
182 holding the same;

183 (35) To regulate and provide for the weighing of ar-
184 ticles sold or for sale;

185 (36) To establish, construct, acquire, maintain and
186 operate public buildings, municipal buildings or city halls,
187 auditoriums, arenas, jails, juvenile detention centers or
188 homes, motor vehicle parking lots, or any other public
189 works;

190 (37) To establish, construct, acquire, provide, equip,
191 maintain and operate recreational parks, playgrounds and
192 other recreational facilities for public use, and in this
193 connection also to proceed in accordance with the pro-
194 visions of article two, chapter ten of this code;

195 (38) To establish, construct, acquire, maintain and
196 operate a public library or museum or both for public use;

197 (39) To provide for the appointment and financial sup-
198 port of a library board in accordance with the provisions
199 of article one, chapter ten of this code;

200 (40) To establish and maintain a public health unit in
201 accordance with the provisions of section two, article two,
202 chapter sixteen of this code, which unit shall exercise its
203 powers and perform its duties subject to the supervision
204 and control of the West Virginia board of health and state
205 department of health;

206 (41) To establish, construct, acquire, maintain and
207 operate hospitals, sanitarium and dispensaries;

208 (42) To acquire, by purchase, condemnation or other-
209 wise, land within or near the corporate limits of the
210 municipality for providing and maintaining proper places
211 for the burial of the dead and to maintain and operate the
212 same and regulate interments therein upon such terms
213 and conditions as to price and otherwise as may be de-
214 termined by the governing body, and, in order to carry
215 into effect such authority the governing body may acquire
216 any cemetery or cemeteries already established;

217 (43) To exercise general police jurisdiction over any
218 territory without the corporate limits owned by the mu-
219 nicipality or over which it has a right-of-way;

220 (44) To protect and promote the public morals, safety,
221 health, welfare and good order;

222 (45) To adopt rules for the transaction of business and
223 the government and regulation of its governing body;

224 (46) Except as otherwise provided, to require and take
225 such bonds from such officers, when deemed necessary,
226 payable to the municipality, in its corporate name, with
227 such sureties and in such penalty as the governing body
228 may see fit, conditioned upon the faithful discharge of
229 their duties;

230 (47) To require and take from such employees and
231 contractors such bonds in such penalty, with such sureties
232 and with such conditions, as the governing body may
233 see fit;

234 (48) To investigate and inquire into all matters of
235 concern to the municipality or its inhabitants;

236 (49) To establish, construct, require, maintain and
237 operate such instrumentalities, other than free public
238 schools, for the instruction, enlightenment, improvement,
239 entertainment, recreation and welfare of the munici-
240 pality's inhabitants as the governing body may deem
241 necessary or appropriate for the public interest;

242 (50) To create, maintain and operate a system or sys-
243 tems for the enumeration, identification and registration,
244 or either, of the inhabitants of the municipality and visi-
245 tors thereto, or such classes thereof as may be deemed
246 advisable;

247 (51) To appropriate and expend not exceeding twenty-
248 five cents per capita per annum for advertising the mu-
249 nicipality and the entertainment of visitors;

250 (52) To conduct programs to improve community re-
251 lations and public relations generally and to expend
252 municipal revenue for such purposes;

253 (53) To reimburse applicants for employment by the
254 municipality for travel and other reasonable and neces-
255 sary expenses actually incurred by such applicants in
256 traveling to and from such municipality to be inter-
257 viewed;

258 (54) To provide revenue for the municipality and ap-
259 propriate the same to its expenses; and

260 (55) To provide penalties for the offenses and viola-
261 tions of law mentioned in this section, subject to the pro-
262 visions of section one, article eleven of this chapter, and
263 such penalties shall not exceed any penalties provided in
264 this chapter and chapter sixty-one of this code for like
265 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 autho-
2 rized to become a member of an association or league
3 having for its general purpose the exchange and dis-
4 semination of information and ideas designed for the

5 more efficient administration and conduct of municipal
6 government and affairs. In order to finance the main-
7 tenance of such an organization, each municipality is
8 hereby empowered and authorized to pay into such an
9 organization annual dues or membership fees in an
10 amount to be fixed by the members thereof at the annual
11 meeting of such organization. Such dues or member-
12 ship fees may be appropriated by the governing body
13 as a current expense item and included in the annual
14 budget.

§8-12-7. Power and authority to purchase insurance and to indemnify officers, agents and employees.

1 (a) Every municipality shall have plenary power and
2 authority to contract and expend public funds for the
3 purchase of one or more policies of public liability in-
4 surance, with or without a sharing in the cost thereof
5 by the officers, agents and employees of such munici-
6 pality, providing the municipality and its officers, agents
7 and employees insurance coverage for legal liability of
8 said municipality and its officers, agents and employees
9 for bodily injury, personal injury or damage (including,
10 but not limited to, false arrest and false imprisonment)
11 and property damage, and affording said municipality
12 and its officers, agents and employees insurance coverage
13 against any and all legal liability arising from, growing
14 out of, by reason of or in any way connected with, any
15 acts or omissions of said municipality, or its officers,
16 agents or employees in the performance of their official
17 duties. So long as the coverage aforesaid is obtained
18 and remains in full force and effect as to the police offi-
19 cers of a municipality, the bond specified in section five,
20 article seven, chapter sixty-one of this code shall not
21 be required as to such police officers.

22 (b) Every municipality shall also have plenary power
23 and authority to provide for the indemnification of its
24 officers, agents and employees against any and all lia-
25 bility, losses, damages, expenses and costs, including court
26 costs and reasonable and necessary attorney fees, arising
27 from, growing out of, by reason of or in any way con-
28 nected with any acts or omissions of said officers, agents

29 or employees in the performance of their official duties.
30 Such indemnification may be provided by a self-funding
31 program, by expenditures from the general fund, or by
32 the purchase of insurance as provided in subsection (a)
33 of this section, with or without financial contribution or
34 participation by such officers, agents and employees.
35 Prior to the expenditure of any public funds pursuant
36 to the power and authority conferred by the provisions
37 of this subsection (b), the governing body shall determine
38 by ordinance applicable to an entire class or classes of
39 officers, agents or employees the manner in which such
40 power and authority shall be exercised.

§8-12-8. Group insurance programs authorized.

1 Every municipality shall have plenary power and
2 authority to negotiate for, secure and adopt for the regu-
3 lar employees thereof (other than provisional, temporary,
4 emergency and intermittent employees) who are in em-
5 ployee status with such municipality on and after the
6 effective date of this section, a policy or policies of group
7 insurance written by a carrier or carriers chartered under
8 the laws of any state and duly licensed to do business
9 in this state and covering life; health; hospital care; sur-
10 gical or medical diagnosis, care, and treatment; drugs
11 and medicines; remedial care; other medical supplies
12 and services; or any other combination of these; and
13 any other policy or policies of group insurance which
14 in the discretion of the governing body bear a reasonable
15 relationship to the foregoing coverages. The provisions
16 and terms of any such group plan or plans of insurance
17 shall be approved in writing by the insurance commis-
18 sioner of this state as to form, rate and benefits.

19 The municipality is hereby authorized and empowered
20 to pay the entire premium cost, or any portion thereof,
21 of said group policy or policies. Whenever the above-
22 described regular employees shall indicate in writing
23 that they have subscribed to any of the aforesaid in-
24 surance plans on a group basis and the entire cost thereof
25 is not paid by the municipality, the municipality is hereby
26 authorized and empowered to make periodic premium
27 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

17 purchases with respect to which the same shall be re-
18 quired and the method and manner in which bids shall
19 be obtained. Any ordinance adopted by any municipality
20 in accordance with the provisions of this subsection (b)
21 shall supersede any provision pertaining to competitive
22 bidding contained in the special legislative charter of
23 such municipality.

**§8-12-11. Lease agreements for equipment or materials with
option to cancel or renew for one year authorized.**

1 Notwithstanding any other provision of this code or
2 any charter provision to the contrary, the governing
3 body of every municipality shall have plenary power
4 and authority to enter into and execute a lease agreement
5 for the obtaining of equipment or material. Any such
6 lease agreement shall not be void or voidable because
7 it also provides (a) that title to the equipment or ma-
8 terial shall vest in the municipality at or before the
9 expiration of the leasehold term upon fulfillment of the
10 terms and conditions stipulated in such lease agreement;
11 (b) for application of the annual rental payments made
12 thereunder toward the purchase price of such equip-
13 ment or material, although such total rental payments
14 under any such agreement are in excess of the cash price
15 of the equipment or material described therein, whether
16 such excess be by way of interest or a time-price dif-
17 ferential; and (c) that the risk of loss of the equipment
18 or material shall be borne by the municipality. Any
19 such lease agreement shall be void, however, unless such
20 agreement provides that the municipality shall have the
21 following options thereunder during each fiscal year of
22 the agreement: (1) The option to terminate the agree-
23 ment and return the equipment or material without any
24 further obligation on the part of the municipality; (2)
25 the option to continue the agreement for an additional
26 rental period not to exceed one year in length; and, when
27 the agreement contains the provisions described in (a),
28 (b) and (c) above, (3) the option to pay in advance at
29 any time during any fiscal year the balance due under
30 such agreement, with an appropriate rebate of the un-
31 earned interest or time-price differential.

32 The funds for the initial rental payment under any
33 such agreement must be legally at the disposal of the
34 municipality for expenditure in the fiscal year in which
35 such agreement is executed, and in the event the mu-
36 nicipality elects during any subsequent fiscal year to
37 continue the agreement for any additional rental period
38 or to pay in advance the balance due, the funds for the
39 additional rental period or the funds to be used to pay
40 the balance in advance must be legally at the disposal
41 of the municipality for expenditure in the fiscal year
42 in which the municipality elects to continue the agree-
43 ment or to pay in advance the balance due, as the case
44 may be.

**§8-12-12. Power and authority to lease, establish, maintain and
operate off-street parking facility.**

1 Every municipality shall have plenary power and
2 authority to enter into a lease with the owner or owners
3 of any real property situate within the corporate limits
4 of such municipality by which such real property is
5 demised, leased and let to such municipality for an off-
6 street parking facility (including parking lots, buildings,
7 ramps, parking meters and other appurtenances deemed
8 necessary, appropriate or incidental to the regulation,
9 control and parking of motor vehicles), which off-street
10 parking facility is hereby declared to be a municipal
11 public work, and every such municipality shall have
12 plenary power and authority to establish, maintain and
13 operate such parking facility. Every such lease shall be
14 authorized by an ordinance adopted by the municipality.
15 Every municipality shall have this power and authority
16 whether such real property is at the time of the execu-
17 tion of such lease already equipped, maintained and
18 operated, in whole or in part, as a parking facility or
19 whether such real property is at such time unimproved
20 and is to be, under the terms of the lease, improved by
21 the installation of parking meters, lighting equipment,
22 pavement or other equipment necessary, appropriate,
23 useful, convenient or incidental to the use of such prop-
24 erty for such purpose.

25 Any such ordinance may provide that the police force
26 or department of such municipality shall police the
27 parking facility; and that overtime parking at the facility
28 or other violations of the ordinance shall be a misde-
29 meanor punishable as provided in said ordinance. Any
30 such ordinance shall also provide for the collection of
31 reasonable charges for the use of such parking facility
32 by the public generally, and any such ordinance may
33 be amended from time to time. Any lease entered into
34 by and between any such municipality and the owner
35 or owners of any such real property may contain such
36 terms and conditions as may be agreed upon between
37 the parties, not inconsistent with any of the provisions
38 of this section or other provisions of law. The ordinance
39 authorizing any such lease may also specify terms and
40 conditions which must be contained in such lease.

41 Under no circumstances whatever shall any obligation
42 incurred under the provisions of this section or any
43 such lease be deemed to be or create an indebtedness of
44 the municipality, the governing body or any member
45 thereof, any officer thereof, or other municipal official,
46 and all of the expenses of whatever kind, nature or
47 character incident to the establishment, maintenance and
48 operation of such parking facility, including, but not
49 limited to, such rental payments as are provided for in
50 the lease and the cost of policing the facility, shall be
51 paid solely from revenues derived from such parking
52 facility, and from revenues derived from other parking
53 facilities or meters not pledged to pay for such other
54 parking facilities or meters. No member of the governing
55 body of any such municipality, or any officer thereof,
56 or other municipal official, shall under any circumstances
57 be personally liable under any such lease or upon any
58 obligation of any kind, nature or character arising under
59 the provisions of this section.

60 The power and authority herein granted shall be in
61 addition to and not in derogation of any power and
62 authority vested in any municipality under any consti-
63 tutional, statutory or charter provision now or hereafter
64 in effect. This section shall, without reference to any
65 other provisions of this code or any other statute or any

66 charter, be deemed full authority for the acquisition of
67 any such real property by lease for a parking facility,
68 for the establishment, maintenance and operation of
69 any such parking facility and for the enactment of an
70 ordinance as hereinbefore specified. This section shall
71 be construed as an additional alternative method for
72 providing off-street parking facilities, and shall not in
73 any way limit the provisions of article sixteen of this
74 chapter authorizing the establishment, maintenance, op-
75 eration and financing of such facilities by the issuance
76 of revenue bonds.

77 This section, being necessary for the public safety and
78 welfare, shall be liberally construed to effectuate its
79 purposes.

§8-12-13. Building regulation; general and special codes.

1 The governing body of every municipality shall have
2 plenary power and authority by ordinance or a code
3 of ordinances to:

4 (1) Regulate the erection, construction, repair or al-
5 teration of structures of every kind within the corporate
6 limits of the municipality, prohibit, within specified ter-
7 ritorial limits, the erection, construction, repair or al-
8 teration of structures of wood or other combustible
9 material, and regulate excavations upon private property;

10 (2) Regulate electric wiring by prescribing minimum
11 specifications to be followed in the installation, altera-
12 tion or repair thereof; and

13 (3) Regulate plumbing by prescribing the minimum
14 specifications to be followed in the installation, altera-
15 tion or repair of plumbing, including equipment, water
16 and sewer pipe, traps, drains, cesspools and septic tanks.

§8-12-14. Permits for construction and alteration.

1 The governing body of every municipality shall have
2 plenary power and authority to require a permit as a
3 condition precedent to the erection, construction, repair
4 or alteration of any structure or of any equipment or
5 part of a structure which is regulated by state law or
6 municipal ordinance.

§8-12-15. Municipal inspection.

1 The governing body of every municipality shall have
2 plenary power and authority to provide for the entering
3 and inspection of private premises to aid in the enforce-
4 ment of any state law or municipal ordinance: *Provided*,
5 That this section shall not be construed as purporting to
6 authorize an unreasonable search and seizure prohibited
7 by section six, article three of the constitution of this
8 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
2 upon every municipality to adopt ordinances regulating
3 the repair, alteration or improvement, or the vacating and
4 closing or removal or demolition, or any combination
5 thereof, of any dwellings or other buildings unfit for
6 human habitation due to dilapidation, defects increasing
7 the hazard of fire, accidents or other calamities, lack of
8 ventilation, light or sanitary facilities or any other condi-
9 tions prevailing in any dwelling or building, whether
10 used for human habitation or not, which would cause
11 such dwellings or other buildings to be unsafe, unsani-
12 tary, dangerous or detrimental to the public welfare.

13 The governing body in formally adopting such ordi-
14 nances shall designate the enforcement agency, which
15 shall consist of the mayor, the municipal engineer or
16 building inspector and one member at large, to be selected
17 by and to serve at the will and pleasure of the mayor.
18 The ranking health officer and fire chief shall serve as
19 ex officio members of such enforcement agency.

20 Any ordinance adopted pursuant to the provisions of
21 this section shall provide fair and equitable rules of pro-
22 cedure and any other standards deemed necessary to
23 guide the enforcement agency, or its agents, in the in-
24 vestigation of dwelling or building conditions, and in con-
25 ducting hearings: *Provided*, That any entrance upon
26 premises for the purpose of making examinations shall
27 be made in such manner as to cause the least possible in-
28 convenience to the persons in possession.

29 Any ordinance adopted pursuant to the provisions of
30 this section shall provide for the assessment of the costs
31 of such repairs, alterations or improvements, or such
32 vacating and closing or removal or demolition, or any
33 combination thereof, by order of the enforcement agency,
34 and said costs, after the sale of any and all salvaged
35 material is credited to the account, shall be a lien against
36 the real property upon which such costs were incurred.

37 All complaints or orders issued by the enforcement
38 agency shall be served in accordance with the law of this
39 state concerning the service of process in civil actions, and
40 shall, in addition thereto, be posted in a conspicuous place
41 on the premises affected by the complaint or order:
42 *Provided, however,* That no ordinance shall be adopted
43 without providing therein for the right to apply to the
44 circuit court for a temporary injunction restraining the
45 enforcement agency pending final disposition of the cause.
46 In the event such application is made, a hearing thereon
47 shall be had within twenty days, or as soon thereafter as
48 possible, and the court shall enter such final order or
49 decree as the law and justice may require. Costs shall be
50 imposed in such manner as in the discretion of the court
51 shall seem meet and proper.

PART V. SALE OR LEASE OF MUNICIPAL PUBLIC UTILITY.

§8-12-17. Sale or lease of municipal public utility.

1 In any case where a municipality shall own a gas sys-
2 tem, an electric system, a waterworks or other public
3 utility, and the governing body thereof shall deem it for
4 the best interest of such municipality that such utility be
5 sold or leased, it shall be lawful for the governing body,
6 by ordinance legally adopted, to submit to the qualified
7 voters of such municipality, at any regular municipal
8 election or at any special municipal election called for
9 that purpose, the question of making or effecting such
10 sale or lease. In such case the governing body shall, in
11 the ordinance submitting such question to a vote, set
12 forth in full the terms of such proposed sale or lease, the
13 name of the proposed purchaser or lessee and the date
14 of such election, and a notice containing this information

15 shall be published as a Class II-0 legal advertisement in
16 compliance with the provisions of article three, chapter
17 fifty-nine of this code, and the publication area for such
18 publication shall be such municipality. Such election
19 shall be held in all respects in compliance with the pro-
20 visions of chapter three of this code, so far as the same are
21 applicable and not inconsistent herewith, and the pro-
22 visions of article five of this chapter. If a majority of the
23 legal votes cast at such election upon such question be in
24 favor of the proposed sale or lease of such utility, the gov-
25 erning body, upon the ascertainment of the result of such
26 election, shall have full power and authority to proceed
27 to execute or effect such sale or lease in accordance with
28 the terms and conditions prescribed in the ordinance as
29 aforesaid, and shall have power to do any and all things
30 necessary or incident thereto: *Provided*, That if at any
31 time after such election and before the execution of the
32 authority under the ordinance, any person should present
33 to the governing body an offer to buy such public utility
34 at a greater price than the sale price which shall have
35 been so voted upon and authorized or to lease the same
36 upon terms which the governing body, in its discretion,
37 shall consider more advantageous to the municipality
38 than the terms of the lease which shall have been autho-
39 rized by vote as aforesaid, the governing body shall have
40 the power to accept such subsequent offer, and to make
41 such sale or such lease to the person making the offer,
42 without resubmitting the question to a vote; but, if a sale
43 shall have been authorized by vote as aforesaid, and such
44 subsequent proposition be for a lease, or, if a lease shall
45 have been so authorized, and the subsequent proposition
46 shall be for a sale, the governing body shall have no
47 power to accept the same without submitting the question
48 thereof to a vote of the people as first above provided.
49 Before any such second or subsequent proposition shall
50 be submitted to a vote, after a sale or lease shall have
51 been authorized at an election held hereunder, the person
52 making such proposition shall furnish bond, with security
53 to be approved by the governing body, in a penalty of
54 not less than twenty-five percent of such proposed bid,
55 conditioned to carry such proposition into execution, if

56 the same shall be approved at the election to be called
57 thereon. In any case where any such public utility shall
58 be sold or leased by the governing body as hereinabove
59 provided, no part of the moneys derived from such sale
60 or lease shall be applied to the payment of current ex-
61 penses of the municipality, but the proceeds of such sale
62 or lease shall be applied in payment and discharge of any
63 bonded indebtedness created in respect to such public
64 utility, and in case there be no bonded indebtedness, the
65 governing body, in its discretion, shall have the power
66 and authority to expend all such moneys when received
67 for the purchase or construction of fire-fighting equip-
68 ment and buildings for housing such equipment, a munic-
69 ipal building or city hall, and the necessary land upon
70 which to locate the same, or for the construction of paved
71 streets, avenues, roads, alleys, ways, sidewalks, sewers
72 and other like permanent improvements, and for no other
73 purposes. In case there be a surplus after the payment of
74 such bonded indebtedness, the surplus shall be used as
75 aforesaid.

76 The requirements of this section shall not apply to the
77 sale or lease of any part of the properties of any such
78 public utility determined by the governing body to be
79 unnecessary for the efficient rendering of the service of
80 such utility.

PART VI. SALE OR DISPOSITION OF OTHER MUNICIPAL PROPERTY.

§8-12-18. Sale or disposition of other municipal property.

1 Every municipality may sell or dispose of any of its
2 real or personal property (other than a public utility
3 which shall be sold or leased in accordance with the pro-
4 visions of section seventeen of this article) as authorized
5 in article five, chapter one of this code, or to the United
6 States of America or any agency or instrumentality there-
7 of for a public purpose for an adequate consideration,
8 without considering alone the present commercial or
9 market value of such property. In all other cases, any
10 municipality is hereby empowered and authorized to sell
11 any of its real or personal property for a fair and adequate
12 consideration, such property to be sold at public auction
13 at a place designated by the governing body, but before

14 making any such sale, notice of the time, terms and place
15 of sale, together with a brief description of the property to
16 be sold, shall be published as a Class II legal advertise-
17 ment in compliance with the provisions of article three,
18 chapter fifty-nine of this code, and the publication area
19 for such publication shall be the municipality: *Provided*,
20 That the requirements of notice and public auction shall
21 not apply to the sale of any one item or piece of property
22 of less value than one thousand dollars, and under no cir-
23 cumstances shall the provisions of this section be con-
24 strued as being applicable to any transaction involving the
25 trading in of municipally owned property on the pur-
26 chase of new or other property for the municipality, and
27 every municipality shall have plenary power and author-
28 ity to enter into and consummate any such trade-in
29 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

5 sustained by reason of the negligence of the municipality,
6 or of any officer, agent or employee thereof, unless a writ-
7 ten verified statement by the claimant, his agent, attorney
8 or representative of the nature of the claim and of the
9 time and place at which the injury is alleged to have oc-
10 curred or been received shall have been filed with the
11 mayor, recorder or municipal attorney within thirty days
12 after such cause of action shall have accrued. The cause of
13 action shall be deemed to have accrued on the date of the
14 sustaining of the injury, except that where death results
15 therefrom the time for the personal representative to give
16 notice shall run from the date of death. An action at law
17 for damages for injury to any person or property or for
18 wrongful death shall not be commenced until the expira-
19 tion of thirty days after the filing of the notice provided
20 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.
- §8-13-3. Capitation tax.
- §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;
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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
2 authority:

3 (1) To levy and collect taxes on real and personal
4 property for any municipal purpose within the limitations
5 and subject to the classifications prescribed by the consti-
6 tution and the general law of this state; and the assess-
7 ment, levy and collection of such taxes shall be governed
8 by the provisions of chapters eleven and eleven-a of this
9 code; and

10 (2) To finance public improvements by the levy and
11 collection of special assessments or other benefit taxes in
12 the manner and to the extent permitted by article
13 eighteen of this chapter and by any other general law.
14 The entire cost of sidewalk construction, including curb-
15 ing, may be imposed upon the owners of abutting prop-
16 erty and made a lien thereon which shall have priority
17 over all other liens except tax liens.

§8-13-2. Correcting erroneous tax levy.

1 Upon the petition of interested persons, as provided in
2 chapter eleven of this code for superseding levies, the
3 circuit court of the county in which the municipality
4 or the major portion of the territory thereof is located
5 may supersede a levy made by such municipality, in
6 the same manner, and to the same effect, as provided
7 in said chapter. The court, if it deem proper to do so,
8 may require security for costs.

§8-13-3. Capitation tax.

1 Every municipality shall have plenary power and
2 authority to levy and collect an annual capitation tax
3 upon all inhabitants of the municipality who have
4 attained the age of twenty-one years. The governing
5 body may exempt from such tax all individuals who are
6 dependent in whole or in part upon public assistance for
7 their support. The rate of such tax shall not exceed two
8 dollars per individual and the revenue so produced shall
9 be applied primarily to the maintenance and repair of
10 streets, avenues, roads, alleys, ways and other public
11 places.

§8-13-4. Municipal license and tax thereon when state license required.

1 Whenever anything, for which a state license is re-
2 quired, is to be done within the corporate limits of any
3 municipality, the governing body thereof shall have
4 plenary power and authority, unless prohibited by gen-
5 eral law, to require a municipal license therefor and for
6 the use of the municipality to impose a reasonable tax
7 thereon which may not exceed the amount of the state
8 license tax. Upon proper application for such municipal
9 license and payment of the prescribed reasonable tax
10 by any person who has a valid and subsisting state license,
11 such municipal license shall be issued.

§8-13-5. Business and occupation or privilege tax.

1 Whenever any business or occupation, upon which the
2 state imposes an annual business and occupation or privi-
3 lege tax under article thirteen, chapter eleven of this
4 code, is engaged in or carried on within the corporate
5 limits of any municipality, the governing body thereof
6 shall have plenary power and authority, unless pro-
7 hibited by general law, to impose a similar business and
8 occupation or privilege tax thereon for the use of the
9 municipality: *Provided*, That in no case shall the rate of
10 such municipal business and occupation or privilege tax
11 on a particular activity exceed the rate imposed by the
12 state, exclusive of surtaxes, and the ordinance imposing
13 such tax shall conform with the provisions of said article

14 thirteen as to the waiver of penalties: *Provided, however,*
15 That no municipality shall impose a business and occupa-
16 tion or privilege tax upon any businesses, occupations or
17 privileges taxed under sections two-a, two-b, two-c, two-d,
18 two-e, two-g, two-h, two-i and two-j of said article thir-
19 teen, chapter eleven in excess of the rates in effect under
20 said article thirteen on January one, one thousand nine
21 hundred fifty-nine.

22 Any taxes levied pursuant to the authority of this sec-
23 tion may be made operative as of the first day of the
24 current fiscal year and each year thereafter.

§8-13-6. Amusement tax.

1 Every municipality shall have plenary power and
2 authority to levy and collect an admission or amusement
3 tax upon any public amusement or entertainment con-
4 ducted within the corporate limits thereof for private
5 profit or gain. The tax shall be levied upon the pur-
6 chaser and added to and collected by the seller with the
7 price of admission, or other charge for the amusement
8 or entertainment. The tax shall not exceed two percent
9 of the admission price or charge, but a tax of one cent
10 may be levied and collected in any case.

11 Any ordinance imposing such tax shall contain rea-
12 sonable rules and regulations governing the collection
13 thereof by the seller and the method of his payment
14 and accounting therefor to the municipality.

**§8-13-7. Tax on purchases of intoxicating liquors in munici-
palities; private club fees.**

1 Every municipality shall have plenary power and
2 authority to levy and collect a tax upon all purchases
3 of intoxicating liquors from the alcohol beverage control
4 commissioner within such municipality: *Provided, That*
5 no municipality shall have authority to levy or collect
6 any such tax on the intoxicating liquors sold by or pur-
7 chased from holders of a license issued under the pro-
8 visions of article seven, chapter sixty of this code. The
9 tax shall be levied upon the purchaser and shall be added
10 to and collected with the price of purchase. The tax shall
11 not exceed three percent of the purchase price.

12 A copy of any ordinance imposing the tax authorized
13 by this section shall be certified by the mayor of the
14 municipality to the West Virginia alcohol beverage con-
15 trol commissioner. The commissioner by appropriate
16 rules and regulations shall provide for the collection of
17 such tax and for distribution thereof to the respective
18 municipalities for which the same shall be collected.
19 Such rules and regulations shall provide that all such
20 taxes shall be deposited with the state treasurer and
21 distributed quarterly by the treasurer upon warrants of
22 the auditor payable to the municipality.

23 Every municipality shall have plenary power and au-
24 thority to levy and collect a fee from any private club
25 licensee whose premises are situate therein, as authorized
26 in section seven, article seven, chapter sixty of this code.

§8-13-8. License tax on horse racing.

1 Every municipality within the corporate limits of
2 which a horse race track is located in whole or in part
3 shall have plenary power and authority to impose upon
4 the operator of the track a daily license tax for the privi-
5 lege of conducting horse racing within the corporate
6 limits of the municipality. Such daily license tax shall
7 not exceed the amount of the daily license tax due from
8 such operator to the state under the provisions of article
9 twenty-three, chapter nineteen of this code. The daily
10 license tax hereby authorized shall not be applicable
11 to any local, county or state fair, horse show or agri-
12 cultural or livestock exposition at which horse racing
13 is conducted for not more than six days. A municipal
14 license tax on horse racing may be imposed under the
15 provisions of this section but not under the provisions of
16 section four of this article.

§8-13-9. Motor vehicle operator's tax.

1 Every municipality shall have plenary power and
2 authority to levy and collect an annual motor vehicle
3 operator's license tax not to exceed two dollars. The
4 tax shall apply only to inhabitants of the municipality.

§8-13-10. Domestic animal tax.

1 Every municipality shall have plenary power and
2 authority to levy and collect an annual license tax
3 upon the privilege of keeping a domestic animal within
4 the corporate limits of the municipality.

§8-13-11. Preservation of prior taxing powers of cities.

1 Any city may include by charter provision, and may
2 continue to exercise, all powers of taxation, other than
3 property taxation, which were set forth in the special
4 legislative charter of such city in effect on the date of
5 the ratification of the municipal home rule amendment
6 to the constitution of this state, being section thirty-
7 nine-a, article six of said constitution, and which are
8 not in conflict with general law.

PART II. BORROWING POWER.**§8-13-12. Borrowing power.**

1 Every municipality shall have plenary power and
2 authority to borrow money on the general faith and
3 credit of the municipality for any municipal purpose,
4 in the manner and subject to the limitations provided
5 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,
2 every municipality which furnishes any essential or special
3 municipal service, including, but not limited to, police and
4 fire protection, parking facilities on the streets or otherwise,
5 parks and recreational facilities, street cleaning, street
6 lighting, street maintenance and improvement, sewerage
7 and sewage disposal, and the collection and disposal of gar-
8 bage, refuse, waste, ashes, trash and any other similar mat-
9 ter, shall have plenary power and authority to provide by
10 ordinance for the installation, continuance, maintenance or
11 improvement of such service, to make reasonable regula-
12 tions with respect thereto, and to impose by ordinance
13 upon the users of such service, subject to the provisions of

14 chapter twenty-four of this code, reasonable rates, fees
15 and charges to be collected in the manner specified
16 in the ordinance. The municipality shall not, however,
17 have a lien on any property as security for payments
18 due under such ordinance. Notwithstanding the pro-
19 visions of section four, article eleven of this chapter,
20 any ordinance enacted or substantially amended under
21 the provisions of this section shall be published as a
22 Class II legal advertisement in compliance with the
23 provisions of article three, chapter fifty-nine of this code,
24 and the publication area for such publication shall be
25 such municipality. In the event thirty percent of the
26 qualified voters of the municipality by petition duly
27 signed by them in their own handwriting and filed with
28 the recorder of the municipality within fifteen days after
29 the expiration of such publication protest against such
30 ordinance as enacted or amended, the ordinance shall
31 not become effective until it shall be ratified by a ma-
32 jority of the legal votes cast thereon by the qualified
33 voters of such municipality at a regular municipal elec-
34 tion or special municipal election, as the governing body
35 shall direct. Voting thereon shall not take place until
36 after notice of such submission shall have been given
37 by publication as above provided for the publication
38 of the ordinance after it is adopted or substantially
39 amended. The powers and authority hereby granted to
40 municipalities and to the governing bodies thereof are
41 in addition and supplemental to the powers and authority
42 named in any charters thereof. Notwithstanding any
43 other provisions of this section, in the event rates, fees
44 and charges herein provided for shall be imposed by
45 the governing body of any municipality for the purpose
46 of replacing and in amounts approximately sufficient to
47 replace in its general fund such amounts as shall be
48 appropriated to be paid out of ad valorem taxes upon
49 property within the municipality pursuant to an election
50 duly called and held under the constitution and laws
51 of the state to authorize the issuance and sale of general
52 obligation bonds of the municipality for public im-
53 provement purposes, in the call for which election it
54 shall be stated that the governing body of the munici-

55 pality proposes to impose rates, fees and charges in
56 specified amounts under this section for the use of one
57 or more of the services above specified, which shall be
58 related to the public improvement proposed to be made
59 with the proceeds of the bonds, no notice, publication of
60 notice, or referendum or election or other condition or
61 prerequisite to the imposition of such rates, fees and
62 charges shall be required or necessary other than the
63 legal requirements for issuance and sale of such general
64 obligation bonds.

PART IV. PENALTIES.

§8-13-14. 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.

§8-13-15. Collection of municipal taxes, fines and assessments.

1 Unless otherwise provided, it shall be the duty of the
2 treasurer of the municipality, or other individual who
3 may be designated by general law, by charter provision
4 or by the governing body, to collect and promptly pay
5 into the municipal treasury all taxes, fines, special assess-
6 ments and other moneys due the municipality. All such
7 taxes, fines, special assessments (except assessments for
8 permanent or semipermanent public improvements) and
9 other moneys due the municipality are hereby declared
10 to be debts owing to the municipality, for which the
11 debtor shall be personally liable, and the treasurer, or
12 other individual so designated, may enforce this liability
13 by appropriate civil action in any court of competent
14 jurisdiction, and is hereby vested with the same rights to
15 distrain for the same as is vested in the sheriff for the
16 collection of taxes. Such treasurer or other individual
17 shall give bond, conditioned according to law, in such
18 penalty and with such security as the governing body
19 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
2 fail to collect, account for or pay over all or any of the
3 moneys with which he may be chargeable, belonging to
4 the municipality, according to the conditions of his bond
5 and the orders of the governing body, it shall be lawful
6 for the governing body to recover the same, in the name
7 of the municipality, by civil action in the circuit court
8 of the county in which the municipality or the major
9 portion of the territory thereof is located, or, where the
10 sum does not exceed three hundred dollars, by suit before
11 a justice of the district in which the municipality or the
12 major portion of the territory thereof is located, against
13 the treasurer, or other designated individual, or his
14 sureties, or any or either of them, or his or their executors
15 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
2 municipalities which are now, or which may hereafter
3 be, required by law shall be kept and made to conform
4 to the fiscal year.

§8-13-18. Audits and accounts.

1 The provisions of article nine, chapter six of this code
2 shall apply to every municipality. By charter provision
3 or ordinance, provision may be made for a system of
4 budgeting, accounting and record keeping, and for the
5 conduct of the transactions of the municipality, but any
6 such provision shall not conflict with said article nine,
7 chapter six or with the regulations or orders promulgated
8 thereunder by the state tax commissioner.

§8-13-19. Capital reserve fund.

1 The governing body of every municipality shall have
2 plenary power and authority to establish a special fund
3 to be known as the "capital reserve fund." The fund shall
4 consist of unexpended balances of other funds which may
5 be transferred to the fund, with the approval of the state

6 tax commissioner, at the end of the fiscal year, and any
7 other moneys authorized by law to be used for the pur-
8 poses of the fund.

9 The fund shall be used, from time to time, for the con-
10 struction, reconstruction, purchase or replacement of, or
11 addition to, municipal buildings, public works, equipment,
12 machinery, motor vehicles or other capital assets. Ex-
13 penditures shall be made from the fund only in accord-
14 ance with an appropriation made pursuant to the annual
15 budget.

16 If a municipality accumulates its capital reserve fund
17 for more than two years, the proceeds of the fund shall
18 be transmitted to the state sinking fund commission on or
19 before the first day of September of each year. The pro-
20 ceeds of the fund may be withdrawn by the municipality
21 upon reasonable notice in writing to the state sinking
22 fund commission.

**§8-13-20. Balances in sinking fund may be transferred to gen-
eral fund where bonded indebtedness has been
paid; application of remitted funds.**

1 Every municipality shall have plenary power and au-
2 thority to transfer to the general fund of such munici-
3 pality any unexpended balances of funds raised to pay
4 the interest on and create sinking funds for any bonded
5 indebtedness where said bonded indebtedness has been
6 fully paid off and discharged, or where there remains no
7 other bonded debt within such taxing district to which
8 such unexpended balances might be applied, as well as
9 any balance remaining in any fund levied and collected
10 under authority of any special levy election.

11 The state sinking fund commission is authorized in any
12 such case to remit any balances under its supervision or
13 control to such municipality to be credited to its general
14 fund.

15 In any case where such funds are transferred from
16 sinking funds, or are remitted from the state sinking fund
17 commission, as hereinabove provided, no part of the
18 moneys so refunded or remitted shall be applied to the
19 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 of-
3 ficers 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 treas-
8 urer 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

17 name of any municipal officer authorized to sign such
18 order by the use of any such mechanical or electrical
19 device upon any warrant, order or check, such municipal
20 officer or officers shall be personally liable, jointly and
21 severally, for the amount of any loss resulting to the
22 municipality.

23 If any individual other than the individuals authorized
24 so to do shall sign the name of any municipal officer
25 authorized to sign such order by the use of any such
26 mechanical or electrical device, or otherwise, upon any
27 warrant, order or check, he shall be guilty of forgery;
28 and if any individual shall utter or attempt to employ as
29 true such forged warrant, order or check, knowing the
30 same to be forged, he shall be guilty of a felony, and, upon
31 conviction, shall be confined in the penitentiary not less
32 than two nor more than ten years.

PART VII. MUNICIPAL FINANCIAL STATEMENTS.

§8-13-23. Preparation, publication and disposition of financial statements.

1 Every city, within four weeks after the beginning of
2 each fiscal year, shall prepare on a form to be prescribed
3 by the state tax commissioner and cause to be published
4 a sworn statement revealing (a) the receipts and expend-
5 itures of the city during the previous fiscal year arranged
6 under descriptive headings, (b) the name of each person
7 who received more than fifty dollars from any fund dur-
8 ing the previous fiscal year, together with the amount
9 received and the purpose for which paid, and (c) all debts
10 of the city, the purpose for which each debt was con-
11 tracted, its due date, and to what date the interest thereon
12 has been paid. Such statement shall be published as a
13 Class I legal advertisement in compliance with the provi-
14 sions of article three, chapter fifty-nine of this code, and
15 the publication area for such publication shall be the city.

16 Every city shall transmit to any resident of such city
17 requesting the same a copy of any published statement
18 for the fiscal year designated, supplemented by a docu-
19 ment listing the names of each person who received less
20 than fifty dollars from any fund during such fiscal year

21 and showing the amount paid to each and the purpose for
22 which paid.

23 Every town or village, within four weeks after the
24 beginning of each fiscal year, shall prepare on a form to
25 be prescribed by the state tax commissioner a sworn
26 statement revealing (a) the receipts and expenditures of
27 the town or village during the previous fiscal year
28 arranged under descriptive headings, (b) the name of
29 each person who received money from any fund during
30 the previous fiscal year, together with the amount re-
31 ceived and the purpose for which paid, and (c) all debts
32 of the town or village, the purpose for which each debt
33 was contracted, its due date, and to what date the interest
34 thereon has been paid.

35 Every town or village shall transmit to any resident of
36 such town or village requesting the same a copy of any
37 such statement for the fiscal year designated. Any such
38 town or village may, if the governing body thereof so
39 elects, also publish such statement as a Class I legal ad-
40 vertisement in compliance with the provisions of said
41 article three, chapter fifty-nine, and in such event, the
42 publication area for such publication shall be the town
43 or village.

44 The statement required by the first paragraph of this
45 section and the statement required by the third para-
46 graph of this section shall be sworn to by the recorder of
47 the municipality and the mayor thereof and two members
48 of the governing body of such municipality. As soon as
49 practicable following the close of the fiscal year, a copy
50 of any statement herein required shall be filed by the
51 municipality with the state tax commissioner, and the
52 clerk of the county court of the county, and the clerk of
53 the circuit court of the circuit, in which the municipality
54 or the major portion of the territory thereof is located.
55 If the governing body fail or refuse to perform any of the
56 duties set forth in this section, every member of such
57 governing body and the recorder thereof concurring in
58 such failure or refusal shall be guilty of a misdemeanor,
59 and, upon conviction thereof, shall be fined not less than
60 ten nor more than one hundred dollars. If any of the

61 provisions of this section are violated, it shall be the duty
62 of the prosecuting attorney of the county in which the
63 municipality or the major portion of the territory thereof
64 is located to immediately present the evidence thereof
65 to the grand jury if in session, and if not in session, he
66 shall cause such violations to be investigated by the next
67 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
2 authority to protect persons and property within the
3 municipality and preserve law and order therein, and,
4 for this purpose, to provide for, establish, equip and main-
5 tain a police force or department. The police force or
6 department in each municipality shall be subject to the
7 authority, control and discipline of the administrative
8 authority.

9 For the purposes of this article, the term "paid police
10 department" shall be taken to mean only a municipal
11 police department maintained and paid for out of public
12 funds and whose employees are paid on a full-time basis
13 out of public funds. The term shall not be taken to
14 mean a department whose employees are paid nominal
15 salaries or wages or are only paid for services actually
16 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
2 now or hereafter operated under police civil service as

3 provided in subsequent sections of this article, the mem-
4 bers of any such department subject to and under civil
5 service shall not be required to be on duty more than
6 five days in any calendar week, nor more than eight
7 hours in any one day, unless they shall be compensated
8 as hereinafter in this section provided. For any time
9 spent on duty by any member of a paid police depart-
10 ment under civil service in excess of eight hours in any
11 one day or in excess of forty hours in any one week,
12 such member shall, notwithstanding any other provi-
13 sions of this code to the contrary, be paid, at a rate not
14 less than his regular rate of pay, for each full hour or
15 allowed equal time off: *Provided*, That in time of mu-
16 nicipal emergency as hereinafter in this section defined,
17 the foregoing provisions with respect to additional pay
18 or time off shall not apply. A municipal emergency for
19 purposes of this section shall mean an unusual or ab-
20 normal condition beyond the municipality's control and
21 a condition beyond its reasonable power to remove or
22 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.**

1 The chief and any member of the police force or de-
2 partment of a municipality and any municipal sergeant
3 shall have all of the powers, authority, rights and privi-
4 leges within the corporate limits of the municipality
5 with regard to the arrest of persons, the collection of
6 claims, and the execution and return of any search war-
7 rant, warrant of arrest or other process, which can legally
8 be exercised or discharged by a constable of a district
9 within the same. In order to arrest for the violation
10 of municipal ordinances and as to all matters arising
11 within the corporate limits and coming within the scope
12 of his official duties, the powers of any chief, policeman
13 or sergeant shall extend anywhere within the county or
14 counties in which the municipality is located, and any
15 such chief, policeman or sergeant shall have the same
16 authority of pursuit and arrest beyond his normal juris-

17 diction as has a sheriff. For an offense committed in his
18 presence, any such officer may arrest the offender without
19 a warrant and take him before the mayor or police court or
20 municipal court to be dealt with according to law. He and
21 his sureties shall be liable to all the fines, penalties and for-
22 feitures which a constable of a district is liable to, for any
23 failure or dereliction in such office, to be recovered in the
24 same manner and in the same courts in which such fines,
25 penalties and forfeitures are recovered against a constable.
26 In addition to the mayor, or police court judge or munic-
27 ipal court judge, if any, of a city, the chief of police of any
28 municipality and in the absence from the station house
29 of the chief of police the captains of police and lieutenants
30 of police shall each have authority to administer oaths to
31 complainants and to issue arrest warrants thereon for all
32 violations of the ordinances of such municipality.

33 It shall be the duty of the mayor and police officers
34 of every municipality and any municipal sergeant to
35 aid in the enforcement of the criminal laws of the state
36 within the municipality, independently of any charter
37 provision or any ordinance or lack of an ordinance with
38 respect thereto, and to cause the arrest of or arrest any
39 offender and take him before a regular or ex officio
40 justice of the peace of the county to be dealt with ac-
41 cording to the law. Failure on the part of any such official
42 or officer to discharge any duty imposed by the provi-
43 sions of this section shall be deemed official misconduct
44 for which he may be removed from office. Any such
45 official or officer shall have the same authority to execute
46 a warrant issued by a justice of the peace, and the same
47 authority to arrest without a warrant for offenses com-
48 mitted 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
2 reputable women as police matrons. Upon the death,
3 resignation or removal of a police matron, any successor
4 shall be appointed by the mayor as aforesaid.

5 Each police matron shall have, subject to the general
6 control of the head of the police department, the entire
7 care and control of all women under arrest in the police
8 station for which she serves, and she may, at any time,
9 call upon any police officer connected with such police
10 station for assistance.

11 Whenever a woman is arrested and taken to a police
12 station to which a matron is attached and when a matron
13 is not present, it shall be the duty of the officer in
14 charge of such police station to cause a matron to be
15 immediately summoned, and it shall be the duty of the
16 police matron to hold herself in readiness at all hours
17 of the day and night to answer any and all calls from
18 such police station whenever and so long as any woman
19 is or remains confined therein.

20 The police matron herein provided for shall attend all
21 sessions of the mayor's court, police court or municipal
22 court, at any and all times, when any woman is to be
23 there arraigned, and the police matron shall have charge
24 of all women there in attendance awaiting trial or await-
25 ing transfer to any other place of detention.

26 In every station to which a police matron is attached,
27 sufficient and proper accommodations shall be provided
28 by those having charge of the police and fiscal affairs of
29 the city, for all women confined therein, under arrest,
30 and in case such accommodations shall be insufficient
31 and improper, the matron shall notify the mayor, and
32 it shall be the duty of the mayor promptly to lay the
33 matter before the governing body and it shall be the
34 duty of such governing body to provide, at the expense
35 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-
2 thority to provide by ordinance for the appointment of
3 special school zone police officers, who shall have the
4 duty of controlling and directing traffic upon designated
5 parts of the streets, avenues, roads, alleys or ways at
6 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 positions in certain paid police departments to be ascertained by examination; provisions exclusive as 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.

22 The term "appointing officer," as used in the following
23 sections of this article, shall be construed to mean the
24 Class I or Class II city officer in whom the power of
25 appointment of members of a paid police department is
26 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
2 department, there shall be a "Policemen's Civil Service
3 Commission." The commission shall consist of three com-
4 missioners, one of whom shall be appointed by the mayor
5 of the city; one of whom shall be appointed by the local
6 fraternal order of police; and the third shall be appointed
7 by the local chamber of commerce, or if there be none, by
8 a local businessmen's association. The individuals ap-
9 pointed commissioners shall be qualified voters of the city
10 for which they are appointed; and at least two of said
11 commissioners shall be individuals in full sympathy with
12 the purposes of the civil service provisions of this article.
13 Not more than two of the said commissioners, at any one
14 time, shall be adherents of the same political party. Of
15 the three original appointments in each city, the first com-
16 missioner shall be appointed by the mayor and shall serve
17 for six years from the date of his appointment; the second
18 commissioner shall be appointed by the local fraternal
19 order of police and shall serve for four years from the
20 date of his appointment; and the third commissioner shall
21 be appointed by the local chamber of commerce or local
22 businessmen's association and shall serve for two years
23 from the date of his appointment. In the event there is
24 no local chamber of commerce or local businessmen's
25 association at the time any appointment is to be made by
26 it, such appointment shall be made by the other two com-
27 missioners by mutual agreement. After the original ap-
28 pointments, all appointments shall be made for periods of
29 four years each by the appointing authority hereinbefore
30 designated. In the event that any commissioner of said
31 civil service commission shall cease to be a member there-
32 of by virtue of death, final removal or other cause, a new
33 commissioner shall be appointed to fill the unexpired term
34 of said commissioner within ten days after said ex-

35 commissioner shall have ceased to be a member of said
36 commission. Such appointment shall be made by the of-
37 ficer or body who in the first instance appointed the com-
38 missioner who is no longer a member of the commission,
39 except that in the case of a vacancy in an appointment
40 made by the governor, which vacancy occurs after the
41 effective date of this article, the appointment for the un-
42 expired term shall be made by the mayor. Each year the
43 three members of the commission shall, together, elect
44 one of their number to act as president of the commission,
45 who shall serve as president for one year. The mayor
46 may, at any time, remove any commissioner or commis-
47 sioners for good cause, which shall be stated in writing
48 and made a part of the records of the commission: *Pro-*
49 *vided*, That once the mayor has removed any commis-
50 sioner, the mayor shall within ten days thereafter file in
51 the office of the clerk of the circuit court of the county
52 in which the city or the major portion of the territory
53 thereof is located a petition setting forth in full the reason
54 for said removal and praying for the confirmation by
55 said circuit court of the action of the mayor in so remov-
56 ing the said commissioner. A copy of said petition shall
57 be served upon the commissioner so removed simultane-
58 ously with its filing in the office of the clerk of the circuit
59 court and shall have precedence on the docket of said
60 court and shall be heard by said court as soon as practi-
61 cable upon the request of the removed commissioner or
62 commissioners. All rights herein vested in said circuit
63 court may be exercised by the judge thereof in vacation.
64 In the event that no term of the circuit court is being
65 held at the time of the filing of said petition, and the judge
66 thereof cannot be reached in the county wherein the peti-
67 tion was filed, said petition shall be heard at the next
68 succeeding term of said circuit court, whether regular or
69 special, and the commissioner or commissioners so re-
70 moved shall remain removed until a hearing is had upon
71 the said petition of the mayor. The court or the judge
72 thereof in vacation shall hear and decide the issues pre-
73 sented by said petition. The mayor or commissioner or
74 commissioners, as the case may be, against whom the
75 decision of the court or the judge thereof in vacation shall

76 be rendered, shall have the right to petition the supreme
77 court of appeals for a review of the decision of the circuit
78 court or the judge thereof in vacation as in other civil
79 cases. In the event that the mayor shall fail to file his
80 petition in the office of the clerk of the circuit court, as
81 hereinbefore provided, within ten days after the removal
82 of said commissioner or commissioners, such commis-
83 sioner or commissioners shall immediately resume his or
84 their position or positions as a member or members of the
85 policemen's civil service commission.

86 Any resident of the city shall have the right at any time
87 to file charges against and seek the removal of any mem-
88 ber of the policemen's civil service commission of such
89 city. Such charges shall be filed in the form of a petition
90 in the office of the clerk of the circuit court of the county
91 in which the city or the major portion of the territory
92 thereof is located, and a copy of said petition shall be
93 served upon the commissioner or commissioners sought
94 to be removed. Said petition shall be matured for hearing
95 and heard by said circuit court or the judge thereof in
96 vacation in the same manner as civil proceedings in the
97 circuit courts of this state are heard, and the party against
98 whom the circuit court's decision is rendered shall have
99 the right to petition the supreme court of appeals for a
100 review of the action of the circuit court, as in other civil
101 cases.

102 No commissioner shall hold any other office (other than
103 the office of notary public) under the United States, this
104 state, or any municipality, county or other political sub-
105 division thereof; nor shall any commissioner serve on
106 any political committee or take any active part in the
107 management of any political campaign.

**§8-14-8. Recorder ex officio clerk of commission; clerical and
stenographic services.**

1 The recorder of the city shall be ex officio clerk of the
2 policemen's civil service commission and shall supply
3 to the commission without extra compensation all neces-
4 sary clerical and stenographic services for the work of
5 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
2 departments of government of every Class I and Class
3 II city having a paid police department to cause suitable
4 and convenient rooms and accommodations to be assigned
5 and provided, furnished, heated and lighted for carrying
6 on the work and examinations of the commission. The
7 commission may order from the proper authorities the
8 necessary stationery, postage stamps, official seal and
9 other articles to be supplied, and the necessary printing
10 to be done, for its official use. It shall be the duty of
11 the officers of every such city to aid the commission in
12 all proper ways in carrying out the civil service provi-
13 sions of this article, and to allow the reasonable use
14 of public buildings, and to heat and light the same, for
15 holding examinations and investigations, and in all proper
16 ways to facilitate the same.

17 All Class I and Class II cities subject to the civil
18 service provisions of this article are hereby required to
19 appropriate sufficient funds for the purpose of carrying
20 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
2 I and Class II city shall:

3 (1) Prescribe and enforce rules and regulations for
4 carrying into effect the civil service provisions of this
5 article. All rules and regulations so prescribed may, from
6 time to time, be added to, amended or rescinded: *Pro-*
7 *vided*, That all rules and regulations shall be approved
8 by the mayor and the governing body before they go
9 into effect, but when so approved shall not be changed
10 or rescinded except by the commission with the approval
11 of the mayor and the governing body: *Provided, how-*
12 *ever*, That if the mayor and governing body take no action
13 on a proposed rule and regulation or a proposed change
14 or rescission submitted to them within a period of twenty
15 days from the date of submission, then the same shall

16 become effective as though approved by the mayor and
17 governing body.

18 (2) Keep minutes of its own proceedings, and records
19 of its examinations and other official actions. All recom-
20 mendations of applicants for office, received by the said
21 commission or by any officer having authority to make
22 appointments to office, shall be kept and preserved for
23 a period of ten years, and all such records, recommenda-
24 tions of former employees excepted, and all written
25 causes of removal, filed with it, shall, subject to reason-
26 able regulation, be open to public inspection.

27 (3) Make investigations, either sitting as a body or
28 through a single commissioner, concerning all matters
29 touching the enforcement and effect of the civil service
30 provisions of this article and the rules and regulations
31 prescribed hereunder or concerning the action of any
32 examiner or subordinate of the commission or any indi-
33 vidual in the public service with respect to the execu-
34 tion of the civil service provisions of this article; and,
35 in the course of such investigations, each commissioner
36 shall have the power to administer oaths and affirma-
37 tions, and to take testimony.

38 (4) Have the power to subpoena and require the
39 attendance of witnesses, and the production thereby of
40 books and papers pertinent to the investigations and
41 inquiries herein authorized, and examine them and such
42 public records as it shall require, in relation to any matter
43 which it has the authority to investigate. The fees of
44 such witnesses for attendance and travel shall be the
45 same as for witnesses before the circuit courts of this
46 state, and shall be paid from the appropriation for the
47 incidental expenses of the commission. All officers in
48 the public service, and their deputies, clerks, subordinates
49 and employees shall attend and testify when required
50 to do so by said commission. Any disobedience to, or
51 neglect of, any subpoena issued by the said commis-
52 sioners, or any one of them, to any person, shall be held
53 a contempt of court, and shall be punished by the circuit
54 court of the county in which the city or the major por-
55 tion of the territory thereof is located, or the judge

56 thereof in vacation, as if such subpoena had been issued
57 therefrom. The judge of such court shall, upon the appli-
58 cation of any one of said commissioners, in any such
59 case, cause the process of said court to issue to compel
60 such person or persons disobeying or neglecting any
61 such subpoena to appear and to give testimony and
62 produce evidence before the said commissioners, or any
63 one of them, and shall have the power to punish any
64 such contempt.

65 (5) Make an annual report to the mayor showing its
66 own actions, and its rules and regulations, and all of
67 the exceptions thereto in force, and the practical effects
68 thereof, and any suggestions it may have for the more
69 effectual accomplishment of the purposes of the civil
70 service provisions of this article. Such report shall be
71 made available for public inspection within five days
72 after the same shall have been delivered to the mayor
73 of the city.

**§8-14-11. Rules and regulations for all examinations; proba-
tionary appointments.**

1 The policemen's civil service commission in each Class
2 I and Class II city shall make rules and regulations pro-
3 viding for both competitive and medical examinations for
4 appointments and promotions to all positions in the paid
5 police department in such city, and for such other mat-
6 ters as are necessary to carry out the purposes of the civil
7 service provisions of this article. Any such commission
8 shall have the power and authority to require by rules
9 and regulations a physical fitness examination as a part
10 of its competitive examination or as a part of its medical
11 examination. Due notice of the contents of all such rules
12 and regulations and of any modifications thereof shall be
13 given, by mail, in due season, to the appointing officer;
14 and said rules and regulations and any modifications
15 thereof shall also be printed for public distribution. All
16 original appointments to any positions in a paid police de-
17 partment subject to the civil service provisions of this
18 article shall be for a probationary period of one year:
19 *Provided*, That at any time during the probationary
20 period the probationer may be discharged for just cause,

21 in the manner provided in section twenty of this article.
22 If, at the close of this probationary term, the conduct or
23 capacity of the probationer has not been satisfactory to the
24 appointing officer, the probationer shall be notified, in
25 writing, that he will not receive absolute appointment,
26 whereupon his employment shall cease; otherwise, his re-
27 tention in the service shall be equivalent to his final ap-
28 pointment.

**§8-14-12. Form of application; age and residency requirements;
exceptions.**

1 The policemen's civil service commission in each Class
2 I and Class II city shall require individuals applying for
3 admission to any competitive examination provided for
4 under the civil service provisions of this article or under
5 the rules and regulations of said commission to file in its
6 office, within a reasonable time prior to the proposed ex-
7 amination, a formal application in which the applicant
8 shall state under oath or affirmation:

9 (1) His full name, residence and post-office address;

10 (2) His United States citizenship, age and the place
11 and date of his birth;

12 (3) His state of health and his physical capacity for the
13 public service;

14 (4) His business and employments and residences for
15 at least three previous years; and

16 (5) Such other information as may reasonably be re-
17 quired, touching upon the applicant's qualifications and
18 fitness for the public service.

19 Blank forms for such applications shall be furnished by
20 the commission, without charge, to all individuals re-
21 questing the same. The commission may require, in con-
22 nection with such application, such certificates of citizens,
23 physicians and others, having pertinent knowledge con-
24 cerning the applicant, as the good of the service may re-
25 quire.

26 No application for original appointment shall be re-
27 ceived if the individual applying is less than twenty-one
28 years of age or more than thirty-five years of age at the
29 date of his application: *Provided*, That in the event any

30 applicant formerly served upon the paid police depart-
31 ment of the city to which he makes application, for a
32 period of more than probationary period, and resigned
33 from the department at a time when there were no
34 charges of misconduct or other misfeasance pending
35 against such applicant, within a period of two years next
36 preceding the date of his application, and at the time of
37 his application resides within the corporate limits of the
38 city in which the paid police department to which he
39 seeks appointment by reinstatement is located, then such
40 individual shall be eligible for appointment by rein-
41 statement in the discretion of the policemen's civil ser-
42 vice commission, even though such applicant shall be
43 over the age of thirty-five years, and such applicant, pro-
44 viding his former term of service so justifies, may be ap-
45 pointed by reinstatement to the paid police department
46 without a competitive examination, but such applicant
47 shall undergo a medical examination; and if such in-
48 dividual shall be so appointed by reinstatement to the
49 paid police department, he shall be the lowest in rank in
50 in the department next above the probationers of the de-
51 partment.

52 Any applicant for original appointment must have been
53 a resident for one year, during some period of time prior
54 to the date of his application, of the city in which he
55 seeks to become a member of the paid police department:
56 *Provided*, That if the commission deems it necessary it
57 may consider for original appointment applicants who
58 are not residents of the city but who have been residents
59 of the county in which the city or any portion of the
60 territory thereof is located for a period of at least one
61 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 pro-
2 motions to all positions shall be practical in their char-
3 acter, and shall relate to such matters, and include such
4 inquiries, as will fairly and fully test the comparative

5 merit and fitness of the individual or individuals exam-
6 ined to discharge the duties of the employment sought by
7 him or them. All competitive examinations shall be open
8 to all applicants who have fulfilled the preliminary re-
9 quirements specified in the other civil service provisions
10 of this article.

11 Adequate public notice of the date, time and place of
12 every competitive examination together with informa-
13 tion as to the kind of position to be filled, shall be given
14 at least one week prior to such competitive examination.
15 The said commission shall adopt reasonable rules and
16 regulations for permitting the presence of representatives
17 of the press at any such competitive examination. The
18 commission shall post, in a public place at its office, the
19 eligible list, containing the names and grades of those who
20 have passed such competitive examinations for positions
21 in the paid police department, and shall indicate thereon
22 such appointments as may be made from said list.

23 All applicants for appointment or promotion to any
24 position in a paid police department of a Class I or Class
25 II city who have passed the competitive examination
26 specified above shall, before being appointed or promoted,
27 undergo a medical examination which shall be conducted
28 under the supervision of a board composed of two doctors
29 of medicine appointed for such purpose by the appointing
30 officer of the city. Such board must certify that an appli-
31 cant is free from any bodily or mental defects, deformity
32 or diseases which might incapacitate him from the per-
33 formance of the duties of the position desired and is phys-
34 ically fit to perform such duties before said applicant shall
35 be appointed or promoted to any position. Notwithstand-
36 ing the first sentence of this paragraph, in the event the
37 commission deems it expedient, the medical examination
38 may be given prior to the competitive examination, and if
39 the medical examination is not passed as aforesaid, the ap-
40 plicant shall not be admitted to the competitive exami-
41 nation.

§8-14-14. Refusal to examine or certify; review thereof.

1 The commission may refuse to examine an applicant, or
2 after examination to certify as eligible one, who is found

3 to lack any of the established preliminary requirements
4 for the examination or position for which he applies; or
5 who is physically so disabled as to be rendered unfit for
6 the performance of the duties of the position desired; or
7 who is addicted to the habitual use of intoxicating liquors
8 or drugs; or who has been guilty of any crime or of in-
9 famous or notoriously disgraceful conduct; or who has
10 been dismissed from public service for delinquency or
11 misconduct; or who has made a false statement of any ma-
12 terial fact, or practiced or attempted to practice any decep-
13 tion or fraud, in his application, in any such examination,
14 or in securing his eligibility; or who refuses to comply
15 with the rules and regulations of the commission.

16 If any applicant feels aggrieved by the action of the
17 commission in refusing to examine him, or after exami-
18 nation in refusing to certify him as eligible, the commis-
19 sion shall, at the request of such applicant, appoint a date,
20 time and place for a public hearing; at which time such
21 applicant may appear, by himself or counsel, or both, and
22 the commission shall then review its refusal to make
23 such examination or certification, and testimony shall be
24 taken. The commission shall subpoena, at the expense
25 of the applicant, any competent witnesses requested by
26 him. After such review, the commission shall file in its
27 records the testimony taken and shall again make a de-
28 cision, which decision shall be final and not subject to
29 judicial review, but under no circumstances shall the
30 provisions of this article be construed, in the case of a
31 refusal to examine an applicant for promotion or to cer-
32 tify an applicant as eligible for promotion, as depriving
33 such applicant of his right to seek a writ of mandamus,
34 if the application for such writ is made within twenty
35 days from the date of the decision refusing to examine
36 or to certify him as eligible for promotion.

§8-14-15. Appointments from list of eligibles.

1 Every position, unless filled by promotion, reinstate-
2 ment or reduction, shall be filled only in the manner
3 specified in this section. The appointing officer shall notify
4 the policemen's civil service commission of any vacancy
5 in a position which he desires to fill, and shall request

6 the certification of eligibles. The commission shall forth-
7 with certify, from the eligible list, the names of the three
8 individuals thereon who received the highest averages at
9 preceding competitive examinations held under the civil
10 service provisions of this article within a period of three
11 years next preceding the date of the prospective appoint-
12 ment. The appointing officer shall, thereupon, with sole
13 reference to the relative merit and fitness of the candi-
14 dates, make an appointment from the three names so
15 certified: *Provided*, That should he make objection, to the
16 commission, to one or more of these individuals, for any
17 of the reasons stated in section fourteen of this article,
18 and should such objection be sustained by the commis-
19 sion, after a public hearing along the lines of the hearing
20 provided for in said section fourteen of this article, if any
21 such hearing is requested, the commission shall thereupon
22 strike the name of any such individual from the eligible
23 list, and certify the next highest name for each individual
24 so stricken. As each subsequent vacancy occurs, in the
25 same or another position, precisely the same procedure
26 shall be followed: *Provided, however*, That after any
27 name has been three times rejected for the same or an-
28 other position in favor of a name or names below it on the
29 same list, the said name shall be stricken from the list.
30 When there are a number of positions of the same kind to
31 be filled at the same time, each appointment shall, never-
32 theless, be made separately and in accordance with the
33 foregoing provisions. When an appointment is made under
34 the provisions of this section it shall be, in the first in-
35 stance, for the probationary period of one year, as pro-
36 vided in section eleven of this article.

**§8-14-16. Noncompetitive examination for filling vacancy; pro-
visional appointment.**

1 Whenever there are urgent reasons for filling a vacancy
2 in any position in a paid police department of a Class I or
3 Class II city and there is no list of individuals eligible for
4 appointment after a competitive examination, the ap-
5 pointing officer may nominate an individual to the police-
6 men's civil service commission for noncompetitive ex-
7 amination; and if such nominee shall be certified by the

8 said commission as qualified, after such noncompetitive
9 examination and a medical examination, he may be ap-
10 pointed provisionally, to fill such vacancy until a selection
11 and appointment can be made after competitive examina-
12 tion, in the manner prescribed in section fifteen of this
13 article; but such provisional appointment shall not con-
14 tinue for a longer period than three months, nor shall
15 successive provisional appointments be made to the same
16 position, under the provisions of this section.

**§8-14-17. Vacancies filled by promotions; eligibility for promo-
tion; rights of chief.**

1 Vacancies in positions in a paid police department of a
2 Class I or Class II city shall be filled, so far as practicable,
3 by promotions from among individuals holding positions
4 in the next lower grade in the department. Promotions
5 shall be based upon merit and fitness to be ascertained by
6 competitive examinations to be provided by the police-
7 men's civil service commission and upon the superior
8 qualifications of the individuals promoted, as shown by
9 their previous service and experience: *Provided*, That
10 except for the chief of police, no individual shall be eligi-
11 ble for promotion from the lower grade to the next higher
12 grade until such individual shall have completed at least
13 two years' service in the next lower grade in the depart-
14 ment: *Provided, however*, That notwithstanding the
15 provisions of section six of this article, any member of a
16 paid police department of a Class I or Class II city now
17 occupying the office of chief of such paid police depart-
18 ment, or hereafter appointed to such office, shall, except
19 as hereinafter provided in this section, be and shall con-
20 tinue to be entitled to all of the rights and benefits of the
21 civil service provisions of this article, except that he
22 may be removed from such office of chief of police with-
23 out cause, and the time spent by such member in the
24 office of such chief of police shall be added to the time
25 served by such member during the entire time he was a
26 member of said paid police department prior to his ap-
27 pointment as chief, and shall in all cases of removal,
28 except for removal for good cause, retain the regular
29 rank within said paid police department which he held

30 at the time of his appointment to the office of chief of
31 police or which he has attained during his term of service
32 as chief of police. The provisions of this section shall be
33 construed to apply and to inure to the benefit of all indi-
34 viduals who have ever been subject to the provisions of
35 this article. The commission shall have the power to
36 determine in each instance whether an increase in salary
37 constitutes a promotion.

§8-14-18. No inquiry shall be made concerning political or religious 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 affili-
4 ations of any applicant; nor shall inquiry be made con-
5 cerning such opinions or affiliations; and all disclosures
6 thereof shall be discountenanced. No discrimination
7 shall be exercised, threatened or promised by any indi-
8 vidual in a paid police department of a Class I or Class
9 II city against, or in favor of, an applicant, eligible, or
10 member of such a paid police department because of his
11 political or religious opinions or affiliations.

§8-14-19. Political activity of members of certain paid police departments prohibited; petition for vacating appointment; action on petition; appeal.

1 (a) No member of any paid police department of a
2 Class I or Class II city shall engage in any political
3 activity of any kind, character or nature whatsoever,
4 except to cast his vote at any election, or shall act as
5 an election official in any election, municipal, county
6 or state. Any member of any such paid police depart-
7 ment violating the provisions of this section shall have
8 his appointment vacated and he shall be removed, in
9 accordance with the pertinent provisions of this section.
10 (b) Any three residents of any such city may file
11 their written petition with the policemen's civil service
12 commission thereof setting out therein the grounds upon
13 which a member of the paid police department of such
14 city should be removed for a violation of subsection

15 (a) of this section. Notice of the filing of such petition
16 shall be given by said commission to the accused mem-
17 ber, which notice shall require the said member to file
18 a written answer to the charges set out in the petition
19 within thirty days of the date of said notice. The said
20 petition and answer thereto, if any, shall be entered upon
21 the records of the commission. If such answer is not
22 filed within the time stated, or any extension thereof
23 for cause which in the discretion of the commission may
24 be granted, an order shall be entered by the commission
25 declaring the appointment of said member vacated; if
26 such answer is filed within the time stated, or any exten-
27 sion thereof for cause which in the discretion of the
28 commission may be granted, the accused member may
29 demand within such period a public hearing on the
30 charges, or the commission may, in its discretion and
31 without demand therefor, set a time for a public hearing
32 on said charges, which hearing shall be within thirty
33 days of the filing of said answer, subject, however, to
34 any continuances which may in the discretion of the
35 commission be granted. A written record of all testi-
36 mony taken at such hearing shall be kept and preserved
37 by the commission, which record shall be sealed and
38 not be open to public inspection, if no appeal be taken
39 from the action of the commission. The commission at
40 the conclusion of the hearing, or as soon thereafter as
41 possible, shall enter an order sustaining in whole or in
42 part the charges made, or shall dismiss the charges as
43 unfounded. In the event the charges are sustained in
44 whole or in part, the order shall also declare the ap-
45 pointment of said member to be vacated and thereupon
46 the proper municipal authorities shall immediately re-
47 move said member from the police force and from the
48 payroll of said city. Notice of the action of the commission
49 shall be given by registered letter to the mayor and
50 chief of police of the city; and for failure to immediately
51 comply with the order of the commission such officer or
52 officers shall be punished for contempt, upon appli-
53 cation of the commission to the circuit court of the county
54 in which the city or the major portion of the territory
55 thereof is located.

56 (c) An appeal from the ruling of the commission
57 may be had in the same manner and within the same
58 time as specified in section twenty of this article for
59 an appeal from a ruling of a commission after hearing
60 held in accordance with the provisions of said section
61 twenty.

**§8-14-20. Removal, discharge, suspension or reduction in rank
or pay; appeal; reduction in number of members.**

1 (a) No member of any paid police department subject
2 to the civil service provisions of this article shall be re-
3 moved, discharged, suspended or reduced in rank or pay
4 except for just cause, which shall not be religious or
5 political, except as hereinbefore provided in section nine-
6 teen of this article; and no such member shall be removed,
7 discharged, suspended or reduced except as provided by
8 the civil service provisions of this article, and in no event
9 until he shall have been furnished with a written state-
10 ment of the reasons for such action. For the purpose of
11 the remainder of this subsection and subsections (b) and
12 (c) of this section, the term "suspension" shall mean only
13 (1) a suspension in excess of ten days, or (2) a suspension
14 in any calendar year which when added to any previous
15 suspension or suspensions within the same calendar year
16 results in a total period of suspension in excess of ten
17 days within such same calendar year, and for the purpose
18 of the remainder of this subsection and said subsections
19 (b) and (c), a member shall not be considered to be
20 suspended or sought to be suspended unless his suspen-
21 sion meets the foregoing definition of said term. In every
22 case of such removal, discharge, suspension or reduction,
23 a copy of the statement of reasons therefor and of the
24 written answer thereto, if the member sought to be re-
25 moved, discharged, suspended or reduced desires to file
26 such written answer, shall be furnished to the policemen's
27 civil service commission and entered upon its records. If
28 the member sought to be removed, discharged, suspended
29 or reduced shall demand it, the commission shall grant
30 him a public hearing, which hearing shall be held within
31 a period of ten days from the filing of the charges in
32 writing or the written answer thereto, whichever shall

33 last occur. At such hearing the burden shall be upon the
34 removing, discharging, suspending or reducing officer,
35 hereinafter in this section referred to as "removing of-
36 ficer," to justify his action, and in the event the removing
37 officer fails to justify his action before the commission,
38 then the member removed, discharged, suspended or re-
39 duced shall be reinstated with full pay, forthwith and
40 without any additional order, for the entire period during
41 which he may have been prevented from performing his
42 usual employment, and no charges shall be officially re-
43 corded against his record. A written record of all testi-
44 mony taken at such hearing shall be kept and preserved
45 by the commission, which record shall be sealed and not
46 be open to public inspection, if no appeal be taken from
47 the action of the commission.

48 (b) In the event that the commission shall sustain the
49 action of the removing officer, the member removed, dis-
50 charged, suspended or reduced shall have an immediate
51 right of appeal to the circuit court of the county wherein
52 the city or the major portion of the territory thereof is
53 located. In the event that the commission shall reinstate
54 the member removed, discharged, suspended or reduced,
55 the removing officer shall have an immediate right of
56 appeal to said circuit court. Any appeal must be taken
57 within ninety days from the date of entry by the commis-
58 sion of its final order; upon an appeal being taken and
59 docketed with the clerk of the circuit court of said county,
60 the circuit court shall proceed to hear the appeal upon
61 the original record made before the commission and no
62 additional proof shall be permitted to be introduced. The
63 circuit court's decision shall be final, but the member or
64 removing officer, as the case may be, against whom the
65 decision of the circuit court is rendered shall have the
66 right to petition the supreme court of appeals for a review
67 of the circuit court's decision, as in other civil cases. Such
68 member or removing officer shall also have the right,
69 where appropriate, to seek in lieu of an appeal, a writ of
70 mandamus.

71 (c) The removing officer and the member sought to
72 be removed, discharged, suspended or reduced shall at all

73 times, both before the commission and upon appeal, be
74 given the right to employ counsel to represent them.

75 (d) If for reasons of economy or other reasons it shall
76 be deemed necessary by any Class I or Class II city to
77 reduce the number of paid members of its paid police
78 department, said city shall follow the procedure set forth
79 in this subsection (d). The reduction in members of the
80 said paid police department of said city shall be effected
81 by suspending the last man or men, including probation-
82 ers, who have been appointed to said paid police depart-
83 ment. Such removal shall be accomplished by suspending
84 the number desired in the inverse order of their appoint-
85 ment: *Provided*, That in the event the said paid police
86 department shall again be increased in numbers to the
87 strength existing prior to such reduction of members the
88 said members suspended under the terms of this subsec-
89 tion shall be reinstated in the inverse order of their sus-
90 pension before any new appointment to said paid police
91 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.**

1 Any Class III city or Class IV town or village having
2 a paid police department and which has not prior to
3 the effective date of this article established a police civil
4 service system, may, by ordinance, provide for an elec-
5 tion to determine whether the civil service provisions
6 of this article shall apply to such city, town or village.
7 Such election shall be held at the first regular municipal
8 or general election held therein after the adoption of said
9 ordinance and shall be conducted and the results thereof
10 ascertained as provided by law for other elections. The
11 ballots, or ballot labels where voting machines are used,
12 shall have printed thereon:

- 13 ☐ For Police Civil Service
14 ☐ Against Police Civil Service

15 If a majority of all of the legal votes cast on this
16 question be against police civil service, then none of the

17 civil service provisions of this article shall apply within
18 such city, town or village. If a majority of all of the
19 legal votes cast on this question be for police civil ser-
20 vice, then all of the civil service provisions of this article
21 shall apply within such city, town or village with like
22 effect as if such Class III city or Class IV town or village
23 were a Class I or Class II city: *Provided*, That all mem-
24 bers of the paid police department of such city, town
25 or village who were so employed by such city, town
26 or village on the date of the election and who, as of
27 such date, have had four or more years' service as mem-
28 bers of any paid police department (including the years
29 any member occupied the office of chief of any such
30 paid police department) shall be considered to have
31 been appointed as members under the civil service
32 provisions of this article and shall hold their positions
33 as members in accordance therewith. All members of
34 the paid police department of such city, town or village
35 who do not have, as of the date of such election, four
36 or more years' service as members of a paid police de-
37 partment (including the years any member occupied the
38 office of chief of any such paid police department) shall
39 be subject to all examinations provided for in the civil
40 service provisions of this article for members, except
41 that if any such individual has sustained an injury or
42 injuries in the line of duty while in police service, such
43 injury or injuries shall not disqualify such individual
44 under the medical examination required under the civil
45 service provisions of this article.

46 The provisions of this section shall not apply to any
47 such city, town or village operating under police civil
48 service on the effective date of this article.

§8-14-22. Offenses and penalties.

1 Any individual who makes an appointment or pro-
2 motion to any position, or selects an individual for em-
3 ployment, contrary to the civil service provisions of this
4 article, or wilfully refuses or neglects otherwise to com-
5 ply with, or to conform to, any of the civil service pro-
6 visions of this article, or violates any of such provisions,
7 shall be deemed guilty of a misdemeanor.

8 Any commissioner or examiner, or any other indi-
9 vidual, who shall wilfully, by himself or in cooperation
10 with one or more persons, defeat, deceive or obstruct any
11 individual with respect to his right of examination or
12 registration according to the civil service provisions of
13 this article, or to any rules and regulations prescribed
14 pursuant thereto, or who shall wilfully or corruptly,
15 falsely mark, grade, estimate, or report upon any such
16 examination or proper standing of any individual so
17 examined, registered or certified, pursuant to the civil
18 service provisions of this article, or aid in so doing, or
19 who shall wilfully or corruptly furnish to any individual
20 any special or secret information, for the purpose of
21 either improving or injuring the prospects or chances
22 of appointment or promotion to any position of any
23 individual so examined, registered or certified, or to be
24 so examined, registered or certified, or who shall im-
25 personate any other individual, or permit or aid in any
26 manner any other individual to impersonate him, in
27 connection with any such examination or registration,
28 or application or request to be examined or registered,
29 shall, for each offense, be deemed guilty of a misdemeanor.
30 Any person convicted of any such misdemeanor offense
31 shall be punished by a fine of not less than fifty dollars,
32 nor more than one thousand dollars, or by imprison-
33 ment for a term not exceeding one year, or by both such
34 fine and imprisonment, in the discretion of the court.

**§8-14-23. Repeal of conflicting acts and provisions; civil ser-
vice provisions of article exclusive; status or tenure
not affected; certain members automatically cov-
ered; continuance of police civil service systems.**

1 All acts, whether general, special, local or special leg-
2 islative charters, or parts thereof, in relation to any civil
3 service measure affecting any paid police department in-
4 consistent with the civil service provisions of this article
5 shall be, and the same are, hereby repealed insofar as
6 such inconsistencies shall exist. It is intended by the
7 civil service provisions of this article to furnish a com-
8 plete and exclusive system for the appointment, pro-
9 motion, reinstatement, removal, discharge, suspension and

10 reduction of all members of all paid police departments
11 subject to the civil service provisions of this article.

12 The status or tenure of all members of any paid police
13 department subject to the civil service provisions of
14 this article, which members were employed on the ef-
15 fective date of this article, shall not be affected by the
16 enactment of this article, but all such members shall be
17 subject to all of the civil service provisions of this article
18 with like effect as if they had been appointed members
19 hereunder.

20 When a Class III city which does not have a police
21 civil service system becomes a Class II city for which
22 police civil service is made mandatory by the provisions
23 of this article, all members of the paid police depart-
24 ment of such city who were employed by such city on
25 the effective date of the transition of such city to a Class
26 II city and who, as of such date, have had four or more
27 years' service as members of any paid police department
28 (including the years any member occupied the office
29 of chief of any such paid police department) shall be
30 considered to have been appointed as members under
31 the civil service provisions of this article and shall hold
32 their positions as members in accordance therewith. All
33 members of the paid police department of such city who
34 do not have, as of such date, four or more years' service
35 as members of a paid police department (including the
36 years any member occupied the office of chief of any
37 such paid police department) shall be subject to all
38 examinations provided for in the civil service provisions
39 of this article for members, except that if any such
40 individual has sustained an injury or injuries in the line
41 of duty while in police service, such injury or injuries
42 shall not disqualify such individual under the medical
43 examination required under the civil service provisions
44 of this article.

45 Any police civil service system established in accord-
46 ance with the provisions of former article five-a of this
47 chapter or this article fourteen shall be or remain man-
48 datory and shall be governed by the provisions of this
49 article fourteen (with like effect, in the case of a Class

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 DEPARTMENTS; CIVIL SERVICE FOR PAID FIRE DEPARTMENTS.

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.
- §8-15-3. Municipalities empowered and authorized to contract for prevention and extinguishment of fires within three miles of corporate limits.

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.
- §8-15-6. Dissolution of volunteer fire company.
- §8-15-7. Incorporation of volunteer fire companies; duties and obligations; dissolution.
- §8-15-8. Support of volunteer fire company; return of property upon dissolution.

PART III. PAID FIRE DEPARTMENTS.

- §8-15-9. Establishment and maintenance of paid fire department.
- §8-15-10. Hours of duty for firemen in a paid fire department.

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.
- §8-15-13. Recorder ex officio clerk of commission; clerical and stenographic services.
- §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 commission.
- §8-15-16. Rules and regulations for all examinations; probationary appointments.
- §8-15-17. Form of application; age and residency requirements; exceptions.
- §8-15-18. Character and notice of competitive examinations; qualifications 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.
§8-15-21. Noncompetitive examination for filling vacancy; provisional appointment.
§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.
§18-15-24. Political activity of members of paid fire departments prohibited.
§18-15-25. Removal, discharge, suspension or reduction in rank or pay; appeal; reduction in number of members.
§18-15-26. Offenses and penalties.
§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 preven-
3 tion and extinguishment of fires, and, for this purpose,
4 it may, among other things, regulate how buildings shall
5 be constructed, procure proper engines and implements,
6 provide for the organization, equipment and govern-
7 ment of volunteer fire companies or of a paid fire de-
8 partment, prescribe the powers and duties of such com-
9 panies or department and of the several officers, pro-
10 vide for the appointment of officers to have command
11 of fire fighting, prescribe what their powers and duties
12 shall be, and impose on those who fail or refuse to obey
13 any lawful command of such officers any penalty which
14 the governing body is authorized by law to impose for
15 the violation of an ordinance. It may give authority
16 to any such officer or officers to direct the pulling down
17 or destroying of any fence, house, building or other
18 thing, if deemed necessary to prevent the spreading of
19 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
2 to prevent the spreading of a fire, as specified in section
3 one of this article, shall be entitled to recover from the

4 municipality the actual property damage which he may
5 have sustained by reason of the same having been pulled
6 down or destroyed: *Provided*, That no one shall recover
7 compensation for property which would have been de-
8 stroyed by fire, if the same had not been pulled down
9 or destroyed under direction as specified in section one
10 of this article, but recovery may be had only for what
11 could have been saved with ordinary care and diligence
12 had no such direction been given.

**§8-15-3. Municipalities empowered and authorized to contract
for prevention and extinguishment of fires within
three miles of corporate limits.**

1 Any municipality shall have plenary power and au-
2 thority to contract to render services in the prevention
3 and extinguishment of fires upon property located within
4 three miles of its corporate limits: *Provided*, That no con-
5 tract entered into under the authority of this section shall
6 operate to impose any greater or different obligation or
7 liability upon the municipality than that with respect to
8 property within its corporate limits: *Provided, however*,
9 That nothing contained in this section shall be construed
10 as requiring any municipality to contract to render such
11 services, but if a municipality shall elect to make such
12 contract with any property owner, the same shall not be
13 cancelled or annulled without the consent of such prop-
14 erty owner, or such owner's successor, so long as the latter
15 shall not be in default: *Provided further*, That if a mu-
16 nicipality shall elect to contract with respect to any prop-
17 erty, it shall, if requested, contract on the basis and terms
18 contracted with respect to other property located at ap-
19 proximately the same distance from fireplugs, or other
20 fixed fire apparatus of said municipality. Any contract
21 entered into under the authority of this section shall re-
22 quire the property owner to pay as consideration for said
23 services an annual payment equivalent to eighty percent
24 of the annual tax levied for current municipal purposes
25 upon property within said municipality of like assessed
26 valuation to the property under contract. No contract
27 entered into under the authority of this section, and
28 nothing herein contained, shall be construed as requiring

29 or permitting any municipality to install or maintain any
30 special or additional apparatus or equipment beyond that
31 necessary for the protection of property within its cor-
32 porate limits.

33 The annual payments due under any such contract shall
34 be payable on or before the first day of October of each
35 calendar year in which such contract shall remain in
36 effect, or upon such day as may be hereafter provided as
37 the due date of the first installment of ad valorem taxes.
38 If any annual payment shall be in default for a period of
39 more than thirty days it shall bear interest at the same
40 rate as that provided for delinquent property taxes, and
41 shall be a lien upon the property subject to contract, pro-
42 vided a notice of such lien is recorded in the proper deed
43 of trust book in the office of the clerk of the county court
44 of the county in which such property or the major portion
45 thereof is located. Such lien shall be void at the expira-
46 tion of one year after such defaulted annual payment
47 shall have become due, unless within such year a civil
48 action seeking equitable relief to enforce the same shall
49 have been instituted by said municipality. The munici-
50 pality may by civil action collect any annual payment
51 and the interest thereon at any time within five years
52 after such payment shall have become due; and upon
53 default in any annual payment, the municipality may
54 cancel the contract involved.

55 Any contract made under the authority of this section
56 shall inure to the benefit of and be binding upon the suc-
57 cessors in title of the person making the same; and such
58 person, upon conveying the property subject to such con-
59 tract, shall no longer be liable under such contract, except
60 as to annual payments due prior to said conveyance and
61 remaining unpaid.

62 Any property owner may cancel any such contract with
63 respect to the property of such owner upon giving a
64 thirty-day written notice to the municipality, if such
65 owner is not in default with respect to any annual pay-
66 ment due thereunder, except that if such notice be given
67 subsequent to July first of any calendar year, the next
68 succeeding annual payment shall be made by said prop-
69 erty owner as soon as the amount thereof is ascertainable.

70 Upon cancellation as aforesaid, the municipality shall de-
71 liver to the property owner a recordable release dis-
72 charging such owner and such property from any further
73 lien or obligation with respect to said annual payments.
74 The annual payments due under any such contract shall
75 be made to such officials as the municipality, in such con-
76 tract, shall designate to receive them, who shall likewise
77 have authority to receive notice of cancellation, and
78 execute upon behalf of such municipality the release for
79 which provision is hereinbefore made.

PART II. VOLUNTEER FIRE COMPANIES.

§8-15-4. Power and authority to form fire companies; recorda- tion of statement; organization.

1 Any number of persons, not less than twenty nor more
2 than sixty-four, residing within the corporate limits of a
3 municipality without a paid fire department may form
4 themselves into a company for extinguishing fires therein.
5 A writing stating the formation of such company, with
6 the names of the members thereof subscribed thereto,
7 shall be recorded in the office of the clerk of the county
8 court of the county wherein such municipality or the ma-
9 jor portion of the territory thereof is located, after which
10 the members of the company shall elect its officers, includ-
11 ing a commander, and make rules and regulations for ef-
12 fecting its object consistent with the laws of the state and
13 the ordinances of such municipality. A volunteer fire
14 company shall be subject to the authority of the govern-
15 ing body.

§8-15-5. Duties of company members; meetings to inspect equipment; report; penalty for noncompliance.

1 Every member of a volunteer fire company shall, upon
2 any alarm of fire, attend, according to the ordinances of
3 the municipality and the company's rules and regulations,
4 and endeavor to extinguish the fire.

5 In addition to the meetings required by the ordinances
6 of the municipality and the rules and regulations of the
7 company, semiannual meetings of the company shall be
8 held in April and October, on such days as the com-
9 mander thereof may appoint, to examine the state of the

10 engine, hose and other equipment, practice therewith and
11 see that the same are in good condition. Within one month
12 after any such semiannual meeting the commander of
13 such company shall make to the governing body a written
14 report of the names of those attending such meeting, to-
15 gether with a written report of the condition of the
16 engine, hose and other equipment. For any failure to
17 comply with the provisions of this section, the commander
18 shall be fined not less than ten nor more than twenty-five
19 dollars.

§8-15-6. Dissolution of volunteer fire company.

1 Whenever the governing body shall ascertain that such
2 company has failed, for three months successively, to con-
3 sist of twenty effective members, or shall ascertain that it
4 has failed for a like period of time to have and keep in
5 good, serviceable condition an engine, hose or other proper
6 equipment, such governing body shall declare such failure
7 and by order dissolve the company.

8 A fire company may also be dissolved at any time by
9 order of the governing body of the municipality or in such
10 manner as the ordinances thereof may prescribe. When-
11 ever a company is dissolved, the order of dissolution shall
12 be recorded in the office of the clerk of the county court
13 of the county wherein such municipality or the major por-
14 tion of the territory thereof is located.

§8-15-7. Incorporation of volunteer fire companies; duties and obligations; dissolution.

1 In lieu of forming a company as specified in section four
2 of this article, interested persons may cause the incorpora-
3 tion of a volunteer fire company as a nonstock, nonprofit
4 corporation under the general corporation laws of this
5 state. The corporation and the members thereof shall have
6 all of the duties and obligations imposed upon unincor-
7 porated volunteer fire companies and the members there-
8 of by the provisions of sections four and five of this article.
9 The provisions of section six of this article shall be appli-
10 cable to any such corporation, except that instead of enter-
11 ing an order of dissolution, the governing body shall enter
12 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 department.

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.

§8-15-10. Hours of duty for firemen in a paid fire department.

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

10. one half of the department. The chief executive officer
11 of the department is hereby empowered, authorized and
12 directed to make the necessary assignments as provided
13 in this section.

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
2 paid fire departments shall be made only according to
3 qualifications and fitness to be ascertained by examinations,
4 which, so far as practicable, shall be competitive, as
5 hereinafter provided. No individual shall be appointed,
6 promoted, reinstated, removed, discharged, suspended or
7 reduced in rank or pay as a paid member of any paid fire
8 department, regardless of rank or position, in any manner
9 or by any means other than those prescribed in the following
10 sections of this article: *Provided*, That in all municipalities
11 in which the office of fire chief of a paid fire department
12 was not covered by the provisions of former
13 article six-a of this chapter on the first day of January,
14 one thousand nine hundred forty-nine, such office in such
15 municipality shall be excepted from the civil service provisions
16 of this article fifteen until such time as the governing body
17 of said municipality shall, by appropriate ordinance or resolution
18 adopted by a majority of its members, elect to place the office
19 of fire chief under the civil service provisions of this article;
20 but until the office of any such fire chief is placed under the
21 civil service provisions of this article by said governing body as
22 aforesaid, the member of any such paid fire department now
23 occupying such office or hereafter appointed to such office
24 shall in all cases of removal, except for removal for good
25 cause, revert to the status he held in such paid fire department
26 at the time of his appointment to the office of such fire chief.
27 The term "appointing officer" as used in the following sections
28 of this article shall be construed to mean the municipal officer
29 in whom the power of appointment

31 ment of members of a paid fire department is vested by
32 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,
2 there shall be a "Firemen's Civil Service Commission."
3 The commission shall consist of three commissioners, one
4 of whom shall be appointed by the mayor of the munici-
5 pality; one of whom shall be appointed by the local trades
6 board in the event that said board shall exist in the mu-
7 nicipality, or in case no such board exists in the munici-
8 pality, then by the paid international association of fire
9 fighters; and the third shall be appointed by the local
10 chamber of commerce, or if there be none, by a local
11 businessmen's association. The individuals appointed com-
12 missioners shall be qualified voters of the municipality
13 for which they are appointed; and at least two of said
14 commissioners shall be individuals in full sympathy with
15 the purposes of the civil service provisions of this article.
16 Not more than two of the said commissioners, at any one
17 time, shall be adherents of the same political party. Of
18 the three original appointments in each municipality, the
19 first commissioner shall be appointed by the mayor and
20 shall serve for six years from the date of his appoint-
21 ment; the second commissioner shall be appointed by the
22 local trades board, or in the absence of such board, by
23 the international association of fire fighters, and shall
24 serve for four years from the date of his appointment;
25 and the third commissioner shall be appointed by the
26 local chamber of commerce or local businessmen's associa-
27 tion and shall serve for two years from the date of his
28 appointment. In the event there is no local chamber of
29 commerce or local businessmen's association at the time
30 any appointment is to be made by it, such appointment
31 shall be made by the other two commissioners by mutual
32 agreement. After the original appointments, all appoint-
33 ments shall be made for periods of four years each by the
34 appointing authority hereinbefore designated. In the
35 event that any commissioner of said civil service commis-
36 sion shall cease to be a member thereof by virtue of
37 death, final removal or other cause, a new commissioner

38 shall be appointed to fill the unexpired term of said com-
39 missioner within ten days after said ex-commissioner
40 shall have ceased to be a member of said commission.
41 Such appointment shall be made by the officer or body
42 who in the first instance appointed the commissioner who
43 is no longer a member of the commission. Each year the
44 three members of the commission shall, together, elect
45 one of their number to act as president of the commission,
46 who shall serve as president for one year. The mayor
47 may, at any time, remove any commissioner or commis-
48 sioners for good cause, which shall be stated in writing
49 and made a part of the records of the commission: *Pro-*
50 *vided*, That once the mayor has removed any commis-
51 sioner, the mayor shall within ten days thereafter file in
52 the office of the clerk of the circuit court of the county in
53 which the municipality or the major portion of the terri-
54 tory thereof is located a petition setting forth in full the
55 reason for said removal and praying for the confirmation
56 by said circuit court of the action of the mayor in so re-
57 moving the said commissioner. A copy of said petition
58 shall be served upon the commissioner so removed simul-
59 taneously with its filing in the office of the clerk of the
60 circuit court and shall have precedence on the docket of
61 said court and shall be heard by said court as soon as
62 practicable upon the request of the removed commis-
63 sioner or commissioners. All rights herein vested in said
64 circuit court may be exercised by the judge thereof in
65 vacation. In the event that no term of the circuit court
66 is being held at the time of the filing of said petition, and
67 the judge thereof cannot be reached in the county where-
68 in the petition was filed, said petition shall be heard at
69 the next succeeding term of said circuit court, whether
70 regular or special, and the commissioner or commissioners
71 so removed shall remain removed until a hearing is had
72 upon the petition of the mayor. The court or the judge
73 thereof in vacation shall hear and decide the issues pre-
74 sented by said petition. The mayor or commissioner or
75 commissioners, as the case may be, against whom the
76 decision of the court or the judge thereof in vacation shall
77 be rendered, shall have the right to petition the supreme
78 court of appeals for a review of the decision of the circuit

79 court or the judge thereof in vacation as in other civil
80 cases. In the event that the mayor shall fail to file his
81 petition in the office of the clerk of the circuit court, as
82 hereinbefore provided, within ten days after the removal
83 of said commissioner or commissioners, such commission-
84 er or commissioners shall immediately resume his or
85 their position or positions as a member or members of the
86 firemen's civil service commission.

87 Any resident of the municipality shall have the right
88 at any time to file charges against and seek the removal of
89 any member of the firemen's civil service commission of
90 such municipality. Such charges shall be filed in the form
91 of a petition in the office of the clerk of the circuit court of
92 the county in which the municipality or the major por-
93 tion of the territory thereof is located, and a copy of said
94 petition shall be served upon the commissioner or com-
95 missioners sought to be removed. Said petition shall be
96 matured for hearing and heard by said circuit court or the
97 judge thereof in vacation in the same manner as civil
98 proceedings in the circuit courts of this state are heard,
99 and the party against whom the circuit court's decision is
100 rendered shall have the right to petition the supreme
101 court of appeals for a review of the action of the circuit
102 court, as in other civil cases.

103 No commissioner shall hold any other office (other than
104 the office of notary public) under the United States, this
105 state or any municipality, county or other political sub-
106 division thereof; nor shall any commissioner serve on any
107 political committee or take any active part in the manage-
108 ment of any political campaign.

**§8-15-13. Recorder ex officio clerk of commission; clerical and
stenographic services.**

1 The recorder of the municipality shall be ex officio clerk
2 of the firemen's civil service commission and shall supply
3 to the commission without extra compensation all neces-
4 sary clerical and stenographic services for the work of the
5 commission.

**§8-15-14. Rooms, stationery, etc., to be furnished by munici-
pality; appropriations required.**

1 It shall be the duty of the mayor and the heads of the

2 departments of government of every municipality having
3 a paid fire department to cause suitable and convenient
4 rooms and accommodations to be assigned and provided,
5 furnished, heated and lighted for carrying on the work
6 and examinations of the commission. The commission may
7 order from the proper authorities the necessary station-
8 ery, postage stamps, official seal and other articles to be
9 supplied, and the necessary printing to be done, for its
10 official use. It shall be the duty of the officers of every
11 such municipality to aid the commission in all proper
12 ways in carrying out the civil service provisions of this
13 article, and to allow the reasonable use of public build-
14 ings, and to heat and light the same, for holding examina-
15 tions and investigations, and in all proper ways to facil-
16 itate the same.

17 All municipalities subject to the civil service provisions
18 of this article are hereby required to appropriate sufficient
19 funds for the purpose of carrying out such provisions.

**§8-15-15. Powers, authority and duties of firemen's civil ser-
vice commission.**

1 The firemen's civil service commission in each munici-
2 pality shall:

3 (1) Prescribe and enforce rules and regulations for
4 carrying into effect the civil service provisions of this
5 article. All rules and regulations so prescribed may, from
6 time to time, be added to, amended or rescinded: *Provided*,
7 That all rules and regulations shall be approved by the
8 mayor and the governing body before they go into effect,
9 but when so approved shall not be changed or rescinded
10 except by the commission with the approval of the mayor
11 and governing body: *Provided, however*, That if the
12 mayor and governing body take no action on a proposed
13 rule and regulation or a proposed change or rescission
14 submitted to them within a period of twenty days from
15 the date of submission, then the same shall become effec-
16 tive as though approved by the mayor and governing
17 body.

18 (2) Keep minutes of its own proceedings, and records
19 of its examinations and other official actions. All recom-
20 mendations of applicants for office, received by the said

21 commission or by any officer having authority to make ap-
22 pointments to office, shall be kept and preserved for a
23 period of ten years, and all such records, recommenda-
24 tions of former employees excepted, and all written causes
25 of removal, filed with it, shall, subject to reasonable regu-
26 lation, be open to public inspection.

27 (3) Make investigations, either sitting as a body or
28 through a single commissioner, concerning all matters
29 touching the enforcement and effect of the civil service
30 provisions of this article and the rules and regulations
31 prescribed hereunder or concerning the action of any
32 examiner or subordinate of the commission or any indi-
33 vidual in the public service with respect to the execution
34 of the civil service provisions of this article; and, in the
35 course of such investigations, each commissioner shall
36 have the power to administer oaths and affirmations, and
37 to take testimony.

38 (4) Have the power to subpoena and require the at-
39 tendance of witnesses, and the production thereby of
40 books and papers pertinent to the investigations and in-
41 quiries herein authorized, and examine them and such
42 public records as it shall require, in relation to any matter
43 which it has the authority to investigate. The fees of such
44 witnesses for attendance and travel shall be the same as
45 for witnesses before the circuit courts of this state, and
46 shall be paid from the appropriation for the incidental ex-
47 penses of the commission. All officers in the public ser-
48 vice, and their deputies, clerks, subordinates and em-
49 ployees shall attend and testify when required to do so
50 by said commission. Any disobedience to, or neglect of,
51 any subpoena issued by the said commissioners, or any
52 one of them, to any person, shall be held a contempt of
53 court, and shall be punished by the circuit court of the
54 county in which the municipality or the major portion of
55 the territory thereof is located, or the judge thereof in
56 vacation, as if such subpoena had been issued therefrom.
57 The judge of such court shall, upon the application of any
58 one of said commissioners, in any such case, cause the
59 process of said court to issue to compel such person or
60 persons disobeying or neglecting any such subpoena to
61 appear and to give testimony and produce evidence be-

62 fore the said commissioners, or any one of them, and shall
63 have the power to punish any such contempt.

64 (5) Make an annual report to the mayor showing its
65 own actions, and its rules and regulations, and all of the
66 exceptions thereto in force, and the practical effects there-
67 of, and any suggestions it may have for the more effectual
68 accomplishment of the purposes of the civil service pro-
69 visions of this article. Such report shall be made available
70 for public inspection within five days after the same shall
71 have been delivered to the mayor of the municipality.

**§8-15-16. Rules and regulations for all examinations; proba-
tionary appointments.**

1 The firemen's civil service commission in each mu-
2 nicipality shall make rules and regulations providing for
3 both competitive and medical examinations for appoint-
4 ments and promotions to all positions in the paid fire
5 department in such municipality, and for such other
6 matters as are necessary to carry out the purposes of the
7 civil service provisions of this article. Any such com-
8 mission shall have the power and authority to require
9 by rules and regulations a physical fitness examination
10 as a part of its competitive examination or as a part
11 of its medical examination. Due notice of the contents
12 of such rules and regulations and of any modifications
13 thereof shall be given, by mail, in due season, to the
14 appointing officer; and said rules and regulations and
15 any modifications thereof shall also be printed for public
16 distribution. All original appointments to any positions
17 in a paid fire department subject to the civil service
18 provisions of this article shall be for a probationary
19 period of six months: *Provided*, That at any time dur-
20 ing the probationary period the probationer may be dis-
21 charged for just cause, in the manner provided in section
22 twenty-five of this article. If, at the close of this proba-
23 tionary term, the conduct or capacity of the probationer
24 has not been satisfactory to the appointing officer, the
25 probationer shall be notified, in writing, that he will
26 not receive absolute appointment, whereupon his em-
27 ployment shall cease; otherwise, his retention in the
28 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 mu-
2 nicipality shall require individuals applying for admission
3 to any competitive examination provided for under the
4 civil service provisions of this article or under the rules
5 and regulations of said commission to file in its office,
6 within a reasonable time prior to the proposed exami-
7 nation, a formal application in which the applicant shall
8 state under oath or affirmation:

9 (1) His full name, residence and post-office address;

10 (2) His United States citizenship, age and the place
11 and date of his birth;

12 (3) His state of health, and his physical capacity for
13 the public service;

14 (4) His business and employments and residences for
15 at least three previous years; and

16 (5) Such other information as may reasonably be
17 required, touching upon the applicant's qualifications
18 and fitness for the public service.

19 Blank forms for such applications shall be furnished
20 by the commission, without charge, to all individuals
21 requesting the same. The commission may require, in
22 connection with such application, such certificates of
23 citizens, physicians and others, having pertinent knowl-
24 edge concerning the applicant, as the good of the service
25 may require.

26 No application for original appointment shall be re-
27 ceived if the individual applying is less than twenty-
28 one years of age or more than thirty-five years of age
29 at the date of his application: *Provided*, That in the
30 event any applicant formerly served upon the paid
31 fire department of the municipality to which he makes
32 application, for a period of more than six months, and
33 resigned from the department at a time when there were
34 no charges of misconduct or other misfeasance pending
35 against such applicant, within a period of two years next
36 preceding the date of his application, and at the time of
37 his application resides within the corporate limits of the
38 municipality in which the paid fire department to which he

39 seeks appointment by reinstatement is located, then
40 such individual shall be eligible for appointment by
41 reinstatement in the discretion of the firemen's civil
42 service commission, even though such applicant shall
43 be over the age of thirty-five years, and such applicant,
44 providing his former term of service so justifies, may
45 be appointed by reinstatement to the paid fire depart-
46 ment without a competitive examination, but such ap-
47 plicant shall undergo a medical examination; and if such
48 individual shall be so appointed by reinstatement to the
49 paid fire department, he shall be the lowest in rank in
50 the department next above the probationers of the de-
51 partment.

52 Any applicant for original appointment must have
53 been a resident for one year, during some period of time
54 prior to the date of his application, of the municipality in
55 which he seeks to become a member of the paid fire de-
56 partment: *Provided*, That if the commission deems it
57 necessary it may consider for original appointment appli-
58 cants who are not residents of the municipality but who
59 have been residents of the county in which the munici-
60 pality or any portion of the territory thereof is located for
61 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.**

1 All competitive examinations for appointments or pro-
2 motions to all positions shall be practical in their char-
3 acter, and shall relate to such matters, and include such
4 inquiries, as will fairly and fully test the comparative
5 merit and fitness of the individual or individuals exam-
6 ined to discharge the duties of the employment sought by
7 him or them. All competitive examinations shall be open
8 to all applicants who have fulfilled the preliminary re-
9 quirements specified in the other civil service provisions
10 of this article.

11 Adequate public notice of the date, time and place of
12 every competitive examination, together with informa-
13 tion as to the kind of position to be filled, shall be given
14 at least one week prior to such competitive examination.

15. The said commission shall adopt reasonable rules and
16 regulations for permitting the presence of representatives
17 of the press at any such competitive examination. The
18 commission shall post, in a public place at its office, the
19 eligible list, containing the names and grades of those who
20 have passed such competitive examinations for positions
21 in the paid fire department, and shall indicate thereon
22 such appointments as may be made from said list.

23 All applicants for appointment or promotion to any
24 position in a paid fire department who have passed the
25 competitive examination specified above shall, before
26 being appointed or promoted, undergo a medical exami-
27 nation which shall be conducted under the supervision of
28 a board composed of two doctors of medicine appointed
29 for such purpose by the mayor of the municipality. Such
30 board must certify that an applicant is free from any
31 bodily or mental defects, deformity or diseases which
32 might incapacitate him from the performance of the
33 duties of the position desired and is physically fit to per-
34 form such duties before said applicant shall be appointed
35 or promoted to any position. Notwithstanding the first
36 sentence of this paragraph, in the event the commission
37 deems it expedient, the medical examination may be
38 given prior to the competitive examination, and if the
39 medical examination is not passed as aforesaid, the ap-
40 plicant shall not be admitted to the competitive examina-
41 tion.

§8-15-19. Refusal to examine or certify; review thereof.

1 The commission may refuse to examine an applicant,
2 or after examination to certify as eligible one, who is
3 found to lack any of the established preliminary require-
4 ments for the examination or position for which he ap-
5 plies; or who is physically so disabled as to be rendered
6 unfit for the performance of the duties of the position
7 desired; or who is addicted to the habitual use of intoxi-
8 cating liquors or drugs; or who has been guilty of any
9 crime or of infamous or notoriously disgraceful conduct;
10 or who has been dismissed from public service for de-
11 linquency or misconduct; or who has made a false state-
12 ment of any material fact, or practiced or attempted to

13 practice any deception or fraud, in his application, in any
14 such examination, or in securing his eligibility; or who
15 refuses to comply with the rules and regulations of the
16 commission.

17 If any applicant feels aggrieved by the action of the
18 commission in refusing to examine him, or after an ex-
19 amination in refusing to certify him as an eligible, the
20 commission shall, at the request of such applicant, appoint
21 a date, time and place for a public hearing; at which time
22 such applicant may appear, by himself or counsel, or
23 both, and the commission shall then review its refusal
24 to make such examination or certification, and testimony
25 shall be taken. The commission shall subpoena, at the
26 expense of the applicant, any competent witnesses re-
27 quested by him. After such review, the commission shall
28 file in its records the testimony taken, and shall again
29 make a decision, which decision shall be final and not
30 subject to judicial review, but under no circumstances
31 shall the provisions of this article be construed, in the case
32 of a refusal to examine an applicant for promotion or to
33 certify an applicant as eligible for promotion, as de-
34 priving such applicant of his right to seek a writ of man-
35 damus, if the application for such writ is made within
36 twenty days from the date of the decision refusing to
37 examine or to certify him as eligible for promotion.

**§8-15-20. Appointments from list of eligibles; special exami-
nations for electricians or mechanics.**

1 Every position, unless filled by promotion, reinstate-
2 ment or reduction, shall be filled only in the manner speci-
3 fied in this section. The appointing officer shall notify
4 the firemen's civil service commission of any vacancy in
5 a position which he desires to fill, and shall request the
6 certification of eligibles. The commission shall forthwith
7 certify, from the eligible list, the names of the three indi-
8 viduals thereon who received the highest averages at
9 preceding competitive examinations held under the civil
10 service provisions of this article within a period of three
11 years next preceding the date of the prospective appoint-
12 ment. The appointing officer shall, thereupon, with sole
13 reference to the relative merit and fitness of the candi-

14 dates, make an appointment from the three names so
15 certified: *Provided*, That should he make objection, to the
16 commission, to one or more of these individuals, for any
17 of the reasons stated in section nineteen of this article, and
18 should such objection be sustained by the commission,
19 after a public hearing along the lines of the hearing pro-
20 vided for in section nineteen, if any such hearing is re-
21 quested, the commission shall thereupon strike the name
22 of any such individual from the eligible list, and certify
23 the next highest name for each individual so stricken. As
24 each subsequent vacancy occurs, in the same or another
25 position, precisely the same procedure shall be followed:
26 *Provided, however*, That after any name has been three
27 times rejected for the same or another position in favor
28 of a name or names below it on the same list, the said
29 name shall be stricken from the list. When there are a
30 number of positions of the same kind to be filled at the
31 same time, each appointment shall, nevertheless, be made
32 separately and in accordance with the foregoing pro-
33 visions. When an appointment is made under the pro-
34 visions of this section it shall be, in the first instance, for
35 the probationary period of six months, as provided in
36 section sixteen of this article: *Provided further*, That in
37 the event any position as an electrician or mechanic is to
38 be filled in any paid fire department, then the examina-
39 tions to be given to applicants for either position shall be
40 so drawn as to test only the qualifications of such appli-
41 cants in regard to their ability as electricians or mechan-
42 ics, such examinations to be special examinations.

§8-15-21. Noncompetitive examination for filling vacancy; provisional appointment.

1 Whenever there are urgent reasons for filling a vacancy
2 in any position in a paid fire department and there is no
3 list of individuals eligible for appointment after a com-
4 petitive examination, the appointing officer may nominate
5 an individual to the firemen's civil service commission for
6 noncompetitive examination; and if such nominee shall
7 be certified by the said commission as qualified, after such
8 noncompetitive examination and a medical examination,
9 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 promotion.

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 religious 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 departments prohibited.

1 No member of any paid fire department shall engage
2 in any political activity of any kind, character or nature

3 whatsoever, except to cast his vote at any election, or
4 shall act as an election official in any election, municipal,
5 county or state. Any member of any paid fire department
6 violating the provisions of this section shall have his ap-
7 pointment vacated and he shall be removed in accordance
8 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.**

1 (a) No member of any paid fire department subject
2 to the civil service provisions of this article shall be
3 removed, discharged, suspended or reduced in rank or
4 pay except for just cause, which shall not be religious
5 or political, except as hereinbefore provided in section
6 twenty-four of this article; and no such member shall
7 be removed, discharged, suspended or reduced except as
8 provided by the civil service provisions of this article, and
9 in no event until he shall have been furnished with a
10 written statement of the reasons for such action. For
11 the purpose of the remainder of this subsection and sub-
12 sections (b) and (c) of this section, the term "suspension"
13 shall mean only (1) a suspension in excess of fifteen
14 days, or (2) a suspension in any calendar year which
15 when added to any previous suspension or suspensions
16 within the same calendar year results in a total period
17 of suspension in excess of fifteen days within such same
18 calendar year, and for the purpose of the remainder of
19 this subsection and said subsections (b) and (c), a
20 member shall not be considered to be suspended or
21 sought to be suspended unless his suspension meets the
22 foregoing definition of said term. In every case of such
23 removal, discharge, suspension or reduction, a copy of
24 the statement of reasons therefor and of the written
25 answer thereto, if the member sought to be removed,
26 discharged, suspended or reduced desires to file such
27 written answer, shall be furnished to the firemen's civil
28 service commission and entered upon its records. If the
29 member sought to be removed, discharged, suspended
30 or reduced shall demand it, the commission shall grant
31 him a public hearing, which hearing shall be held within
32 a period of ten days from the filing of the charges in

33 writing or the written answer thereto, whichever shall
34 last occur. At such hearing the burden shall be upon
35 the removing, discharging, suspending or reducing offi-
36 cer, hereinafter in this section referred to as "removing
37 officer," to justify his action, and in the event the re-
38 moving officer fails to justify his action before the com-
39 mission, then the member removed, discharged, sus-
40 pended or reduced shall be reinstated with full pay,
41 forthwith and without any additional order, for the
42 entire period during which he may have been prevented
43 from performing his usual employment, and no charges
44 shall be officially recorded against his record. A written
45 record of all testimony taken at such hearing shall be
46 kept and preserved by the commission, which record
47 shall be sealed and not be open to public inspection, if
48 no appeal be taken from the action of the commission.

49 (b) In the event that the commission shall sustain
50 the action of the removing officer the member removed,
51 discharged, suspended or reduced shall have an imme-
52 diate right of appeal to the circuit court of the county
53 wherein the municipality or the major portion of the
54 territory thereof is located. In the event that the com-
55 mission shall reinstate the member removed, discharged,
56 suspended or reduced, the removing officer shall have
57 an immediate right of appeal to said circuit court. Any
58 appeal must be taken within ninety days from the date
59 of entry by the commission of its final order; upon an
60 appeal being taken and docketed with the clerk of the
61 circuit court of said county, the circuit court shall pro-
62 ceed to hear the appeal upon the original record made
63 before the commission and no additional proof shall be
64 permitted to be introduced. The circuit court's decision
65 shall be final, but the member or removing officer, as
66 the case may be, against whom the decision of the circuit
67 court is rendered shall have the right to petition the
68 supreme court of appeals for a review of the circuit
69 court's decision, as in other civil cases. Such member or
70 removing officer shall also have the right, where appro-
71 priate, to seek in lieu of an appeal, a writ of mandamus.

72 (c) The removing officer and the member sought to
73 be removed, discharged, suspended or reduced shall at

74 all times, both before the commission and upon appeal,
75 be given the right to employ counsel to represent them.

76 (d) If for reasons of economy or other reasons it
77 shall be deemed necessary by any such municipality to
78 reduce the number of paid members of its paid fire
79 department, said municipality shall follow the procedure
80 set forth in this subsection (d). The reduction in
81 members of the said paid fire department of said mu-
82 nicipality shall be effected by suspending the last man
83 or men, including probationers, who have been appointed
84 to said paid fire department. Such removal shall be
85 accomplished by suspending the number desired in the
86 inverse order of their appointment: *Provided*, That in
87 the event the said paid fire department shall again be
88 increased in numbers to the strength existing prior to
89 such reduction of members the said members suspended
90 under the terms of this subsection shall be reinstated
91 in the inverse order of their suspension before any new
92 appointment to said paid fire department shall be made.

§8-15-26. Offenses and penalties.

1 Any individual who makes an appointment or promo-
2 tion to any position, or selects an individual for employ-
3 ment, contrary to the civil service provisions of this arti-
4 cle, or wilfully refuses or neglects otherwise to comply
5 with, or to conform to, any of the civil service provisions
6 of this article, or violates any of such provisions, shall be
7 deemed guilty of a misdemeanor.

8 Any commissioner or examiner, or any other individ-
9 ual, who shall wilfully, by himself or in cooperation with
10 one or more persons, defeat, deceive or obstruct any in-
11 dividual with respect to his right of examination or regis-
12 tration according to the civil service provisions of this
13 article, or to any rules and regulations prescribed pur-
14 suant thereto, or who shall wilfully or corruptly, falsely
15 mark, grade, estimate, or report upon any such examina-
16 tion or proper standing of any individual so examined,
17 registered or certified, pursuant to the civil service pro-
18 visions of this article, or aid in so doing, or who shall
19 wilfully or corruptly furnish to any individual any special
20 or secret information, for the purpose of either improv-

21 ing or injuring the prospects or chances of appointment
22 or promotion to any position of any individual so exam-
23 ined, registered or certified, or to be so examined, regis-
24 tered or certified, or who shall impersonate any other
25 individual, or permit or aid in any manner any other
26 individual to impersonate him, in connection with any
27 such examination or registration, or application or re-
28 quest to be examined or registered, shall, for each offense,
29 be deemed guilty of a misdemeanor.

30 Any person convicted of any such misdemeanor offense
31 shall be punished by a fine of not less than fifty dollars,
32 nor more than one thousand dollars, or by imprisonment
33 for a term not exceeding one year, or by both such fine
34 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.**

1 All acts, whether general, special, local or special legis-
2 lative charters, or parts thereof, in relation to any civil
3 service measure affecting any paid fire department incon-
4 sistent with the civil service provisions of this article
5 shall be, and the same are, hereby repealed insofar as such
6 inconsistencies shall exist. It is intended by the civil
7 service provisions of this article to furnish a complete and
8 exclusive system for the appointment, promotion, rein-
9 statement, removal, discharge, suspension and reduction
10 of all members of all paid fire departments in all munici-
11 palities. The status or tenure of all members of any paid
12 fire department, which members were employed on the
13 effective date of this article, shall not be affected by the
14 enactment of this article, but all such members shall be
15 subject to all of the civil service provisions of this article
16 with like effect as if they had been appointed members
17 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.

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- §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.
§8-16-15. How proceeds of bonds applied.
§8-16-16. Bonds secured by trust indenture between municipality or municipalities and corporate trustee.
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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.
§8-16-26. Construction of power and authority conferred.
§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
2 works" or "works" or "projects" shall be construed to
3 mean and include the construction, reconstruction, es-
4 tablishment, acquisition, improvement, renovation, ex-
5 tension, enlargement, increase, equipment, maintenance,
6 repair (including replacements) and operation of jails,
7 jail facilities, municipal buildings, police stations, fire
8 stations, libraries, museums, other public buildings, in-
9 cinerator plants, land fill or other garbage disposal sys-
10 tems, hospitals, piers, docks, terminals, airports, drain-
11 age systems, flood control systems, flood walls, culverts,
12 bridges (including approaches, causeways, viaducts, un-
13 derpasses and connecting roadways), public markets,
14 cemeteries, motor vehicle parking facilities (including
15 parking lots, buildings, ramps, curb-line parking, meters
16 and other facilities deemed necessary, appropriate, use-
17 ful, convenient or incidental to the regulation, control
18 and parking of motor vehicles), stadiums, gymnasiums,
19 sports arenas, auditoriums, public recreation centers,
20 public recreation parks, swimming pools, roller skating
21 rinks, ice skating rinks, tennis courts, golf courses, polo
22 grounds, or the grading, regrading, paving, repaving, sur-
23 facing, resurfacing, curbing, recurbing, widening or other-
24 wise improving of any street, avenue, road, alley or way,
25 or the building or renewing of sidewalks, where such
26 works or projects will be made self-supporting, and the
27 cost thereof, together with the interest thereon, will be
28 returned within a reasonable period, not exceeding forty
29 years, by means of tolls, fees, rents, special assessments
30 or charges other than taxation; and the terms shall mean
31 and include any works or project as a whole, and all
32 integral parts thereof, including all necessary, appro-
33 priate, useful, convenient or incidental appurtenances and
34 equipment in connection with any one or more of the
35 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 munici-
2 palities acting jointly, whether situate in the same county
3 or different counties, are, hereby empowered and au-
4 thorized to construct, reconstruct, establish, acquire,
5 improve, renovate, extend, enlarge, increase, own, equip,
6 repair (including replacements), maintain and operate
7 any municipal public works, together with all appur-
8 tenances necessary, appropriate, useful, convenient or
9 incidental for or to the maintenance and operation of
10 such works, and shall have plenary power and authority
11 to acquire by gift, grant, purchase, condemnation or other-
12 wise, and thereafter hold, all necessary lands, rights,
13 easements, right-of-ways, franchises and other property
14 therefor within or without, or partly within and partly
15 without, the corporate limits of any such municipality
16 or municipalities, and to issue revenue bonds to pay the
17 costs of such public works and properties: *Provided,*
18 That this section shall not be construed to authorize any
19 municipality to construct, reconstruct, establish, acquire,
20 improve, renovate, extend, enlarge, increase, own, equip,
21 repair (including replacements), maintain or operate any
22 works which would render a service already being ade-
23 quately rendered within such municipality. No obli-
24 gation shall be incurred by any municipality in such
25 construction, reconstruction, establishment, acquisition,
26 improvement, renovation, extension, enlargement or in-
27 crease, except such as is payable solely from the funds
28 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
2 parking facility, any municipality involved therein shall
3 have the plenary power and authority, in order to help
4 finance the same, to use any revenue derived from other
5 parking meters or other parking facilities, unless such
6 revenue is otherwise pledged to pay for such other park-
7 ing meters or other parking facilities.

8 When the municipal public works is a jail facility used
9 for municipal prisoners, any municipality involved there-
10 in shall have the power and authority, in order to help
11 finance the same, to pledge, for a period not to exceed
12 twenty years, the proceeds derived from the imposition
13 of fines and fees.

14 When the cost of the municipal public works is to be
15 paid by special assessment against the abutting prop-
16 erty, represented by assessment certificates which con-
17 stitute a lien upon such property and said assessment
18 certificates are pledged by any municipality to retire
19 revenue bonds issued and sold to pay the cost thereof,
20 the payor of such assessment certificate shall have the
21 right to pay the same at any time before maturity, to-
22 gether with interest thereon to date of payment, and
23 upon the payment of such assessment certificate the treas-
24 urer of such municipality shall deliver to the payor a
25 release for such lien, and the funds received therefrom
26 shall by said treasurer be deposited in a special fund to
27 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, ac-
2 quisition, improvement, renovation, extension, enlarge-
3 ment, increase, equipment, repair (including replace-
4 ments), custody, maintenance and operation of any such
5 works, and the collection of revenues therefrom, shall
6 be under the supervision and control of the governing
7 body, or of a committee, by whatever name called, com-
8 posed of all or a portion of the governing body when
9 only one municipality is involved, or of a board or
10 commission appointed by such governing body when
11 only one municipality is involved or appointed by the
12 governing bodies when two or more municipalities take
13 joint action under the provisions of this article, as may
14 be provided by the governing body or bodies.

15 When such supervision and control are vested in a
16 committee, board or commission, the governing body or

17 bodies, as the case may be, may provide, by ordinance
18 or ordinances, for said committee, board or commission
19 to exercise such of the functions of the governing body
20 or bodies in connection with the matter as it or they
21 deem proper, and may provide for said committee, board
22 or commission to receive such compensation as such
23 body or bodies may deem proper, all of which author-
24 ity and compensation shall be specifically provided for
25 by ordinance or ordinances. Any such committee, board
26 or commission shall consist of the number of members
27 fixed in the ordinance or ordinances creating the same,
28 and the manner and mode of the selection and appoint-
29 ment of the members of any such board or commission
30 shall be stated in such ordinance or ordinances. The
31 members of any such board or commission appointed
32 by the governing body or bodies shall be chosen without
33 regard to their political affiliations, but with regard to
34 their business and professional experience or standing
35 as citizens in the community. All compensation and ex-
36 penses, including attorney's fees, of such committee, board
37 or commission shall be paid solely from funds provided
38 under the authority of this article. Any such committee,
39 board or commission shall have the power to establish
40 bylaws, rules and regulations for its own government.

41 When hereinafter used in this article, the term "board"
42 shall be construed to mean the governing body or com-
43 mittee composed of all or a portion of the governing body
44 when only one municipality is involved, or a board or
45 commission appointed by the governing body when only
46 one municipality is involved or appointed by the gov-
47 erning bodies when two or more municipalities take joint
48 action under the provisions of this article, as the case
49 may be. When two or more municipalities take joint
50 action under the provisions of this article each govern-
51 ing body shall appoint to the board the number of mem-
52 bers which the governing bodies have agreed shall be
53 appointed by each such governing body.

54 The governing body or bodies also, in its or their dis-
55 cretion, may provide by ordinance or ordinances for the
56 leasing of a municipal public works and provide for the
57 custody, maintenance and operation thereof by a lessee

58 in accordance with the provisions of such ordinance or
59 ordinances and lease contract executed pursuant thereto:
60 *Provided*, That the lessee shall pay to the municipality
61 or municipalities for the use and occupancy of such
62 municipal public works so leased an amount sufficient
63 to provide a sinking fund for the payment of the bonds
64 and the interest thereon and all other charges mentioned
65 in section seventeen of this article.

PART III. GENERAL POWERS AND AUTHORITY.

§8-16-5. Powers of board.

1 The board shall have plenary power and authority to
2 take all steps and proceedings, and to make and enter
3 into all contracts or agreements necessary, appropriate,
4 useful, convenient or incidental to the performance of
5 its duties and the execution of its powers and authority
6 under this article: *Provided*, That any contract or agree-
7 ment relating to the financing, or the construction, re-
8 construction, establishment, acquisition, improvement,
9 renovation, extension, enlargement, increase or equip-
10 ment of any such works, and any trust indenture with
11 respect thereto as hereafter provided for, shall be ap-
12 proved by the governing body or bodies.

13 The board may employ engineers, architects, inspec-
14 tors, superintendents, managers, collectors, attorneys and
15 such other employees as in its judgment may be neces-
16 sary in the execution of its powers and duties, and may
17 fix their compensation, all of whom shall do such work
18 as the board may direct. All such compensation and
19 expenses incurred in carrying out the provisions of this
20 article shall be paid solely from funds provided under
21 the authority of this article, and the board shall not exer-
22 cise or carry out any power or authority herein given
23 it so as to bind said board or any municipality beyond
24 the extent to which money shall have been, or may be
25 provided under the authority of this article. No contract
26 or agreement with any contractor or contractors for labor
27 or materials, or both, exceeding in amount the sum of
28 one thousand dollars shall be made without advertising
29 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

5 public works, the governing body, or the governing body
6 of each participating municipality, shall enact an or-
7 dinance or ordinances, which shall (a) set forth a brief and
8 general description of the works, including a reference to
9 the preliminary report or plans and specifications which
10 shall theretofore have been prepared; (b) set forth the
11 estimated cost thereof; (c) order the construction, recon-
12 struction, establishment, acquisition, improvement, ren-
13 ovation, extension, enlargement, increase, equipment or
14 repair (including replacements) of such works; (d) direct
15 that municipal revenue bonds be issued pursuant to this
16 article, in such amount as may be found necessary to pay
17 the cost of the works; and (e) contain such other provi-
18 sions as may be necessary or proper in the premises.
19 When two or more municipalities take joint action under
20 the provisions of this article, a certified copy of each such
21 ordinance shall be filed in the office of the clerk of the
22 county court of the county or counties in which the mu-
23 nicipalities are located and in the office of the state tax
24 commissioner, and when any such municipality is located
25 in more than one county, the filing for that municipality
26 shall be in the office of the clerk of the county court in
27 which the major portion of the territory of such munici-
28 pality is located. Before any such ordinance shall become
29 effective, it shall be published as a Class II legal adver-
30 tisement in compliance with the provisions of article
31 three, chapter fifty-nine of this code, and the publication
32 area for such publication shall be such municipality or
33 each such municipality, as the case may be. Said notice
34 shall specify a date, time and place for a public hearing,
35 the date being not less than ten days after the first publi-
36 cation of said notice at which time and place all parties
37 and interests may appear before the governing body of
38 the municipality or each such municipality and may be
39 heard as to whether or not said ordinance shall be put into
40 effect. At such hearing all objections and suggestions shall
41 be heard and the governing body or each such governing
42 body shall take such action as it or they shall deem proper
43 in the premises: *Provided*, That if at any such hearing
44 written protest is filed by thirty percent or more of the
45 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

27 to accept and pay for the property, but such undertaking
28 or security shall impose no liability upon any such mu-
29 nicipality, except such as may be paid from the funds
30 provided under the authority of this article.

31 In the event of acquisition by purchase, the board may
32 obtain and exercise an option from the owners of said
33 property for the purchase thereof, and may enter into a
34 contract for the purchase thereof, and such purchase may
35 be made upon such terms and conditions, and in such
36 manner as the board may deem proper: *Provided, how-*
37 *ever,* That the exercise of such option, or the contract for
38 such purchase, or such purchase shall in no event create
39 any obligation of any such municipality, or create any
40 debt, liability or claim, except such as may be discharged
41 or paid from the funds provided under the authority of
42 this article.

43 In the event of the acquisition of any works already
44 constructed by purchase or condemnation, the board at
45 or before the time of the adoption of any ordinance de-
46 scribed in section seven hereof, shall cause to be deter-
47 mined what reconstruction, improvement, renovation, ex-
48 tension, enlargement, increase, equipment or repair (in-
49 cluding replacements) will be necessary, in order that
50 such works may be effective for their purpose, and an
51 estimate of the cost thereof shall be included in the esti-
52 mate of the cost required by section seven hereof, and the
53 same shall be made upon the acquisition of the works and
54 as a part of the cost thereof: *Provided further,* That no
55 municipality or municipalities shall, under the authority
56 conferred by this article, condemn any existing privately
57 owned works in operation at the date of the condemna-
58 tion.

PART V. REVENUE BOND FINANCING.

§8-16-9. Bonds for improvements, etc., of works.

1 Whenever any municipality or municipalities now, or
2 hereafter, shall own and maintain and operate any of the
3 works herein referred to, whether constructed, recon-
4 structed, established or acquired under the provisions of
5 this article or not, and shall desire to improve, renovate,
6 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 feasi-
14 bility 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-
able from proceeds of bonds; exemption from
taxation.**

1 Nothing in this article contained shall be so construed
2 as to authorize or permit any municipality or municipi-
3 palities to make any contract or incur any obligation of
4 any kind or nature, except such as shall be discharged or
5 payable solely from the funds provided under the author-
6 ity of this article. Funds for the payment of the entire

7 cost of the works shall be provided by the issuance of
8 revenue bonds of the municipality or municipalities, the
9 principal and interest of which bonds shall be payable
10 solely from the special fund for such payment herein pro-
11 vided for, and said bonds shall not in any respect be a
12 corporate indebtedness of such municipality or municipa-
13 lities. All such bonds and the interest thereon, and all
14 properties and revenues and income derived from such
15 municipal public works, shall be exempt from all taxa-
16 tion by this state, or any county, municipality, political
17 subdivision or agency thereof. All of the details of such
18 bonds and the issuance thereof shall be determined by
19 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.**

1 Such revenue bonds shall bear interest at not more than
2 six percent per annum, payable annually, or at shorter
3 intervals, and shall mature at such time or times, not ex-
4 ceeding forty years, as may be determined by the or-
5 dinance or ordinances authorizing the issuance of such
6 bonds. Such bonds may be made redeemable before ma-
7 turity, at the option of the municipality or municipalities
8 issuing the same, to be exercised by said board, at not
9 more than the par value thereof, and at a premium of
10 not more than five percent, under such terms and condi-
11 tions as may be fixed by the ordinance or ordinances
12 authorizing the issuance of the bonds. The principal and
13 interest of the bonds may be made payable in any lawful
14 medium. Such ordinance or ordinances shall determine
15 the form of the bonds, including the interest coupons to
16 be attached thereto, and shall fix the denomination or
17 denominations of such bonds, and the place or places of
18 the payment of the principal and interest thereof, which
19 may be at any banking institution or trust company with-
20 in or without the state. When two or more municipalities
21 take joint action under the provisions of this article, the
22 bonds shall be issued by the participating municipalities
23 either as separate or joint bonds, as the governing bodies
24 thereof may agree, and when separate bonds are issued,

25 the amount of the bonds to be issued by each participating
26 municipality shall be fixed by agreement of the governing
27 bodies of the participating municipalities set forth in the
28 ordinance of each participating municipality authorizing
29 the issuance of such bonds. The bonds shall contain a
30 statement on their face that the municipality or municipi-
31 palities issuing the same shall not be obligated to pay the
32 same, or the interest thereon, except from the special
33 fund derived from the net revenue of the works, or the
34 pro rata part thereof, as provided for in section eleven
35 hereof. All such bonds shall be, and shall have and are
36 hereby declared to have all the qualities and incidents of,
37 negotiable instruments, under the Uniform Commercial
38 Code of this state. Provision may be made for the registra-
39 tion of any of the bonds in the name of the owner as to
40 principal alone; but bonds shall be executed in such man-
41 ner as the governing body or bodies may direct. The bonds
42 shall be sold by the governing body or bodies in such
43 manner as may be determined to be for the best interest
44 of the municipality or municipalities: *Provided*, That said
45 bonds shall not be negotiated at a price lower than a
46 price which when computed to maturity upon standard
47 tables of bond values will show a net return of more than
48 six percent per annum to the purchaser upon the amount
49 paid therefor. Any surplus of the bond proceeds over and
50 above the cost of the project shall be paid into the sink-
51 ing fund hereinafter provided for. If the proceeds of the
52 bonds, by error or calculation or otherwise, shall be less
53 than the cost of the project, additional bonds may in like
54 manner be issued to provide the amount of such deficit,
55 and, unless otherwise provided in the ordinance or or-
56 dinances authorizing the issuance of the bonds first issued,
57 or in the trust indenture hereinafter authorized, shall be
58 deemed to be of same issue, and shall be entitled to pay-
59 ment without preference or priority of the bonds first
60 issued; and if any preference or priority of the bonds
61 first issued is provided for in the ordinance or ordinances
62 authorizing the issuance of the bonds first issued or in said
63 trust indenture, such preference or priority shall not ex-
64 tend to an amount exceeding ten percent of the original
65 issue. Prior to the preparation of the definite bonds, in-

66 term certificates may, under like restrictions, be issued
67 with or without coupons exchangeable for definite bonds
68 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
2 shall in any event be personally liable upon any contract
3 or obligation of any kind or character executed under the
4 authority herein contained, even if said undertaking
5 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
2 ordinance or ordinances authorizing the issuance of the
3 bonds or in the trust indenture hereinafter referred to,
4 that additional bonds may thereafter be authorized and
5 issued at one time, or from time to time, under such
6 limitations and restrictions as may be set forth in said
7 ordinance or ordinances, or trust indenture, or all of these,
8 for the purpose of improving, renovating, extending, en-
9 larging, increasing, equipping or repairing (including re-
10 placements) the works when deemed necessary in the
11 public interest, such additional bonds to be secured, and
12 be payable from the revenues of the works, as provided
13 for in section nine of this article.

§8-16-15. How proceeds of bonds applied.

1 All moneys received from the sale of any bonds issued
2 under the authority of this article, after reimbursements
3 and repayments to said municipality or municipalities of
4 all amounts advanced for preliminary expenses, as pro-
5 vided in section six of this article, shall be applied solely
6 to the payment of the cost of the project, or to the appur-
7 tenant sinking fund, and there shall be, and there is here-
8 by, created and granted a lien upon such moneys, until so
9 applied, in favor of the holders of the bonds or the trustees
10 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
2 body or bodies such bonds may be secured by a trust in-

3 denture by and between such municipality or municipali-
4 ties and a corporate trustee, which may be a trust com-
5 pany or banking institution having powers of a trust
6 company within or without the state. The ordinance or
7 ordinances authorizing the issuance of the revenue bonds,
8 and fixing the details thereof, may provide that such trust
9 indenture may contain such provisions for protecting and
10 enforcing the rights and remedies of bondholders as may
11 be reasonable and proper, not in violation of law, includ-
12 ing covenants setting forth the duties of the municipality
13 or municipalities and the board in relation to the con-
14 struction, reconstruction, establishment, acquisition, im-
15 provement, renovation, extension, enlargement, increase
16 and equipment of the project and the repair (including
17 replacements), maintenance, operation and insurance
18 thereof, and the custody, safeguarding and application of
19 all moneys, and may provide that the project shall be
20 contracted for, carried out and paid for, under the
21 supervision and approval of the consulting engineers em-
22 ployed or designated by the board and satisfactory to the
23 original bond purchasers, their successors, assignees or
24 nominees, who may be given the right to require the
25 security given by contractors and by any depository of
26 the proceeds of bonds or revenues of the works or other
27 moneys pertaining thereto be satisfactory to such pur-
28 chasers, their successors, assignees or nominees. Such in-
29 denture may set forth the rights and remedies of the
30 bondholders or such trustee, or both. Except as in this
31 article otherwise provided, the governing body or bodies
32 may provide by ordinance or ordinances or in such trust
33 indenture for the payment of the proceeds of the sale of
34 the bonds and the revenues of the works to such officer,
35 board or depository, as such body or bodies may deter-
36 mine for the custody thereof, and for the method of dis-
37 tribution thereof, with such safeguards and restrictions as
38 such body or bodies may determine.

**§8-16-17. Sinking fund; sinking fund commission; purchase of
outstanding bonds.**

1 Before the issuance of any such bonds, the governing
2 body or bodies shall, by ordinance or ordinances, pro-

3 vide for a sinking fund for the payment of the bonds and
4 the interest thereon, and the payment of the charges of
5 banking institutions or trust companies for making
6 payment of such bonds and interest, out of the net
7 revenues of said works, and shall set aside and pledge a
8 sufficient amount of the net revenues of the works hereby
9 defined to mean the revenues of the works remaining
10 after the payment of the reasonable expenses of repair
11 (including replacements), maintenance and operation,
12 such amount to be paid by the board into the sinking fund
13 at intervals, to be determined by ordinance or ordinances
14 adopted prior to the issuance of the bonds, for (a) the
15 interest upon such bonds as such interest shall fall due;
16 (b) the necessary fiscal agency charges for paying bonds
17 and interest; (c) the payment of the bonds as they fall
18 due, or if all bonds mature at one time, the proper main-
19 tenance of a sinking fund sufficient for the payment there-
20 of at such time; and (d) a margin for safety and for the
21 payment of premium upon bonds retired by call or
22 purchase as herein provided, which margin, together with
23 unused surplus of such margin carried forward from the
24 preceding year, shall equal ten percent of all other
25 amounts so required to be paid into the sinking fund.
26 Such required payments shall constitute a first charge
27 upon all the net revenues of the works. Prior to the is-
28 suance of the bonds, the board may, by ordinance or
29 ordinances, be given the right to use or direct the trustee
30 or the state sinking fund commission to use such sinking
31 fund, or any part thereof, in the purchase of any of the
32 outstanding bonds payable therefrom, at the market
33 prices thereof, but not exceeding the price, if any, at
34 which the same shall in the same year be payable or re-
35 deemable, and all bonds redeemed or purchased shall
36 forthwith be cancelled, and shall not again be issued.
37 After the payments into the sinking fund as herein re-
38 quired, the board may at any time in its discretion trans-
39 fer all or any part of the balance of the net revenues,
40 after reserving an amount deemed by the board sufficient
41 for repair (including replacements), maintenance and
42 operation for an ensuing period of not less than twelve
43 months and for depreciation, into the sinking fund, or into

44 a fund for improvement, renovation, extension, enlarge-
45 ment, increase or equipment for or to the works.

46 All amounts for the sinking fund and interest, as and
47 when set apart for the payment of same, shall be remitted
48 to the state sinking fund commission at such periods as
49 shall be designated in the ordinance or ordinances, but in
50 any event at least thirty days previous to the time interest
51 or principal payments become due, to be retained and
52 paid out by said commission consistent with the provi-
53 sions of this article and the ordinance or ordinances pur-
54 suant to which such bonds have been issued. The state
55 sinking fund commission is hereby authorized to act as
56 fiscal agent for the administration of such sinking fund
57 under any ordinance or ordinances passed or adopted pur-
58 suant to the provisions of this article and shall invest all
59 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 au-
2 thority and it shall be its duty, by ordinance, to establish
3 and maintain just and equitable rates or charges for the
4 use and services rendered, or the improvement or protec-
5 tion of property provided or afforded, by such works, to be
6 paid by the person using the same, receiving the services
7 thereof, or owning the property improved or protected
8 thereby, and may readjust such rates or charges from
9 time to time. When two or more municipalities take joint
10 action under the provisions of this article, such rates or
11 charges shall be established by each participating munici-
12 pality, with the concurrence of the other participating
13 municipality or municipalities as to the amount of such
14 rates or charges, and such rates or charges may be the
15 same with respect to each municipality, or they may be
16 different.

17 Rates or charges heretofore or hereafter established and
18 maintained for the improvement or protection of property,
19 provided or afforded by a municipal flood control system
20 or flood walls, to be paid by the person owning the
21 property improved or protected thereby, shall be collect-
22 ible and enforceable from the time provided in any such

23 ordinance, any provision of this or any other law to the
24 contrary notwithstanding, if, at such time, such works,
25 though not yet fully completed, are nearing completion
26 and such governing body is reasonably assured that such
27 works will be completed and placed in operation without
28 unreasonable delay.

29 All rates or charges shall be sufficient in each year for
30 the payment of the proper and reasonable expenses of
31 repair (including replacements), maintenance and opera-
32 tion of the works, and for the payment of the sums herein
33 required to be paid into the sinking fund.

34 Revenues collected pursuant to the provisions of this
35 section shall be deemed the revenues of the works. No
36 such rates or charges shall be established until after a
37 public hearing at which all the users of the works and
38 owners of the property served, or to be served thereby,
39 and others interested, shall have an opportunity to be
40 heard concerning the proposed rates or charges. After in-
41 troduction of the proposed ordinance fixing such rates or
42 charges and before the same is finally adopted, notice of
43 such hearing, setting forth the proposed schedule of such
44 rates or charges, shall be given by publishing the same as
45 a Class I-0 legal advertisement in compliance with the
46 provisions of article three, chapter fifty-nine of this code,
47 and the publication area for such publication shall be
48 such municipality or each such municipality, as the case
49 may be. Said notice shall be published at least five days
50 before the date fixed in such notice for the hearing, which
51 hearing may be adjourned from time to time. No other
52 or further notice to parties in interest shall be required.
53 After such hearing the ordinance establishing rates or
54 charges, either as originally proposed or introduced, or
55 as modified and amended, shall be adopted and put into
56 effect. A copy of the schedule of such rates and charges so
57 established shall be kept on file in the office of the board
58 having charge of such works, and also in the office of
59 the governing body or bodies, and shall be open to inspec-
60 tion by all parties in interest. The rates or charges so
61 established for any class of users or property served shall
62 be extended to cover any additional class of users or
63 property thereafter served which fall within the same

64 class, without the necessity of any hearing or notice. Any
65 change or adjustment of rates or charges may be made
66 in the same manner as such rates or charges were origi-
67 nally established as hereinabove provided. The aggregate
68 of the rates or charges shall always be sufficient for the
69 expenses of repair (including replacements), maintenance
70 and operation, and for the sinking fund payments. If any
71 rate or charge so established shall not be paid within
72 thirty days after the same is due, the amount thereof may
73 be recovered by the board in a civil action in the name
74 of the municipality or municipalities, and in the case of
75 charges due for services rendered, such charges, if not
76 paid when due, may, if the governing body so provide in
77 the ordinance provided for under section seven of this
78 article, constitute a lien upon the premises served by such
79 works, which lien may be foreclosed against such lot,
80 parcel of land or building so served, in accordance with
81 the laws relating to the foreclosure of liens on real
82 property. Upon failure of any person receiving any such
83 service to pay for the same when due, the board may dis-
84 continue such service without notice.

§8-16-19. Appeal to public service commission from rates fixed.

1 If any party in interest is dissatisfied with the rates
2 fixed under the provisions of the immediately preceding
3 section of this article, such party shall have the right to
4 appeal to the public service commission at any time
5 within thirty days after the fixing of such rates by the
6 governing body, but the rates so fixed by the governing
7 body shall remain in full force and effect, until set aside,
8 altered or amended by the public service commission.

PART VII. ACCOUNTING SYSTEM AND RECORDS.

§8-16-20. Accounting system; yearly audit; custodian of funds.

1 Any municipality or municipalities issuing revenue
2 bonds under the provisions of this article shall install
3 and maintain a proper system of accounting, showing the
4 amount of revenues received and the application of the
5 same, and the governing body or bodies shall, at least
6 once a year, cause such accounts to be properly audited
7 by a competent auditor, and the report of such auditor

8 shall be open for inspection at all proper times to any
9 taxpayer or resident of said municipality or municipali-
10 ties, or person receiving service from said works, or any
11 holder of bonds issued under the provisions of this article,
12 or anyone acting for and in behalf of such taxpayer,
13 resident, person or bondholder. The treasurer of such
14 municipality or each such municipality, or other official
15 or institution specifically charged with the duty, shall
16 be the custodian or custodians of the funds derived from
17 income received from said works, and shall give proper
18 bond or bonds for the faithful discharge of his or its or
19 their duties as such custodian or custodians, which bond
20 or bonds shall be fixed and approved by the governing
21 body or bodies. All of the funds received as income from
22 said works under the provisions of this article and all
23 funds received from the sale of revenue bonds issued
24 therefor shall be kept separate and apart from other funds
25 of the municipality or municipalities, and separate ac-
26 counts shall be maintained for the several items required
27 to be set up by the provisions of section seventeen of
28 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.

1 The municipality or municipalities issuing such bonds
2 shall be subject to the same rates or charges established
3 as hereinbefore provided, or to rates or charges estab-
4 lished in harmony therewith, for service rendered to
5 the municipality or municipalities and shall pay such
6 rates or charges, when due, from corporate funds, and
7 the same shall be deemed to be a part of the revenues
8 of the works as herein defined, and may be applied as
9 herein provided for the application of such revenue.

PART IX. LIENS AND PROTECTION OF BONDHOLDERS.

§8-16-22. Statutory mortgage lien upon works created.

1 There shall be and there is hereby created and granted
2 a statutory mortgage lien upon such municipal public

3 works constructed, reconstructed, established, acquired,
4 improved, renovated, extended, enlarged, increased,
5 equipped or repaired (including replacements) under
6 the provisions of this article, which shall exist in favor
7 of the holder of said bonds, and each of them, and to
8 and in favor of the holder of the coupons attached to
9 said bonds, and such municipal public works shall remain
10 subject to such statutory mortgage lien until payment
11 in full of the principal of and interest upon said bonds.

§8-16-23. Acquisition of property on which lien exists.

1 No property shall be acquired under the provisions
2 of this article upon which any lien or other encumbrance
3 exists, unless at the time such property is acquired a
4 sufficient sum of money be deposited in trust to pay
5 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.**

1 Any holder of any such bonds, or any of the coupons
2 attached thereto, and the trustee, if any, except to the
3 extent that the rights herein given may be restricted
4 by the ordinance authorizing the issuance of the bonds
5 or by the trust indenture, may by civil action, man-
6 damus or other proper proceeding enforce the statutory
7 mortgage lien created and granted in section twenty-two
8 of this article, protect and enforce any and all rights
9 granted hereunder or under any such ordinance or trust
10 indenture, and may enforce and compel performance of
11 all duties required by the provisions of this article or
12 by any such ordinance or trust indenture to be per-
13 formed by the municipality or municipalities, or by the
14 board or any officer, including the making and collect-
15 ing of reasonable and sufficient rates or charges for
16 services rendered by the works. If there be default in
17 the payment of the principal of or interest upon any
18 of the bonds, or of both principal and interest, any court
19 having jurisdiction shall appoint a receiver to administer
20 the works on behalf of the municipality or municipali-
21 ties, and the bondholders or trustee, or both, except as

22 so restricted, with power to charge and collect rates
23 or charges sufficient to provide for the payment of the
24 expenses of repair (including replacements), maintenance
25 nance and operation, and also to pay any bonds and
26 interest outstanding, and to apply the income or other
27 revenue in conformity with this article, and the said ordinance
28 nance or trust indenture, or both, and the power herein
29 provided for the appointment of a receiver and the administration
30 by the court of the works on behalf of the municipality or municipalities,
31 and the bondholders or trustee, or both, shall apply to cases where such works
32 are operated by a lessee of the municipality or municipalities as well
33 as to cases where works are operated by the municipality or municipalities.
34 In case a receiver is appointed for works operated by a lessee of a municipality
35 or municipalities, the lease agreement then existing between the municipality
36 or municipalities and the lessee ipso facto thereby shall be terminated and all
37 property, equipment, bills receivable and assets of every kind, used in connection
38 with the operation of such works, shall pass to the receiver and upon the termination
39 of such receivership, such works, equipment, property, bills receivable and assets
40 of every kind then in the hands of the receiver thereupon shall pass to the municipality
41 or municipalities.

PART X. CONSTRUCTION; EXTRATERRITORIAL JURISDICTION.

§8-16-25. Article confers additional power and authority; extraterritorial jurisdiction.

1 The power and authority herein granted shall be in
2 addition to and not in derogation of any power and authority
3 vested in any municipality under any constitutional, statutory or charter
4 provisions which may now or hereafter be in effect. For all purposes of this
5 article, municipalities shall have jurisdiction for ten miles outside
6 of the corporate limits thereof, except where such zone would overlap
7 with the zone of another municipality, in which event the meridian line
8 of the overlapping zone shall be the dividing line of their respective
9 jurisdictions, except that one municipality shall have jurisdiction
10 within such ten-mile zone and may overlap into the zone

13 of another municipality or municipalities with the con-
14 sent thereof.

§8-16-26. Construction of power and authority conferred.

1 This article shall, without reference to any other statute
2 or charter provision, be deemed full authority for the
3 construction, reconstruction, establishment, acquisition,
4 improvement, renovation, extension, enlargement, in-
5 crease, equipment, repair (including replacements), main-
6 tenance and operation of the works herein provided for,
7 and for the issuance and sale of the bonds by this article
8 authorized, and shall be construed as an additional al-
9 ternative method therefor, and for the financing thereof,
10 and no petition or other or further proceeding in respect
11 to any such project, or to the issuance or sale of bonds
12 under this article, and no publication of any ordinance,
13 notice or proceeding relating to any such project, or to
14 the issuance or sale of such bonds shall be required, except
15 such as are prescribed in this article, any provisions of
16 other statutes of the state to the contrary notwithstanding.

§8-16-27. Article liberally construed.

1 This article being necessary for the public health, safety
2 and welfare shall be liberally construed to effectuate the
3 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.

1 In elaboration of the provisions of section eight, article
2 one of this chapter, wherever in this code, in any act,
3 in general law, elsewhere in law, in any charter, in any
4 ordinance, resolution or order, or in any ordinance, reso-
5 lution or order of a county court, reference is made to the
6 term "municipal authorities" or "municipal authority"
7 within the meaning of the provisions of former article
8 four-a of this chapter, such reference shall henceforth
9 be read, construed and understood to mean "governing
10 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 practicably accomplished out of municip-
- 5 al revenues or in accordance with the procedures estab-

6 lished in article eighteen of this chapter. This article shall
7 be liberally construed to accomplish the purpose hereof.

§8-17-2. Definitions.

1 For the purposes of this article:

2 (1) "Abutter" shall include the owner or owners, as of
3 the date of service of, or the date of the first publication
4 of, a notice under the provisions of section eight of this
5 article, of the property abutting on any street, alley,
6 public way or easement, or sewer right-of-way or ease-
7 ment, upon or in which an improvement shall be made or
8 proposed to be made under the provisions of this article;

9 (2) "Engineer" shall mean the municipal engineer, or,
10 if the municipality has no regularly employed municipal
11 engineer, any registered professional engineer, if there be
12 any practicing in the municipality or the county, or if no
13 such engineer be practicing in the county, any competent
14 civil engineer;

15 (3) "Petitioner" shall, unless the context clearly indi-
16 cates otherwise, include those abutters, whether one or
17 more, who file the petition and bond described in section
18 four of this article;

19 (4) "Improvement" shall include the grading, regrad-
20 ing, paving, repaving, surfacing, resurfacing, curbing,
21 recurbing and repairing of streets, alleys, public ways or
22 easements, or portions thereof, and the building, renew-
23 ing and repairing of sidewalks, and the constructing, re-
24 newing and repairing of storm or sanitary or combined
25 storm and sanitary sewer systems, or portions thereof, up-
26 on or in any streets, alleys, public ways or easements, or
27 sewer right-of-ways or easements, or portions thereof, in-
28 dependently or in conjunction with other of such im-
29 provements, within the municipality; and

30 (5) "Total cost" shall include the cost and expense of
31 surveys, engineering and attorney fees, the printing and
32 publishing in relation thereto, and the cost and expense
33 of all labor, work, supervision, inspection, equipment
34 leased and materials furnished and used in completing
35 said improvements, excepting, however, any salaries and
36 wages paid to municipal employees that would have been
37 paid regardless of the work on the proposed improvement.

PART II. POWER AND AUTHORITY TO MAKE LOW COST
IMPROVEMENTS—PRELIMINARY PROCEEDINGS.

§8-17-3. Municipality empowered and authorized to make improvements.

1 Every municipality is hereby empowered and autho-
2 rized, in addition to any other rights, power or authority
3 conferred upon it, to make improvements upon the terms
4 and conditions and in the manner hereinafter in this
5 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
2 an improvement, together with the bond hereinafter de-
3 scribed, by (1) a petitioner stating in said petition the
4 willingness of said petitioner to pay all of the total cost
5 of said improvement, or (2) a petitioner owning the great-
6 er amount of frontage of property abutting upon any por-
7 tion of a street, alley, public way or easement, or sewer
8 right-of-way or easement, upon or in which said improve-
9 ment is to be made, the governing body shall, by ordi-
10 nance or resolution, order the engineer to investigate the
11 improvement and to prepare a memorandum describing
12 the portions of the streets, alleys, public ways or ease-
13 ments, or sewer right-of-ways or easements, proposed to
14 be improved, and certifying the reasonable necessity of
15 the improvement, the plans and specifications for the im-
16 provement and a list of all items comprising the total cost
17 of the improvement, with an estimate of the cost of each
18 item.

19 There shall be stated, specified or described in the peti-
20 tion the name and mailing address of the petitioner, the
21 part or parts of the therein named streets, alleys, public
22 ways or easements, or sewer right-of-ways or easements,
23 desired improved, the improvement desired and whether
24 the petitioner will pay all of the total cost or whether he
25 desires the total cost to be apportioned among all of the
26 abutters. In any case where two or more petitioners file
27 the petition and it is stated therein that they intend to pay
28 all of the total cost of the improvement, it shall also be

29 stated therein either that they desire to have such total
30 cost apportioned among them on a pro rata basis of their
31 abutting footages according to a list of such footages com-
32 piled by them and contained in the petition or that they
33 desire to pay such total cost according to a list of per-
34 centage shares formulated by them and contained in the
35 petition.

36 Any petition filed under the provisions of this article
37 shall be signed by the petitioner. A bond shall be given by
38 the petitioner with good security to be approved by the
39 governing body in the penal sum of one thousand dollars.
40 The bond shall bind the petitioner (jointly and severally,
41 in the case of more than one petitioner) to pay all charges
42 and assessments imposed upon such petitioner under the
43 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
2 improvement is not reasonably necessary, or that the
3 estimated total cost is more than one thousand dollars,
4 or both, the governing body shall notify the petitioner of
5 the adverse report in the engineer's memorandum, and of
6 a date (at least ten days from the date of the mailing of
7 the notice as provided below), time and place of a meet-
8 ing of the governing body, at which the engineer shall be
9 present and the petitioner may object to or be heard on
10 any part of the engineer's memorandum concerned with
11 the said adverse report. The notice shall be given by mail-
12 ing a copy thereof to the petitioner at the address listed
13 in the petition unless the petitioner shall have notified the
14 governing body in writing of a change in his mailing ad-
15 dress, in which case the notice shall be mailed according
16 to such change. The governing body may modify the
17 memorandum in accordance with the evidence introduced
18 at said meeting; but if no evidence is introduced, the
19 engineer's memorandum shall be accepted. In any case
20 where the petition fails because there is no reasonable
21 necessity for the improvement or because the estimated

22 total cost of the improvement is more than one thousand
23 dollars, or because of both reasons, the petitioner shall be
24 charged with all municipal expenses in connection there-
25 with, except salaries and wages of regular municipal
26 officials and employees, which charge shall be made by
27 ordinance or resolution of the governing body; and a
28 statement of such charge shall be mailed to the petitioner
29 at the proper address, determined as aforesaid.

30 For convenience of reference herein, the term "engi-
31 neer's memorandum" shall mean, as the case may be, his
32 original memorandum, or his memorandum as modified
33 in accordance with the provisions of this section or sec-
34 tion 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
2 and the accompanying bond have been found to be regu-
3 lar, and when the engineer's memorandum indicates that
4 the proposed improvement is reasonably necessary and
5 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
2 pay all of the total cost, the governing body shall, as soon
3 as the petition is granted as provided in section six of
4 this article, order, by ordinance or resolution, the proper
5 municipal authorities to proceed with the accomplishment
6 of the improvement according to the plans and specifica-
7 tions 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
2 desires the total cost to be apportioned among all of the
3 abutters, the governing body shall, as soon as the petition
4 is granted, cause notice to be given to all abutters that the
5 petition has been granted; that the engineer's memoran-
6 dum, certifying reasonable necessity, the plans and specifi-

7 cations and the cost estimates, will be reconsidered, before
8 work is started, at a public meeting of the governing body
9 on the date and at the time and place named in the notice;
10 and that all abutters will be given an opportunity to pro-
11 test or be heard concerning any or all particulars of the
12 engineer's memorandum at that meeting or an adjourn-
13 ment thereof. Such notice to abutters may be by service on
14 such abutters in the manner in which process commencing
15 a civil action under the law of this state is permitted to be
16 served, at least ten days before said meeting. In lieu of
17 such service of such notice, the following described notice,
18 or one in substantially the same form, may be given, and
19 shall be deemed to have been served on all such abutters,
20 by publication of such notice as a Class II legal advertise-
21 ment in compliance with the provisions of article three,
22 chapter fifty-nine of this code, and the publication area for
23 such publication shall be such municipality:

24 "NOTICE TO ALL PERSONS OR CORPORATIONS
25 OWNING PROPERTY ABUTTING ON _____
26 (here describe the portion of the street, alley, public way
27 or easement, sewer right-of-way or easement, to be im-
28 proved) IN THE _____ (city, town or
29 village) OF _____ (name of muni-
30 cipality);

31 A petition has been granted by the _____
32 _____ (council, board of directors, commissioners
33 or other governing body) of the _____
34 (city, town or village) of _____ (name
35 of municipality) to improve the portion of the _____
36 _____ (street, alley, public way or easement,
37 or sewer right-of-way or easement) above described in
38 _____ (name of municipality) by _____
39 _____ (grading, regrading, paving, repaving, sur-
40 facing, resurfacing, curbing, recurbing or repairing, or
41 the building, renewing or repairing of sidewalks, or the
42 constructing of sanitary or storm sewers, or both, or other
43 general description of the proposed improvement), as
44 specifically described in the engineer's memorandum
45 certifying the reasonable necessity of the proposed im-
46 provement, the plans and specifications thereof, and the
47 estimate of the items of cost thereof, and to apportion the

48 cost of such improvement among the owners, as of _____
49 _____ (the date of the first publication of this
50 notice), of the abutting property.

51 The engineer's memorandum above described and the
52 granting of the petition will be reconsidered by the _____
53 _____ (council, board of directors, commis-
54 sioners or other governing body) at a public meeting to
55 be held on the _____ day of _____, 19____,
56 at _____ M. at _____. Any abut-
57 ting owner or interested party will be given an oppor-
58 tunity to protest or be heard at said meeting or an ad-
59 journment thereof.

60 _____ (name of recorder)
61 _____ (official position)."

62 An affidavit of publication of the notice, made by the
63 newspaper publisher, or some person authorized to do so
64 on behalf of such publisher, and a copy of the notice shall
65 be made a part of the minutes of the governing body and
66 spread on its records of the meeting described in the
67 notice. The service of said notice upon all persons owning
68 any interest in any property abutting upon any portion
69 of said street, alley, public way or easement, or sewer
70 right-of-way or easement, to be improved shall conclu-
71 sively be deemed to have been given when such news-
72 paper publication shall have been completed.

73 Any part or parts of the engineer's memorandum may
74 be modified or remodified at the protest meeting in ac-
75 cordance with the evidence introduced at such meeting,
76 including the extent of the portions of the streets, alleys,
77 public ways or easements, or sewer right-of-ways or ease-
78 ments, proposed to be improved as designated in the engi-
79 neer's memorandum. If, after modification or remodelifica-
80 tion at such protest meeting, the memorandum indicates
81 that the improvement is not reasonably necessary or that
82 its estimated total cost is more than one thousand dollars,
83 or both, then the petition shall be automatically revoked;
84 and the petitioner shall be charged with all municipal
85 expense in connection therewith except the salaries and
86 wages of regular municipal employees, which charge shall
87 be made by ordinance or resolution of the governing body

88 and a statement of said charge shall be mailed to the
89 petitioner at the proper address, determined as aforesaid.

90 If the engineer's memorandum has not been so modified
91 or remodified at the protest meeting as to render the peti-
92 tion automatically revoked as provided above, the govern-
93 ing body shall order, by ordinance or resolution, the
94 proper municipal authorities to proceed with the accomp-
95 lishment of the improvement according to the plans and
96 specifications in the engineer's memorandum, as modified
97 or remodified at the protest meeting in the event that
98 they were modified or remodified.

**§8-17-9. Accomplishment of the improvement; use of munici-
pal employees and equipment; contracts; account
of costs.**

1 When the proper municipal authorities shall have been
2 ordered by the governing body to proceed under the pro-
3 visions of either section seven or section eight of this
4 article, they shall do so without delay. The improvement
5 shall be accomplished, as far as possible without inter-
6 fering with normal municipal services, with the munici-
7 pality's regular employees and equipment; but contracts
8 may be made with reputable persons for the improve-
9 ment. Said authorities shall keep an account of all items
10 of cost connected therewith that affect the total cost of
11 the improvement. Upon completion of the improvement,
12 said proper municipal authorities shall deliver the ac-
13 count of costs to the engineer.

**§8-17-10. Apportionment among petitioners only; limit on
total cost chargeable to petitioners; notice.**

1 Where the willingness of the petitioner to pay all of the
2 total cost is stated in the petition, the engineer shall
3 compute the actual total cost as soon as the improvement
4 is completed and the account called for in section nine of
5 this article is furnished to him; and, where more than
6 one petitioner filed the petition, the engineer shall assess
7 the amount owed by each petitioner according to the
8 method indicated in the petition as prescribed in section
9 four of this article: *Provided*, That if the actual total cost
10 exceeds one thousand dollars, the municipality shall be
11 responsible for such excess over one thousand dollars, and

12 if the actual total cost is less than one thousand dollars
13 but exceeds the estimated total cost by more than ten
14 percent of the latter, the municipality shall be responsible
15 for such excess over one hundred ten percent of the esti-
16 mated total cost.

17 The engineer shall certify his determination of charges
18 to the governing body, and, after adopting the same by
19 ordinance or resolution, the governing body shall notify
20 the petitioner of the assessment list by mailing a written
21 copy thereof to the petitioner at the proper address, de-
22 termined as aforesaid.

**§8-17-11. Apportionment among all abutters; limit on total
cost chargeable to abutters; engineer's report;
notice; hearings; correcting and laying assess-
ments.**

1 Where the petitioner indicated in the petition his desire
2 to have the total cost apportioned among all of the abut-
3 ters, the engineer shall, as soon as the governing body
4 has ordered the proper municipal authorities to proceed
5 with the improvement under the provisions of section
6 eight of this article, determine or cause to be determined
7 the several frontages abutting on the improvement, a
8 brief description thereof and the owners of such front-
9 ages as of the date of service of, or the date of the first
10 publication of, a notice under the provisions of section
11 eight of this article; and he shall keep an account of all
12 items of cost connected therewith that affect the total
13 cost. As soon as the improvement is completed and the
14 account called for in section nine of this article has been
15 furnished to him, the engineer shall compute the actual
16 total cost of the improvement.

17 The total cost shall be personally borne by such own-
18 ers of abutting property, including the petitioner, as of
19 the date of service of, or the date of the first publication
20 of, a notice under the provisions of section eight of this
21 article; and the amount of the assessment against each
22 shall be apportioned by the engineer on the basis of the
23 formula next hereinafter set forth. Each lot or parcel
24 of land so abutting shall be assessed with that portion
25 of the total cost of the entire project which is represented

26 by the proportion which the abutting frontage in feet
27 of such lot or parcel bears to the total abutting frontage
28 in feet of all the lots or parcels of land abutting on the
29 streets, alleys, public ways or easements, or sewer right-
30 of-ways or easements, so improved: *Provided*, That if
31 the character of the improvements shall be substantially
32 different upon different streets, alleys, public ways or
33 easements, or sewer right-of-ways or easements, or por-
34 tions thereof, the cost may be equitably apportioned to
35 the respective streets, alleys, public ways or easements,
36 or sewer right-of-ways or easements, or portions thereof,
37 in proportion to the character and cost of the improve-
38 ments respectively thereon; and the part of the cost so
39 apportioned to each respective street, alley, public way
40 or easement, or sewer right-of-way or easement, or por-
41 tion thereof, shall be apportioned to and assessed against
42 the respective lots or parcels of land abutting thereupon
43 in the proportion as hereinabove provided: *Provided*,
44 *however*, That if any part of the street, alley, public way
45 or easement improved is used by a railway then the cost
46 of the portion of any improvements between the rails
47 and for two feet outside said rails shall be assessed
48 against and wholly borne by the owner of the railway:
49 *Provided further*, That if there be any property abutting
50 on the portion of the street, alley, public way or ease-
51 ment, or sewer right-of-way or easement, so improved
52 which it has been determined by the governing body, and
53 shown in the ordinance or resolution authorizing the
54 improvement, not to be specially benefited by the im-
55 provement, or for other reasons would not be liable to
56 assessment for any of, or for some part of, the cost of
57 improvements, then the cost of the improvements abut-
58 ting such part of said street, alley, public way or ease-
59 ment, or sewer right-of-way or easement, as is so deter-
60 mined to be nonassessable, shall be apportioned among,
61 assessed against and borne by the remaining property
62 abutting upon the portion of the street, alley, public way
63 or easement, or sewer right-of-way or easement, im-
64 proved in proportion to the frontage of such remaining
65 abutting property as hereinabove provided: *And pro-*
66 *vided further*, That if such improvement includes the

67 building, renewing or repairing of sidewalks on only
68 one side of a street, alley, public way or easement, then
69 the cost of such improvement shall be assessed only on
70 the property abutting on that side where the sidewalks
71 are so built, constructed or repaired: *Provided*, That if
72 there be property abutting the street, alley, public way
73 or easement, or sewer right-of-way as easement, so
74 improved which is owned by the United States of
75 America, and, for that reason, not legally subject to
76 assessment, then the municipality shall pay the propor-
77 tionate part of the cost of the improvement which other-
78 wise would be assessable against such federally owned
79 property: *Provided, however*, That if the actual total
80 cost exceeds one thousand dollars, the municipality shall
81 be responsible for such excess over one thousand dollars,
82 and if the actual total cost is less than one thousand
83 dollars but exceeds the estimated total cost by more
84 than ten percent of the latter, the municipality shall be
85 responsible for such excess over one hundred ten per-
86 cent of the estimated total cost.

87 The engineer shall formulate a report showing the
88 chargeable total cost to be apportioned among, assessed
89 against and borne by the abutters, the names of the
90 abutters (including the petitioner), the several frontages
91 owned by said abutters, a brief description thereof and
92 the proper amount of the chargeable total cost to be
93 assessed personally against each abutter, and shall deliver
94 such report to the governing body. The governing body
95 shall thereupon give notice to the abutters to be assessed
96 that, on or after a date named in said notice, an assess-
97 ment may be laid personally against the abutters as
98 embodied in said report. Said notice shall state that the
99 abutters so named, or other interested party, may on
100 said date appear before the governing body to move
101 the correction or revision of such proposed assessment.
102 Said notice shall show the same facts embodied in the
103 engineer's report hereinabove described and shall be
104 published as a Class II legal advertisement in compliance
105 with the provisions of article three, chapter fifty-nine of
106 this code, and the publication area for such publication
107 shall be the municipality. On or after the date so ad-

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 municipi-
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 default 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

10 his bond. If any such assessment, in whole or in part, be
11 not paid within said sixty days, the governing body shall
12 determine the total amount in default and shall charge
13 said amount to the petitioner by ordinance or resolution;
14 and a statement of the charge shall be mailed to the peti-
15 tioner at the proper address, determined as aforesaid.

§8-17-14. Due date of charges against petitioner; collection on bond; petitioner's right of action.

1 Charges made against any petitioner under the pro-
2 visions of sections five, eight, ten and thirteen of this
3 article shall be due the municipality within thirty days
4 from the date that a statement was mailed to him at the
5 proper address, determined as aforesaid. If any such
6 charges against any petitioner be not paid within such
7 thirty days, the governing body shall by ordinance or
8 resolution authorize the proper municipal authorities to
9 proceed to collect on the petitioner's bond.

10 Any petitioner who is forced to pay, either by collection
11 on the bond or by voluntary payment to avoid collection
12 on the bond, any sum which should have been paid by
13 another petitioner or any other abutter shall have a right
14 of action against any such defaulter for the amount that
15 the defaulter should have paid, with interest at six per-
16 cent from the date that the defaulter was in default; and
17 where a petitioner makes a voluntary payment for any
18 such defaulter to avoid collection on the bond, a receipt
19 shall be given to him, and a copy retained by the munici-
20 pality, showing the petitioner who made such payment,
21 the defaulter for whom the payment was made and the
22 charge or assessment for which the defaulter was in
23 default, which receipt shall be prima facie evidence of
24 the petitioner's right to collect from the defaulter named
25 in said receipt the amount specified therein, with interest
26 as above stated.

PART V. CUMULATIVE AUTHORITY.

§8-17-15. Cumulative authority.

1 The power and authority herein granted shall be in
2 addition to and not in derogation of any power and au-
3 thority vested in any municipality under any constitu-

4 tional, statutory or charter provisions which may now
5 or hereafter be in effect.

**ARTICLE 18. ASSESSMENTS TO IMPROVE STREETS, SIDE-
WALKS 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.

§8-18-8. Apportionment and assessment of cost.

§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 REPAYED 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.**

§8-18-13. Assessment certificates.

PART VII. FINANCING IMPROVEMENTS BY ISSUANCE OF BONDS.

§8-18-14. Issuance of bonds.

§8-18-15. Bonds to pay municipality's share of cost of improvements.

§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.

§8-18-21. 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.

1 Every municipality is hereby empowered and autho-
2 rized, in addition to any other rights, power and authority
3 conferred upon it, upon the terms, conditions and in the
4 manner hereinafter set forth, to grade or regrade, pave
5 or repave, surface or resurface, curb or recurb, streets
6 (which term is used in this article to include avenues and
7 roads), alleys, public ways or easements, or portions
8 thereof, and to build or renew sidewalks, and to construct,
9 provide or renew any of such improvements or other
10 permanent public improvements in any streets, alleys,
11 public ways or easements, or portions thereof, in such
12 municipality, and, if deemed advisable, to construct storm
13 and sanitary sewers, or all or a part of a storm or sanitary
14 or combined storm and sanitary sewer system in any
15 streets, alleys, public ways or easements, or sewer right-
16 of-ways or easements, or portions thereof, independently
17 or in conjunction with other of such improvements, and
18 to assess the costs of any or all of such improvements on
19 abutting property.

§8-18-2. Petition of abutting property owners for improvement; improvements without petition.

1 Upon the petition in writing of persons owning the
2 greater amount of frontage of property abutting upon any
3 portion of a street, alley, public way or easement, or sewer

4 right-of-way or easement, for any permanent improve-
5 ment (which term is used in this section and the succeed-
6 ing sections of this article to include any reimprovement)
7 authorized in section one of this article, the governing
8 body of any municipality may, after giving notice to
9 abutting property owners as hereinafter in this article
10 provided, by ordinance or resolution declare the necessity
11 or convenience of such improvement and order and cause
12 such portions of such streets, alleys, public ways or ease-
13 ments, or sewer right-of-ways or easements, to be graded;
14 regraded, paved, repaved, surfaced, resurfaced, curbed,
15 recurbed, sewerred, re sewerred, permanently improved
16 (which term is used in this section and the succeeding
17 sections of this article to also mean reimproved) with
18 sidewalks or otherwise permanently improved with suit-
19 able material, or any one or more of such improvements
20 without the others, as may be determined by the govern-
21 ing body, to be made or constructed within such municip-
22 ality or within such part or parts thereof as the govern-
23 ing body may determine, and such governing body may
24 specially assess the entire cost of such improvements, or
25 any part thereof, upon the property abutting on both
26 sides of the portions of the streets, alleys, public ways or
27 easements, or sewer right-of-ways or easements, im-
28 proved.

29 The governing body of any municipality may also adopt
30 such ordinance or resolution of necessity or convenience
31 and provide for such improvements and the assessing of
32 the cost thereof upon abutting property without such a
33 petition of property owners having first been received,
34 when the ordinance or resolution providing for such im-
35 provements is adopted by the affirmative vote of at least
36 three fourths of the members of such governing body by
37 recorded vote, after having given notice to abutting prop-
38 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.**

1 Before the adoption of such ordinance or resolution
2 of necessity or convenience, the governing body shall
3 cause notice to be given to owners of abutting property

4 that such ordinance or resolution will be considered
5 before adoption at a public meeting of the governing
6 body at a date, time and place named in the notice and
7 that all persons shall at that meeting, or an adjournment
8 thereof, be given an opportunity to protest or be heard
9 concerning the adoption or rejection of said ordinance
10 or resolution. Such notice to owners of property abut-
11 ting on the portion of the street, alley, public way or
12 easement, or sewer right-of-way or easement, to be
13 improved may be by service on such owners in the man-
14 ner in which process commencing a civil action under
15 the laws of this state is permitted to be served at least
16 ten days before said meeting. In lieu of such service of
17 such notice, the following described notice, or one in sub-
18 stantially the same form, may be given, and shall be
19 deemed to have been served on all such owners of abut-
20 ting property, by publication of such notice as a Class
21 II legal advertisement in compliance with the provi-
22 sions of article three, chapter fifty-nine of this code, and
23 the publication area for such publication shall be such
24 municipality:

25 "NOTICE TO ALL PERSONS OR CORPORATIONS
26 OWNING PROPERTY ABUTTING ON
27 (here describe the portion of the street, alley, public
28 way or easement, or sewer right-of-way or easement, to
29 be improved) IN THE (city, town or
30 village) OF (name of municipality):

31 Proposals have been made to the
32 (council, board of directors, commissioners or other gov-
33 erning body) of the (city, town or village)
34 of (name of municipality) to permanently
35 improve the portion of the (street, alley, public
36 way or easement, or sewer right-of-way or easement)
37 above described in (name of municipality)
38 by (grading, regrading, paving, repaving,
39 surfacing, resurfacing, curbing or recurbing, building or
40 renewing of sidewalks, or the constructing of sanitary
41 or storm sewers, or other general description of the
42 proposed improvements) as the (council,
43 board of directors, commissioners or other governing
44 body) may deem proper, and to assess the cost of such

45 improvements on the property abutting said portion of
46 said _____ (street, alley, public way or easement,
47 or sewer right-of-way or easement).

48 The proposals to make such improvements, and the
49 plans, specifications, profiles and estimates therefor, will
50 be considered by the _____ (council, board of
51 directors, commissioners or other governing body) at a
52 public meeting to be held on the _____ day of _____,
53 19____, at _____ M. at _____. Any abutting owner
54 or interested party will be given an opportunity to pro-
55 test or be heard at said meeting or an adjournment
56 thereof.

57 _____ (name of recorder)
58 _____ (official position)."

59 An affidavit of publication of the notice, made by the
60 newspaper publisher, or some person authorized to do
61 so on behalf of such publisher, and a copy of the notice
62 shall be made a part of the minutes of the governing body
63 and spread on its records of the meeting described in the
64 notice. The service of said notice upon all persons own-
65 ing any interest in any property abutting upon any por-
66 tion of said street, alley, public way or easement, or
67 sewer right-of-way or easement, to be improved shall
68 conclusively be deemed to have been given when such
69 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.

1 After hearing held pursuant to notice as provided in
2 section three of this article, the governing body, by ordi-
3 nance or resolution, may authorize such improvements
4 and the assessing of the total cost or any part thereof on
5 abutting property as herein provided. In the same or sub-
6 sequent ordinances or resolutions, but before advertising
7 for bids from contractors, the governing body shall cause
8 to be prepared plans, specifications and estimates of the
9 cost of the proposed improvements under the supervision

10 of the engineer for the municipality. Such plans, specifi-
11 cations and estimates shall show the proposed grade and
12 sufficient data for any owner of abutting property to cal-
13 culate approximately what proportionate part of the esti-
14 mated cost thereof might be assessed against his property,
15 and shall be filed with the recorder and open to the in-
16 spection of interested persons before advertisement for
17 bids of contractors and before the meeting at which such
18 bids may be accepted or rejected. Before advertising for
19 bids of contractors, such governing body shall consider
20 said plans, specifications and estimates and may amend or
21 modify them, and before advertising for bids shall by ordi-
22 nance or resolution approve such plans, specifications and
23 estimates as so amended and modified. Such ordinance or
24 resolution shall also provide for advertisement for bids,
25 for the letting of a contract or contracts for the work to
26 the lowest responsible bidder, with right reserved to such
27 governing body to reject any and all bids, and shall pro-
28 vide for supervision of such work by the mayor, city
29 manager, if any, municipal engineer, if any, or other
30 person or committee designated by the governing body.
31 Such ordinance or resolution shall also provide for pay-
32 ment of the cost of the work when completed. The gov-
33 erning body shall provide in such ordinance or resolution
34 for the payment by abutting property owners of the cost
35 of the work in equal installments payable over a period
36 of not less than five years nor more than ten years from
37 the date of assessment, with interest at the rate of six
38 percent per annum from the date of assessment, and in
39 said ordinance or resolution the governing body shall fix
40 the number of installments in which the amounts assessed
41 shall be payable: *Provided*, That each of said assessments
42 or the installments thereof then remaining unpaid shall
43 be payable at any time after assessment without interest
44 after the date such payment is made: *Provided, however*,
45 That on failure of the owner of the property assessed to
46 pay any installment as and when due, and if such default
47 continues for sixty days, then at the option of the govern-
48 ing body (if neither assessment certificates nor bonds are
49 issued as hereinafter in this article provided), or the
50 holder of the assessment certificates (if the assessments

51 are evidenced by such certificates), or the holder of any
52 bonds secured by such assessments (if bonds are issued),
53 the entire balance due may be declared immediately due
54 and payable and the municipality, or the holder of the
55 certificates, or bonds, as the case may be, may forthwith
56 proceed to enforce the collection thereof: *Provided fur-*
57 *ther*, That if the amounts to be assessed against abutting
58 property be less than two dollars for each abutting front
59 foot of property, then said governing body is authorized
60 to make the same payable in one lump sum or in install-
61 ments, with interest, over a period of less than five years
62 from the date of assessment.

**§8-18-5. Report on completion; notice to abutting owners of
assessments; hearings; correcting and laying as-
sessments.**

1 When the improvement of such street, alley, public
2 way or easement, or sewer right-of-way or easement, has
3 been completed, the governing body shall cause the engi-
4 neer, or other person charged by the governing body with
5 the supervision of the work of improvement, to make a
6 report showing the several frontages abutting thereon,
7 the total cost, the respective amounts chargeable upon
8 each lot or parcel of land assessed abutting thereon and
9 the proper amounts to be assessed against the respective
10 abutting lots or parcels of land as provided herein, with
11 a description of the abutting lots and parcels of land as to
12 ownership, frontage and location. The governing body
13 shall thereupon give notice to the owners of the property
14 to be assessed that on or after a date named in said notice
15 an assessment may be laid against the property so im-
16 proved as embodied in said report. Said notice shall state
17 that the owner or owners whose property is to be assessed,
18 or other interested party, may on said date appear before
19 the governing body to move the revision or correction of
20 such proposed assessment. Such notice shall be published
21 as a Class II legal advertisement in compliance with the
22 provisions of article three, chapter fifty-nine of this code,
23 and the publication area for such publication shall be the
24 municipality. Said notice shall show the total cost of the
25 improvement, the several frontages abutting thereon and

26 the respective amounts to be assessed against the abutting
27 property, with a description of the respective abutting
28 lots and parcels of land as to ownership, frontage and
29 location. On or after the date so advertised, the governing
30 body may revise, amend, correct and verify the report and
31 proceed by ordinance or resolution to lay the assessments
32 as corrected and verified.

PART III. APPORTIONMENT IN MAKING ASSESSMENTS.

§8-18-6. Construction of sewers and sewer systems; assessments; corner lots, etc.

1 The governing body of any municipality is hereby em-
2 powered and authorized to order and cause to be con-
3 structed, within said municipality, or partly within and
4 partly without the corporate limits of said municipality,
5 public, common, lateral, branch and trunk storm and
6 sanitary sewers and sewer systems and combined storm
7 and sanitary sewers or sewer systems, or both, by contract
8 or directly by the municipality, for the benefit of said
9 municipality or any part thereof, and to purchase lands
10 or easements or to condemn lands or easements in the
11 manner provided by law for such sewers or sewer sys-
12 tems. When the governing body shall order and complete
13 the construction of any such sewer or sewer system or any
14 part thereof within said municipality, the property
15 abutting on such sewer or abutting upon any street, alley,
16 public way or easement, or any sewer right-of-way or
17 easement, in which such sewer shall be constructed, or
18 abutting on any street, alley, public way or easement, or
19 any sewer right-of-way or easement, in which any part
20 of such a sewer is constructed, may be charged with all or
21 any part of the cost thereof, including the cost of such
22 sewer or sewer system across intersections of streets,
23 alleys, public ways and easements.

24 A sewer system shall be deemed to include all of the
25 common sewers whether they be lateral, branch, trunk
26 or combined sewers, which serve to drain a definite drain-
27 age area as specified in the order of the governing body
28 directing the work to be done.

29 In case of a corner lot, or of acreage which has not been
30 divided into lots, frontage which may be assessed shall

31 be measured along the longest dimension thereof abutting
32 on each street, alley, public way or easement, or sewer
33 right-of-way or easement, in which such sewer is laid,
34 but if sewerred on two or more sides then such corner lot,
35 or acreage which has not been divided into lots, is to be
36 charged only with the side first sewerred unless two hun-
37 dred feet or more in depth measured from such first
38 sewerred side, in which event the corner lot, or acreage
39 which has not been divided into lots, shall be charged
40 only with the footage in excess of two hundred feet. Any
41 lot, or any acreage which has not been divided into lots,
42 having such a depth of two hundred feet or more and
43 abutting on two or more streets, alleys, public ways or
44 easements, or sewer right-of-ways or easements, one in
45 the front and one in the rear of said lot, or said acreage
46 which has not been divided into lots, shall be assessed on
47 both of said streets, alleys, public ways or easements, or
48 sewer right-of-ways or easements, if a sewer is constructed
49 on both such streets, alleys, public ways or easements,
50 or sewer right-of-ways or easements. Where a corner lot,
51 or an acreage which has not been divided into lots, has
52 been assessed on both ends, it shall not be assessed on the
53 side, and where it has been assessed on the side, it shall
54 not be assessed on either end.

55 In case of corner lots, or acreage which has not been
56 divided into lots, where the cost of sewerred along one
57 dimension is not assessed against the owner thereof, and
58 in the case of lots, or acreage, less than two hundred feet
59 deep abutting at each end on a street, alley, public way
60 or easement, or sewer right-of-way or easement, in which
61 a sewer is laid, the cost of sewerred along the dimension
62 or end not assessed against the property owner shall in
63 every case be apportioned and assessed against the other
64 property abutting on the streets, alleys, public ways or
65 easements, or sewer right-of-ways or easements, being
66 improved, in the manner of apportionment of the cost of
67 improvements in intersections.

§8-18-7. What total cost to include.

- 1 In ascertaining the total cost of the improvements in
- 2 any project undertaken pursuant to the provisions of

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.

§8-18-8. Apportionment and assessment of cost.

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-

34 ments between the rails and for two feet outside said rails
35 shall be assessed against and wholly borne by the owner
36 of the railway: *Provided further*, That property shall be
37 assessed only to the extent it is benefited and if there be
38 any property abutting on the portion of the street, alley,
39 public way or easement, or sewer right-of-way or ease-
40 ment, so improved which it has been determined by the
41 governing body, and shown in the ordinance or resolu-
42 tion authorizing the improvements, not to be specially
43 benefited by the improvements, or not to be specially
44 benefited to the full extent of the cost of the improve-
45 ments, or for other reasons would not be liable to assess-
46 ment for any of, or for some part of, the cost of improve-
47 ments, then the cost of the improvements abutting such
48 part of said street, alley, public way or easement, or sewer
49 right-of-way or easement, or so much thereof as is so
50 determined to be nonassessable, shall be apportioned
51 among, assessed against and borne by the remaining
52 property abutting upon the streets, alleys, public ways or
53 easements, or sewer right-of-ways or easements, improved
54 in proportion, subject to the aforesaid provisions of sec-
55 tion six of this article, to the frontage of such remaining
56 abutting property as hereinabove provided: *And provided*
57 *further*, That if such improvements include the building
58 or renewal of sidewalks on only one side of a street, alley,
59 public way or easement, then the cost of such sidewalk
60 shall be assessed only on the property abutting on that
61 side where the sidewalks are so built or renewed: *Pro-*
62 *vided*, That in apportioning and assessing the cost of
63 sewers or sewer systems the provisions of section six of
64 this article shall be observed: *Provided, however*, That if
65 there be property abutting the street, alley, public way or
66 easement, or sewer right-of-way or easement, so improved
67 which is owned by the United States of America, and,
68 for that reason, not legally subject to assessment, then the
69 municipality shall pay the proportionate part of the cost
70 of the improvement which otherwise would be assessable
71 against such federally owned property.

72 In apportioning the cost to any lot or parcel of land in
73 any situation not covered in this article, the cost shall be
74 apportioned equitably, as determined by the governing

75 body, in keeping with the concepts and principles ex-
76 pressed in this article and the special benefit to the
77 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
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,
7 or a religious, charitable, educational or eleemosynary
8 institution, for purposes not subject to taxation, such
9 property shall nevertheless be assessed with its proper
10 proportion of the cost of said improvement, and it shall
11 be the duty of those persons having charge of the fiscal
12 affairs of such owner or the management of any such
13 property or institution to make proper arrangements for
14 the payment of, and cause to be paid, such assessments
15 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,
2 public way or easement, or sewer right-of-way or ease-
3 ment, improved shall be subject to a lien, from the
4 date of the ordinance or resolution laying the assessment,
5 for the payment of the cost of the improvements assessed
6 against said property. A notice of the liens of said
7 assessments referring to the assessing ordinance or
8 resolution, and setting forth a list of the property assessed,
9 described respectively as to amounts of assessment and
10 ownership, frontage and location of the property, shall
11 be certified by the recorder of the municipality to the
12 clerk of the county court of the county wherein the
13 improvement or any part thereof is located. The county
14 clerk shall record the same in a proper trust deed book

15 and index the same in the name of each owner of abutting
16 property assessed. From the date of the assessment, the
17 municipality (if neither assessment certificates nor bonds
18 are issued as hereinafter in this article provided), or
19 the holder of the assessment certificates (if the assess-
20 ments are evidenced by such certificates), or the holders
21 of the bonds secured by such assessments (if bonds
22 are issued), shall have such liens and shall be entitled
23 to enforce the same in its, his or their name or the
24 name of the municipality to the extent of the amount,
25 principal and interest, of such assessments and against
26 the said property, as to any assessment not paid as and
27 when due. Said assessments shall be and constitute
28 liens in the hands of the municipality, or the holders of
29 said certificates, or the holders of said bonds, as the
30 case may be, upon the respective lots and parcels of land
31 assessed and shall have priority over all other liens
32 except those for land taxes due the state, county and
33 municipality, and except any liens for preexisting
34 special assessments. Said assessments and interest
35 thereon shall be paid by the owners of the property
36 assessed as and when the installments are due. The
37 municipality, or the holders of any such certificates,
38 or the holders of any such bonds, as the case may be,
39 may enforce the lien thereof in any proper suit, and
40 when default in the payment, as and when due, of any
41 assessment, principal or interest, or installment, shall
42 occur and such default shall have continued for more
43 than sixty days, the municipality, or the holders of any
44 such certificates, or the holders of any such bonds, as
45 the case may be, may declare the whole unpaid balance
46 due and payable and by proper civil action seeking
47 equitable relief enforce the lien thereof, upon process
48 issued and served according to law upon the owner or
49 owners of the lots or parcels of land subject to said
50 lien at the time such suit may be brought as shown
51 by the records of the clerk of the county court of the
52 county in which said lots or parcels of land are located.

§8-18-11. How assessments may be evidenced.

1 The governing body shall also determine and provide
2 in the ordinance or resolution laying the assessments,

3 adopted in accordance with the provisions of section
4 five of this article, if such provision was not made in
5 the ordinance or resolution adopted in accordance with
6 the provisions of section four of this article, the method
7 of paying for the work, for the cost of which assess-
8 ments are levied as in this article provided, whether
9 by an appropriation from funds in the treasury of the
10 municipality unappropriated to be repaid from the col-
11 lection of the assessments, or by the issuance of cer-
12 tificates as hereinafter provided, or from the proceeds
13 of bonds issued in anticipation of the collection of special
14 assessments to be made against the abutting property
15 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 pro-
ceeds of bonds.**

1 If the governing body shall determine by ordinance
2 or resolution as in this article provided to pay for the
3 work completed, for the cost of which assessments are
4 levied as in this article provided, from unappropriated
5 funds in the treasury of the municipality, it shall be
6 the duty of the governing body immediately to certify
7 such assessments to the treasurer for collection in ac-
8 cordance with the terms provided in the ordinance or
9 resolution authorizing the improvements.

10 To each of the installments of assessments remaining
11 unpaid in the treasurer's hands on the dates specified
12 for the payment thereof, a penalty of ten percent shall
13 be added, and any assessments so remaining unpaid
14 in the treasurer's hands on such dates shall be taken
15 up by the governing body on settlements had with the
16 treasurer on such dates, and such assessments, with
17 the penalty added thereto, shall be collected in all
18 respects as provided for the collection of taxes due the
19 municipality, and they shall be a lien upon the property
20 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.

§8-18-13. 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-

21 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.

§8-18-14. 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

27 the payment of such bonds and all accrued interest and
28 cost, such balance shall be turned into the municipal
29 treasury to the credit of the interest and sinking fund of
30 the municipality: *Provided*, That no such municipality
31 shall by sale or issuance of such bonds cause the aggre-
32 gate of its indebtedness of every kind whatsoever to
33 exceed five percent of the value of taxable property
34 therein: *Provided, however*, That nothing herein con-
35 tained shall be construed as authorizing any such munici-
36 pality to become indebted in any other manner or for
37 any other purpose, to an amount, including its existing
38 indebtedness, in the aggregate exceeding two and one-
39 half percent of the value of the taxable property therein,
40 as provided in section three, article one, chapter thirteen
41 of this code, except for the purpose of grading, regrading,
42 paving, repaving, surfacing, resurfacing, curbing, recurb-
43 ing, building or renewing sidewalks, or constructing
44 sewers or otherwise improving or reimproving the streets,
45 alleys, public ways or easements, or sewer right-of-ways
46 or easements, of such municipality, as provided for in
47 this article; nor shall such municipality make such is-
48 suance and sale without at the same time providing for
49 the collection of a direct annual tax sufficient to pay
50 annually the interest on such debt and the principal
51 thereof within and not exceeding ten years. All of the
52 assessments, interest and penalties collected from the
53 abutting property owners on account of the grading,
54 regrading, paving, repaving, surfacing, resurfacing, curb-
55 ing, recurbing, building or renewing sidewalks, or con-
56 structing sewers or otherwise improving or reimprov-
57 ing the streets, alleys, public ways or easements, or sewer
58 right-of-ways or easements, of any such municipality,
59 under the provisions of this article, shall annually be
60 applied to the annual tax required to pay the interest on
61 such debt and such principal within and not exceeding
62 ten years; and in the event that the assessments, interest
63 and penalties so collected do not amount to a sum suffi-
64 cient to pay annually the interest on such debt and the
65 principal thereof within and not exceeding ten years,
66 then the governing body of such municipality shall
67 collect so much of such levy as will pay annually the

68 interest on such debt and the principal thereof within
69 and not exceeding ten years.

§8-18-15. Bonds to pay municipality's share of cost of improvements.

1 Every municipality is also empowered and authorized
2 to issue and sell its bonds, as provided in this article for
3 the sale of other bonds, to pay any part of the cost of
4 such improvements to be paid by the municipality, and
5 such municipality may levy taxes in addition to all other
6 taxes authorized by law, to pay such bonds and interest
7 thereon: *Provided*, That the total indebtedness of the
8 municipality for all purposes shall not exceed five per-
9 cent of the total value of all taxable property therein.

§8-18-16. Bond issue to be authorized by voters.

1 No bonds shall be issued under the provisions of this
2 article unless and until the question of issuing such
3 bonds shall have first been submitted to a vote of the
4 qualified voters of the municipality, and shall have re-
5 ceived three fifths of all of the votes cast at such election
6 for or against the same. The governing body of any
7 municipality empowered and authorized to issue bonds
8 under the provisions of this article may provide by ordi-
9 nance for an annual election, at which the question shall
10 be submitted to the people as to whether the municipality
11 shall issue bonds, for the purposes and under the pro-
12 visions of this article, to an amount not to exceed in
13 the ensuing year the amount recommended by such
14 ordinance for such ensuing year. The ordinance provid-
15 ing for such election need not specify in detail the loca-
16 tion of the improvements contemplated to be paid for
17 during the ensuing year out of such aggregate issue au-
18 thorized for such year, but, before issuing any such
19 bonds, the governing body shall adopt an ordinance or
20 resolution as in this article provided, authorizing the im-
21 provements to be made. It shall be a sufficient descrip-
22 tion of the purpose for which such election is held if the
23 ordinance calling the same shall recite that the govern-
24 ing body proposes to issue bonds for the purpose of grad-
25 ing, regrading, paving, repaving, surfacing, resurfacing,
26 curbing, recurbing, building or renewing sidewalks, or

27 constructing sewers or otherwise improving or reimprov-
28 ing the streets, alleys, public ways or easements, or sewer
29 right-of-ways or easements, of such municipality at such
30 time as to the governing body shall seem fit during the
31 ensuing year ending on the _____ day of _____,
32 19____, to an amount not exceeding in the aggregate dur-
33 ing said year the sum of \$_____. When the gov-
34 erning body shall have once been authorized by a vote
35 of the qualified voters to issue bonds for such purposes
36 and to a sum not to exceed the amount set forth in the
37 ordinance calling such election, no further election shall
38 be necessary for the issuing of bonds during such en-
39 suing year up to the amount stipulated in such ordinance
40 calling such election, but the governing body shall, from
41 time to time during such ensuing year, by ordinance
42 authorize the issuance of such bonds in such sums, and
43 authorize such improvements the cost of which shall
44 be paid from the proceeds of such bonds, as said govern-
45 ing body shall determine. The aggregate amount of bonds
46 authorized by such annual election shall not be exceeded
47 during such ensuing year, unless the same be authorized
48 by a special bond election held at a subsequent time in
49 such year and duly called as provided for the calling of
50 the annual bond election. The provisions of article one,
51 chapter thirteen of this code, concerning bond elections
52 shall, so far as they are not in conflict with the provisions
53 of this article, apply to the annual bond elections and
54 special bond elections herein provided for.

PART VIII. PAYMENT OF ASSESSMENTS.

§8-18-17. Payment of assessments or installments; release.

1 Payments of any assessments or installments thereof
2 may be made to the treasurer of the municipality or the
3 holder of the assessment certificates. If payment is made
4 to the treasurer he shall require all interest to be paid
5 which is owed up to the time of payment, and notify the
6 holder of the certificate, if informed of the holder's ad-
7 dress, that he has received such payment, and make
8 payment to the holder on presentation for cancellation
9 of the certificate representing such payment. If payment
10 is made to the holder of the certificate, the holder shall

11 deliver to the payor certificates marked "paid" repre-
12 senting the payments made of principal and interest.
13 On presentation to the treasurer for cancellation of all
14 certificates of principal and interest for the whole assess-
15 ment made against a specific piece of property assessed,
16 the treasurer shall on request execute and deliver a re-
17 lease of the lien of such assessment.

PART IX. REASSESSMENT FOR VOID ASSESSMENTS.

§8-18-18. Reassessment for void, irregular or omitted assessments.

1 In the case of the construction of any permanent im-
2 provements where an assessment has heretofore been
3 laid or may hereafter be laid for the cost thereof, which
4 said assessment is or shall be void or voidable by reason
5 of errors, irregularities or defects in the proceedings
6 under which such improvements were made, or in case
7 such assessment shall have been made against the wrong
8 person or property, or shall have been omitted to be
9 made in a case where the same was proper, it shall be
10 the duty of the governing body within ten years after
11 the completion of such improvements, or after any court
12 shall have declared such assessment invalid, to cause
13 notice to be given to any person or persons against whom
14 the cost of said improvements might properly be or have
15 been assessed, of its intention to lay such assessment and
16 fixing a date, time and place at which the owner or
17 owners may appear and show cause against the same.
18 Said notice shall be served in the manner provided in
19 this article for the giving of notices in assessment pro-
20 ceedings, or in any other manner provided by law. At
21 the time and place specified in the notice aforesaid or at
22 any time thereafter, the governing body shall proceed
23 to lay and levy an assessment or assessments for the
24 cost of such improvements as would have been lawful
25 under proper proceedings at the time said improvements
26 were completed, unless the owner or owners so notified
27 shall show good cause against the same. The reassessment
28 or reassessments so laid shall be a lien upon the property
29 liable therefor in the manner hereinabove provided from
30 the date of the completion of the improvements, with

31 interest therefrom, and proper assessment certificates
32 may be issued, recordation had, and the payment thereof
33 and the lien thereof may be enforced in the same manner
34 and upon the same terms as would have been proper
35 at the time of the completion of the said improvements
36 had the assessments therefor been then properly laid
37 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 re-
2 paving, surfacing or resurfacing, curbing or recurbing
3 or other work permanently improving streets, alleys,
4 public ways or easements, or of building or renewing
5 sidewalks, or constructing sewers, has been assessed
6 against abutting property under the provisions of this
7 article, no part of the cost of a similar permanent im-
8 provement of the same portion of the same street, alley,
9 public way or easement, or sewer right-of-way or ease-
10 ment, shall be assessed against such abutting property
11 within ten years after completion of the last preceding
12 similar such improvement for which assessments have
13 been so made and levied.

PART XI. CONSTRUCTION.

**§8-18-20. Liberal construction of article; validity and enforce-
ment of assessments when bond issue for same
improvements; cumulative authority.**

1 This article shall be liberally construed to accomplish
2 the purpose of providing reasonable, economical and
3 expeditious means for municipalities to provide per-
4 manent improvements and to assure to the contractors
5 making such improvements, or persons directly or indi-
6 rectly financing the same, security in the payment of
7 the cost and expense of such improvements; and nothing
8 in this article shall be construed as imposing a time
9 limit on a certificate holder or bondholder for the
10 enforcement of his rights.

11 Moreover, the validity and enforcement of the assess-
12 ments in this article provided shall not be impaired by
13 the issuance and sale of bonds, as provided in article

14 one of chapter thirteen of this code, for the same im-
15 provements, nor by the application, in whole or in part,
16 of the proceeds of any such bond issue to the cost of
17 any such improvement prior to collection of said assess-
18 ments.

§8-18-21. Cumulative authority.

1 The power and authority herein granted shall be in
2 addition to and not in derogation of any power and
3 authority vested in any municipality under any consti-
4 tutional, statutory or charter provisions which may now
5 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
2 abutting on any street, alley, public way or easement
3 in any municipality on which a public sewer is now
4 located or may hereafter be constructed and laid
5 (whether constructed and laid under the provisions of
6 this article or any other provisions of law) upon which
7 lot or parcel of land any business or residence building
8 is now located or may hereafter be erected, not con-
9 nected with a public sewer, may be required and com-
10 pelled by the board of health to connect any such building
11 with such sewer. Notice so to connect may be given by
12 the board of health either to the owner, lessee or occupant
13 of such building. Each day's failure to comply with
14 such notice and connect with such sewer by such owner
15 or owners, after ten days from the giving of such notice,
16 shall be a misdemeanor and a separate and new offense
17 under this section, and each such offense shall be punish-
18 able by a fine of not less than five nor more than twenty-
19 five dollars. Jurisdiction to hear, try, determine and
20 sentence for any violation of this section is hereby vested
21 in the police or municipal court thereof, or, where no
22 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.
§8-19-8. Lien of bondholders.
§8-19-9. Covenants with bondholders.
§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.
§8-19-13. Discontinuance of water service for nonpayment of rates or charges.
§8-19-14. Bonds for additions, betterments and improvements.
§8-19-15. System of accounts; audit.
§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,

3 establish, extend, equip, repair, maintain and operate,
4 or lease to others for operation, a waterworks system,
5 or construct, maintain and operate additions, betterments
6 and improvements to an existing waterworks system,
7 within the corporate limits of said municipality and
8 within the area extending twenty miles beyond the
9 corporate limits of such municipality, notwithstanding
10 any provision or limitation to the contrary in any other
11 law or charter: *Provided*, That such municipality shall
12 not serve or supply water facilities or services within
13 the corporate limits of any other municipality without
14 the consent of the governing body of such other munici-
15 pality.

16 When used in this article, the term "waterworks
17 system" shall be construed to mean and include a water-
18 works system in its entirety or any integral part thereof,
19 including mains, hydrants, meters, valves, standpipes,
20 storage tanks, pump tanks, pumping stations, intakes,
21 wells, impounding reservoirs, pumps, machinery, puri-
22 fication plants, softening apparatus, and all other facil-
23 ities necessary, appropriate, useful, convenient or in-
24 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.

1 The governing body of any Class III city or Class IV
2 town or village is hereby prohibited from selling, leas-
3 ing or otherwise disposing of its municipally owned
4 waterworks system, unless upon submission of the ques-
5 tion of the proposed sale, lease or other disposition to
6 the qualified voters of said city, town or village for
7 ratification or rejection at any regular municipal election
8 or special municipal election, three fifths of the legal
9 votes cast shall be in favor of ratification. Should any
10 such city, town or village desire to sell, lease or otherwise
11 dispose of its waterworks system, it shall publish the
12 following described notice immediately prior to the reg-
13 ular municipal election or special municipal election,

14 as specified by the governing body, as a Class II legal
15 advertisement in compliance with the provisions of article
16 three, chapter fifty-nine of this code, and the publication
17 area for such publication shall be such city, town or
18 village. The notice shall set forth the terms and condi-
19 tions of such sale, lease or other disposition of said water-
20 works system, the price or other consideration which
21 has been agreed upon, the name of the purchaser or
22 purchasers or lessee or lessees, and such other informa-
23 tion as the governing body may deem necessary, and
24 each ballot, or ballot label where voting machines are
25 used, shall have written or printed thereon the following
26 words:

27 ☐ For Ratification

28 ☐ Against Ratification

29 Such election shall be held under the superintendence
30 of the commissioners of election appointed by the gov-
31 erning body of such city, town or village and the results
32 of such election shall be certified under oath and re-
33 turned by said election commissioners to the governing
34 body as soon as may be after such election.

35 In the event that the sale, lease or other disposition
36 of said waterworks system is ratified by three fifths of
37 the qualified voters voting at said regular or special
38 municipal election, the governing body of said city,
39 town or village having control of such waterworks system
40 shall proceed to consummate the sale, lease or other
41 disposition to the purchaser or purchasers or lessee upon
42 such terms and provisions as have been agreed upon;
43 otherwise, no further action with respect to said sale,
44 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
2 or extending any waterworks system, or for the purpose
3 of constructing any additions, betterments or improve-
4 ments to any waterworks system, or for the purpose of
5 acquiring any property necessary, appropriate, useful,
6 convenient or incidental for or to any waterworks system,
7 under the provisions of this article, the municipality shall

8 have the right of eminent domain as provided in chapter
9 fifty-four of this code: *Provided*, That such right of emi-
10 nent domain for the acquisition of a complete privately
11 owned waterworks system shall not be exercised without
12 prior approval of the public service commission, and in
13 no event shall any municipality construct, establish or
14 extend beyond the corporate limits of said municipality a
15 municipal waterworks system under the provisions of this
16 article to supply service in competition with an existing
17 privately or municipally owned waterworks system in
18 such municipality or within the proposed extension of
19 such system, unless a certificate of public convenience and
20 necessity therefor shall have been issued by the public
21 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.

1 Whenever a municipality shall, under the provisions of
2 this article, determine to acquire (by purchase or other-
3 wise), construct, establish, extend or equip a waterworks
4 system, it shall cause an estimate to be made of the cost
5 thereof, and shall, by ordinance, provide for the issuance
6 of revenue bonds under the provisions of this article,
7 which ordinance shall set forth a brief description of the
8 contemplated undertaking, the estimated cost thereof, the
9 amount, rate or rates of interest, the time and place of
10 payment, and other details in connection with the issuance
11 of the bonds. Such bonds shall be in such form and shall
12 be negotiated in such manner and upon such terms as
13 the governing body of such municipality may by ordi-
14 nance specify. All such bonds and the interest thereon,
15 and all properties and revenues and income derived from
16 such waterworks system, shall be exempt from all tax-
17 ation by this state, or any county, municipality, political
18 subdivision or agency thereof. Such bonds shall bear
19 interest at not more than six percent per annum, pay-
20 able semiannually, and shall be payable at such times,
21 not exceeding forty years from their date, and at such
22 place or places, within or without the state, as shall be
23 prescribed in the ordinance providing for their issuance.

24 Such ordinance shall also declare that a statutory
25 mortgage lien shall exist upon the property so to be
26 acquired, constructed, established, extended or equipped,
27 fix minimum rates or charges for water to be collected
28 prior to the payment of all of said bonds and shall pledge
29 the revenues derived from the waterworks system for
30 the purpose of paying such bonds and interest thereon,
31 which pledge shall definitely fix and determine the
32 amount of revenues which shall be necessary to be set
33 apart and applied to the payment of the principal of and
34 interest upon the bonds and the proportion of the balance
35 of such revenues which are to be set aside as a proper
36 and adequate depreciation account, and the remainder
37 shall be set aside for the reasonable and proper maintenance
38 and operation thereof. The rates or charges to be
39 charged for the services from such waterworks system
40 shall be sufficient at all times to provide for the payment
41 of interest upon all bonds and to create a sinking fund
42 to pay the principal thereof as and when the same become
43 due, and reasonable reserves therefor, and to provide
44 for the repair, maintenance and operation of the water-
45 works system, and to provide an adequate depreciation
46 fund, and to make any other payments which shall be
47 required or provided for in the ordinance authorizing
48 the issuance of said bonds.

§8-19-5. Publication of ordinance and notice; hearing.

1 After the ordinance for any project under this article
2 has been adopted, the ordinance, together with the fol-
3 lowing described notice, shall be published as a Class II
4 legal advertisement in compliance with the provisions of
5 article three, chapter fifty-nine of this code, and the
6 publication area for such publication shall be such munici-
7 pality. The notice to be published with said ordinance
8 shall state that said ordinance has been adopted, and that
9 the municipality contemplates the issuance of the bonds
10 described in the ordinance, and that any person interested
11 may appear before the governing body, upon a certain
12 date which shall not be less than ten days subsequent to
13 the date of the last publication of such ordinance and
14 notice, and present protests. At such hearing all protests

15 and suggestions shall be heard and the governing body
16 shall take such action as it shall deem proper in the
17 premises: *Provided*, That if at such hearing written pro-
18 test is filed by thirty percent or more of the freeholders
19 of the municipality, then the governing body of said
20 municipality shall not take further action unless four
21 fifths of the qualified members of said governing body
22 assent thereto.

§8-19-6. Amount, negotiability and execution of bonds.

1 Bonds herein provided for shall be issued in such
2 amounts as may be necessary to provide sufficient funds
3 to pay all costs of acquisition, construction, establishment,
4 extension or equipment, including engineering, legal and
5 other expenses, together with interest to a date six
6 months subsequent to the estimated date of completion.
7 Bonds issued under the provisions of this article are
8 hereby declared to be negotiable instruments, and the
9 same shall be executed by the proper legally constituted
10 authorities of the municipality and be sealed with the
11 corporate seal of the municipality, and in case any of
12 the officers whose signatures appear on the bonds or
13 coupons shall cease to be such officers before delivery of
14 such bonds, such signatures shall nevertheless be valid and
15 sufficient for all purposes the same as if they had re-
16 mained in office until such delivery. All signatures on the
17 bonds or coupons and the corporate seal may be mechan-
18 ically reproduced if authorized in the ordinance autho-
19 rizing the issuance of the bonds. Said bonds shall not
20 be negotiated at a price lower than a price which when
21 computed to maturity upon standard tables of bond
22 values will show a net return of more than six percent per
23 annum to the purchaser upon the amount paid therefor.

§8-19-7. 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 such
3 waterworks system, and such bonds shall not in any event
4 constitute an indebtedness of such municipality within
5 the meaning of any constitutional or statutory provision

6 or limitation, and it shall be plainly stated on the face
7 of each bond that the same has been issued under the
8 provisions of this article, and that it does not constitute
9 an indebtedness of such municipality within any constitu-
10 tional or statutory provision or limitation. Subject to the
11 provisions of subsection (b), section twelve of this article,
12 the ordinance authorizing the issuance of the bonds may
13 contain such covenants and restrictions upon the issuance
14 of additional revenue bonds thereafter as may be deemed
15 necessary or advisable for the assurance of payment of
16 the bonds thereby authorized and as may thereafter be
17 issued.

§8-19-8. Lien of bondholders.

1 There shall be and there is hereby created and granted
2 a statutory mortgage lien upon the waterworks system
3 so acquired, constructed, established, equipped or ex-
4 tended from the proceeds of bonds hereby authorized to
5 be issued, which shall exist in favor of the holder of
6 said bonds and each of them, and to and in favor of the
7 holder of the coupons attached to said bonds, and such
8 waterworks system shall remain subject to such statu-
9 tory mortgage lien until payment in full of the principal
10 of and interest upon said bonds.

11 Any municipality in acquiring an existing waterworks
12 system may provide that payment therefor shall be made
13 by issuing revenue bonds and delivering the same at
14 such prices as may be agreed upon within the limitations
15 prescribed in section six hereof. Any revenue bonds so
16 issued in payment for such an existing waterworks sys-
17 tem shall for all purposes be regarded as partaking of
18 the nature of and as being secured by a purchase money
19 mortgage upon the property so acquired; and the holders
20 thereof shall have, in addition to any other remedies and
21 rights prescribed by this article, such remedies and rights
22 as may now or hereafter exist in law in the case of pur-
23 chase money mortgages.

§8-19-9. 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
5 is hereby empowered and authorized to enter into and
6 execute, may contain covenants with the holders of such
7 bonds as to:

8 (a) The purpose or purposes to which the proceeds
9 of sale of such bonds or the revenues derived from said
10 waterworks system may be applied and the securing,
11 use and disposition thereof, including, if deemed desir-
12 able, the appointment of a trustee or depository for any
13 of such funds;

14 (b) The pledging of all or any part of the revenues
15 derived from the ownership, control or operation of such
16 waterworks system, including any part thereof here-
17 tofore or hereafter acquired, constructed, established,
18 extended or equipped or derived from any other sources,
19 to the payment of the principal of or interest thereon
20 of bonds issued hereunder and for such reserve or
21 other funds as may be deemed necessary or desir-
22 able;

23 (c) The fixing, establishing and collecting of such
24 rates or charges for the use of the services and facilities
25 of the waterworks system, including the parts thereof
26 heretofore or hereafter acquired, constructed, established,
27 extended or equipped and the revision of same from
28 time to time, as will always provide revenues at least
29 sufficient to provide for all expenses of repair, mainte-
30 nance and operation of such waterworks system, the
31 payment of the principal of and interest upon all bonds
32 or other obligations payable from the revenues of such
33 waterworks system, and all reserve and other funds
34 required by the terms of the ordinance authorizing the
35 issuance of such bonds;

36 (d) The transfer from the general funds of the mu-
37 nicipality to the account or accounts of the waterworks
38 system of an amount equal to the cost of furnishing the
39 municipality or any of its departments, boards or agen-
40 cies with the services and facilities of such waterworks
41 system;

42 (e) Subject to the provisions of subsection (b), sec-
43 tion twelve of this article, limitations or restrictions upon

44 the issuance of additional bonds or other obligations
45 payable from the revenues of such waterworks system,
46 and the rank or priority, as to lien and source and
47 security for payment from the revenues of such water-
48 works system, between bonds payable from such rev-
49 enues;

50 (f) The manner and terms upon which all bonds
51 and other obligations issued hereunder may be declared
52 immediately due and payable upon the happening of
53 a default in the payment of the principal of or interest
54 thereon, or in the performance of any covenant or
55 agreement with bondholders, and the manner and
56 terms upon which such defaults may be declared cured
57 and the acceleration of the maturity of such bonds
58 rescinded and repealed;

59 (g) Budgets for the annual repair, maintenance and
60 operation of such waterworks system and restrictions
61 and limitations upon expenditures for such purposes,
62 and the manner of adoption, modification, repeal or
63 amendment thereof, including the approval of such
64 budgets by consulting engineers designated by holders
65 of bonds issued hereunder;

66 (h) The amounts of insurance to be maintained upon
67 such waterworks system, or any part thereof, and the
68 use and disposition of the proceeds of any insurance;
69 and

70 (i) The keeping of books of account, relating to such
71 undertakings and the audit and inspection thereof, and
72 the furnishing to the holders of bonds issued hereunder
73 or their representatives, reports prepared, certified or
74 approved by accountants designated or approved by the
75 holders of bonds issued hereunder.

76 Any such ordinance or trust indenture may also con-
77 tain such other additional covenants as shall be deemed
78 necessary or desirable for the security of the holders
79 of bonds issued hereunder, notwithstanding that such
80 other covenants are not expressly enumerated above,
81 it being the intention hereof to grant to municipalities
82 plenary power and authority to make any and all
83 covenants or agreements necessary in order to secure
84 greater marketability for bonds issued hereunder as

85 fully and to the same extent as such covenants or agree-
86 ments could be made by a private corporation rendering
87 similar services and facilities and to grant to munici-
88 palities full and complete power and authority to enter
89 into any contracts, covenants or agreements with holders
90 of bonds issued hereunder not inconsistent with the
91 constitution of this state.

§8-19-10. Operating contract.

1 Any such municipality may enter into contracts or
2 agreements with any persons for (1) the repair, mainte-
3 nance and operation and management of the facilities
4 and properties of said waterworks system, or any part
5 thereof, or (2) the collection and disbursement of the
6 income and revenues therefor, or for both (1) and (2),
7 for such period of time and under such terms and condi-
8 tions as shall be agreed upon between such municipality
9 and such persons. Any such municipality shall have
10 plenary power and authority to provide in the ordinance
11 authorizing the issuance of bonds hereunder, or in any
12 trust indenture securing such bonds, that such contracts
13 or agreements shall be valid and binding upon the
14 municipality as long as any of said bonds, or interest
15 thereon, is outstanding and unpaid.

§8-19-11. Rates or charges for water must be sufficient to pay bonds, etc.; disposition of surplus.

1 Rates or charges for water fixed precedent to the
2 issuance of bonds shall not be reduced until all of said
3 bonds shall have been fully paid, and may, whenever
4 necessary, be increased in amounts sufficient to provide
5 for the payment of the principal of and interest upon
6 such bonds, and to provide proper funds for the depre-
7 ciation account and repair, maintenance and operation
8 charges. If any surplus shall be accumulated in the
9 repair, maintenance and operation fund which shall be
10 in excess of the cost of repairing, maintaining and oper-
11 ating the waterworks system during the remainder of
12 the fiscal year then current, and the cost of repairing,
13 maintaining and operating the said waterworks system
14 during the fiscal year then next ensuing, then any such
15 excess may be transferred to either the depreciation

16 account or to the bond and interest redemption account,
17 and if any surplus shall be accumulated in the depre-
18 ciation account over and above that which the munici-
19 pality shall find may be necessary for the probable
20 replacements which may be needed during the then
21 present fiscal year, and the next ensuing fiscal year,
22 such excess may be transferred to the bond and interest
23 redemption account, and if any surplus shall exist in
24 the bond and interest redemption account the same shall
25 be applied insofar as possible in the purchase or retire-
26 ment of outstanding revenue bonds payable from such
27 account.

**§8-19-12. Service charges; sinking fund; amount of bonds;
additional bonds; surplus.**

1 (a) Every municipality issuing bonds under the pro-
2 visions of this article shall thereafter, so long as any
3 of such bonds remain outstanding, repair, maintain and
4 operate its waterworks system as hereinafter provided
5 and shall charge, collect and account for revenues there-
6 from as will be sufficient to pay all repair, maintenance
7 and operation costs, provide a depreciation fund, retire
8 the bonds and pay the interest requirements of the
9 bonds as the same become due. The ordinance pursuant
10 to which any such bonds are issued shall pledge the
11 revenues derived from the waterworks system to the
12 purposes aforesaid and shall definitely fix and determine
13 the amount of revenues which shall be necessary and
14 set apart in a special fund for the bond requirements.
15 The amounts as and when so set apart into said special
16 fund for the bond requirements shall be remitted to
17 the state sinking fund commission to be retained and
18 paid out by said commission consistent with the pro-
19 visions of this article and the ordinance pursuant to
20 which such bonds have been issued. The bonds hereby
21 authorized shall be issued in such amounts as may be
22 determined necessary to provide funds for the purpose
23 for which they are authorized, and in determining the
24 amount of bonds to be issued it shall be proper to in-
25 clude interest on the bonds for a period not beyond six
26 months from the estimated date of completion.

27 (b) If the proceeds of the bonds, because of error
28 or otherwise, shall be less than the cost of the property
29 or undertaking for which authorized, additional bonds
30 may be issued to provide the amount of such deficit and
31 such additional bonds shall be deemed to be of the
32 same issue and shall be entitled to payment from the
33 same fund without preference or priority over the bonds
34 first authorized and issued.

35 (c) If the proceeds of the bonds shall exceed the
36 cost of the property or undertaking, the surplus shall
37 be converted into the fund for the retirement of the
38 bonds and payment of the interest thereon.

§8-19-13. Discontinuance of water service for nonpayment of rates or charges.

1 Any such municipality shall also have plenary power
2 and authority, and may covenant with the holders of
3 any bonds issued hereunder, to shut off and discontinue
4 the supplying of the water service of said waterworks
5 system for the nonpayment of the rates or charges for
6 said water service.

§8-19-14. Bonds for additions, betterments and improvements.

1 Whenever any municipality shall now or hereafter
2 own and operate a waterworks system, whether acquired,
3 constructed, established, extended or equipped under
4 the provisions of this article or not, and shall desire to
5 construct additions, betterments or improvements thereto,
6 it may issue revenue bonds under the provisions of this
7 article to pay for the same, and the procedure therefor,
8 including the fixing of rates or charges and the com-
9 putation of the amount thereof, and the power and
10 authority in connection therewith, shall be the same
11 as in this article provided for the issuance of bonds
12 for the acquisition, construction, establishment, exten-
13 sion or equipment of a waterworks system in a munici-
14 pality which has not heretofore owned and operated
15 a waterworks system: *Provided*, That nothing in this
16 article shall be construed as authorizing any munici-
17 pality to impair or commit a breach of the obligation
18 of any valid lien or contract created or entered into by
19 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.

§8-19-15. System of accounts; audit.

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

21 retirement of the bonds and pay the interest thereon,
22 and for the payment of the repair, maintenance and
23 operation expenses, and such receiver shall apply the
24 revenues in conformity with the provisions of this article
25 and the ordinance pursuant to which such bonds have
26 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.**

1 Any municipality is hereby empowered and authorized
2 to accept grants, and procure loans or temporary advances,
3 for the purpose of paying part or all of the cost of acquisi-
4 tion, construction, establishment, extension or equipment
5 of waterworks systems and the construction of additions,
6 betterments and improvements thereto, from the United
7 States of America or any federal or public agency or
8 department of the United States or any private agency,
9 corporation or individual, which loans or temporary ad-
10 vances may be repaid out of the proceeds of bonds
11 authorized to be issued under the provisions of this article
12 and to enter into the necessary contracts and agreements
13 to carry out the purposes hereof with the United States
14 of America or any federal or public agency or department
15 of the United States, or with any private agency, corpo-
16 ration or individual.

17 In no event shall any such loan or temporary advance
18 be a general obligation of the municipality and such loans
19 or temporary advances, including the interest thereon,
20 shall be paid solely from the proceeds of the bonds
21 authorized to be issued under the provisions of this article
22 or the revenues of the municipal waterworks system so
23 recited in each such contract and agreement.

**§8-19-18. Additional and alternative method for constructing,
etc., and financing waterworks system; cumulative
authority.**

1 This article shall, without reference to any other
2 statute or charter provision, be deemed full authority for

3 the acquisition, construction, establishment, extension,
4 equipment, additions, betterment, improvement, repair,
5 maintenance and operation of or to the waterworks sys-
6 tem herein provided for and for the issuance and sale
7 of the bonds by this article authorized, and shall be
8 construed as an additional and alternative method there-
9 for and for the financing thereof, and no petition, refer-
10 endum or election or other or further proceeding with
11 respect to any such undertaking or to the issuance or sale
12 of bonds under the provisions of this article and no pub-
13 lication of any resolution, ordinance, notice or proceeding
14 relating to any such undertaking or to the issuance or
15 sale of such bonds shall be required, except as prescribed
16 by this article, any provisions of other statutes of the
17 state to the contrary notwithstanding: *Provided*, That all
18 functions, powers and duties of the state department of
19 health shall remain unaffected by this article.

20 This article shall be construed as cumulative authority
21 for any undertaking herein authorized, and shall not be
22 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.

1 As an alternative to the procedures hereinabove pro-
2 vided, any municipality is hereby empowered and
3 authorized to acquire, construct, establish, extend, equip,
4 repair, maintain and operate a waterworks system or to
5 construct, maintain and operate additions, betterments
6 and improvements thereto, whether acquired, constructed,
7 established, extended or equipped under the provisions
8 of this article or not, and to collect the revenues therefrom
9 for the services rendered thereby, through the supervision
10 and control of a committee, by whatever name called,
11 composed of all or a portion of the governing body, or of
12 a board or commission appointed by such governing body,
13 as may be provided by the governing body, and if such
14 alternative is followed, said committee, board or commis-
15 sion shall have and be limited to all the powers, authority
16 and duties granted to and imposed upon a board as pro-

17 vided in article sixteen of this chapter, except that as to
18 a Class III city or Class IV town or village, the right to
19 lease said waterworks system shall be strictly limited
20 as 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
2 and welfare and shall be liberally construed to effectuate
3 its 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 sewerage 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 municipal indebtedness.

§8-20-7. Lien of bondholders.

§8-20-8. Covenants with bondholders.

§8-20-9. Operating contract.

§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.

§8-20-13. System of accounts; audit.

§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.

1 Any municipality may acquire, construct, establish and
2 equip and thereafter repair, maintain and operate a com-
3 bined waterworks and sewerage system either wholly
4 within or partly within and partly without the corporate
5 limits thereof, under the provisions of this article, and
6 any municipality owning and operating either a water-
7 works or a sewerage system, but not both, may acquire,
8 construct, establish and equip the waterworks or sewerage
9 system which it does not then own and operate, and in
10 either of such cases such municipality may provide by
11 ordinance that when such waterworks or sewerage system,
12 or both, shall have been acquired, constructed, estab-
13 lished and equipped, the same shall thereafter be owned,
14 repaired, maintained and operated as a combined under-
15 taking under the provisions of this article, and any
16 municipality already owning and operating an existing
17 waterworks system and an existing sewerage system may
18 by ordinance combine the same into a single undertaking
19 under the provisions of this article.

20 Any municipality which has combined its waterworks
21 and sewerage system under the provisions of this article,
22 or pursuant to provisions of any other law, may hereafter
23 construct extensions, additions, betterments and improve-
24 ments to either the waterworks system or the sewerage
25 system of said combined waterworks and sewerage sys-
26 tem, or both, and may finance the acquisition, construc-
27 tion, establishment and equipment of any such water-
28 works or sewerage system, or both, or the construction of
29 extensions, additions, betterments and improvements to

30 either the waterworks system or the sewerage system of
31 such combined waterworks and sewerage system, or both,
32 by the issuance of revenue bonds under the provisions of
33 this article.

34 Notwithstanding the provisions of any other law or
35 charter to the contrary, any such municipality may serve
36 and supply the area included within twenty miles out-
37 side its corporate limits with the water or sewer services
38 and facilities, or both, of its combined waterworks and
39 sewerage system: *Provided*, That such water or sewer
40 services and facilities shall not be served or supplied
41 within the corporate limits of any other municipality
42 without the consent of the governing body of such other
43 municipality.

44 When used in this article, the term "waterworks sys-
45 tem" shall be construed to mean and include a water-
46 works system in its entirety or any integral part thereof,
47 including mains, hydrants, meters, valves, standpipes,
48 storage tanks, pump tanks, pumping stations, intakes,
49 wells, impounding reservoirs, pumps, machinery, purifica-
50 tion plants, softening apparatus, and all other facilities
51 necessary, appropriate, useful, convenient or incidental
52 in connection with or to a water supply system; the term
53 "sewerage system" shall be construed to mean and in-
54 clude any or all of the following: A sewage treatment
55 plant or plants, collecting, intercepting and outlet sewers,
56 lateral sewers, drains, force mains, conduits, pumping
57 stations, ejector stations and all other appurtenances, ex-
58 tensions, additions and improvements necessary, appro-
59 priate, useful, convenient or incidental for the collection,
60 treatment and disposal in a sanitary manner of sewage
61 and industrial wastes; and the term "combined water-
62 works and sewerage system" shall be construed to mean
63 and include a waterworks and sewerage system, which a
64 municipality determines by ordinance to operate in com-
65 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

3 system, or a combined waterworks and sewerage system,
4 or for the purpose of constructing any additions, better-
5 ments or improvements to any such waterworks or
6 sewerage system, or a combined waterworks and sewer-
7 age system, or for the purpose of acquiring any prop-
8 erty necessary, appropriate, useful, convenient or inci-
9 dental for or to any waterworks or sewerage system, or
10 combined waterworks and sewerage system, under the
11 provisions of this article, the municipality shall have the
12 right of eminent domain as provided in chapter fifty-four
13 of this code: *Provided*, That such right of eminent
14 domain for the acquisition of a complete privately owned
15 waterworks system shall not be exercised without prior
16 approval of the public service commission, and in no
17 event shall any municipality construct, establish or ex-
18 tend beyond the corporate limits of said municipality a
19 municipal waterworks system or a combined waterworks
20 and sewerage system under the provisions of this article
21 to supply service in competition with an existing pri-
22 vately or municipally owned waterworks system or com-
23 bined waterworks and sewerage system in such munici-
24 pality or within the proposed extension of such system,
25 unless a certificate of public convenience and necessity
26 therefor shall have been issued by the public service com-
27 mission.

PART III. REVENUE BOND FINANCING.

§8-20-3. Ordinance describing project; contents.

1 The governing body of any municipality availing itself
2 of the provisions of this article shall adopt an ordinance
3 describing in a general way the contemplated project.
4 If it is intended to include in the combined waterworks
5 and sewerage system any existing waterworks system
6 or any existing sewerage system, or both, such ordinance
7 shall provide that it or they be so included in such com-
8 bined system and shall describe in a general way such
9 existing waterworks or sewerage system or both to be
10 included in the combined waterworks and sewerage
11 system. Such ordinance shall state the means provided
12 for refunding any obligations unpaid and outstanding
13 payable solely from the revenues of any such waterworks

14 or sewerage system, or both. Such ordinance shall deter-
15 mine the period of usefulness of the contemplated proj-
16 ect. If it is intended to acquire, construct, establish and
17 equip a combined waterworks and sewerage system or
18 any part thereof, or to construct extensions, additions,
19 betterments and improvements to either the waterworks
20 system or the sewerage system of said combined water-
21 works and sewerage system, or both, the ordinance shall
22 describe in a general way the works or property or sys-
23 tem to be acquired, constructed, established or equipped
24 or the extensions, additions, betterments and improve-
25 ments to be constructed. Such ordinance shall fix the
26 amount of revenue bonds proposed to be issued, the in-
27 terest rate or rates, and any other details in connection
28 with such bonds deemed advisable. Such ordinance may
29 state that the bonds, or such ones thereof as may be
30 specified, shall, to the extent and in the manner pre-
31 scribed, be subordinated and be junior in standing, with
32 respect to principal and interest and the security thereof,
33 to such other bonds as are designated in the ordinance.

§8-20-4. Publication of ordinance and notice; hearing.

1 After the ordinance for any project under the pro-
2 visions of this article has been adopted, the ordinance,
3 together with the following described notice, shall be
4 published as a Class II legal advertisement in compli-
5 ance with the provisions of article three, chapter fifty-
6 nine of this code, and the publication area for such publi-
7 cation shall be such municipality. The notice to be
8 published with said ordinance shall state that said ordi-
9 nance has been adopted, and that the municipality con-
10 templates the issuance of the bonds described in the ordi-
11 nance, and that any person interested may appear be-
12 fore the governing body, upon a certain date which shall
13 not be less than ten days subsequent to the date of the
14 last publication of such ordinance and notice, and pre-
15 sent protests. At such hearing all protests and sugges-
16 tions shall be heard and the governing body shall take
17 such action as it shall deem proper in the premises:
18 *Provided*, That if at such hearing written protest is filed
19 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

34 shall be treated as, negotiable instruments for all pur-
35 poses. Said bonds and the interest thereon, together
36 with all properties and facilities of said municipality
37 owned or used in connection with said combined water-
38 works or sewerage system, and all the moneys, revenues
39 and other income of such municipality derived from
40 such combined waterworks and sewerage system shall
41 be exempt from all taxation by this state or any county,
42 municipality, political subdivision or agency thereof.
43 Such bonds may be sold in such manner as the govern-
44 ing body shall determine and if issued to bear interest
45 at the rate of six percent per annum shall be sold for
46 not less than par and accrued interest. If any such bonds
47 shall be issued to bear interest at a rate of less than six
48 percent per annum, the minimum price at which they
49 may be sold shall be such that the interest cost to such
50 municipality of the proceeds of such bonds shall not
51 exceed six percent per annum computed to maturity
52 according to the standard table of bond values: *Provided,*
53 That if the governing body of the municipality deter-
54 mines to sell any revenue bonds of such combined water-
55 works and sewerage system for refunding purposes, such
56 bonds shall be sold at not less than par and accrued
57 interest and the proceeds deposited at the place of pay-
58 ment of the bonds, obligations or securities being re-
59 funded thereby. In case any officer whose signature
60 appears on such bonds or coupons attached thereto shall
61 cease to be such officer before the delivery of the bonds
62 to the purchaser, such signature shall nevertheless be
63 valid and sufficient for all purposes, with the same effect
64 as if he had remained in office until the delivery of the
65 bonds. All signatures on the bonds or coupons and the
66 corporate seal may be mechanically reproduced if autho-
67 rized in the ordinance authorizing the issuance of the
68 bonds. Such bonds shall have all the qualities of negotia-
69 ble instruments under the law of this state.

70 Whenever a waterworks and sewerage system is in-
71 cluded in a combined waterworks and sewerage system
72 under the provisions of this article and there are unpaid
73 and outstanding revenue bonds or any other obligations
74 or securities previously issued which are payable solely

75 from the revenues of such waterworks or such sewerage
76 system or any part thereof, such outstanding bonds, obli-
77 gations or securities may be refunded by the issuance
78 and sale or exchange therefor of revenue bonds to be
79 issued under the provisions of this article. Whenever
80 any outstanding bonds, obligations or securities previ-
81 ously issued which are payable solely from the revenues
82 of any waterworks or sewerage system included in a
83 combined waterworks and sewerage system under the
84 provisions of this article are refunded and the refunding
85 is to be accomplished by exchange, such outstanding
86 bonds, obligations or securities shall be surrendered and
87 exchanged for revenue bonds of such combined water-
88 works and sewerage system of a total principal amount
89 which shall not be more and may be less than the
90 principal amount of the bonds, obligations or securities
91 surrendered and exchanged plus the interest to accrue
92 thereon to the date of surrender and exchange, and if
93 the refunding is to be accomplished through the sale of
94 revenue bonds of such combined waterworks and sewer-
95 age system the total principal amount of such revenue
96 bonds which may be sold for refunding purposes shall
97 not exceed the principal amount of the bonds, obligations
98 or securities being refunded plus the interest to accrue
99 thereon to the retirement date or the next succeeding
100 interest payment date, whichever date may be earlier.
101 Provision may be made that each bond to be exchanged
102 for refunding bonds shall be kept intact and shall not be
103 cancelled or destroyed until the refunding bonds, and
104 interest thereon, have been finally paid and discharged;
105 but each such bond shall be stamped with a legend to the
106 effect that the same has been refunded pursuant to the
107 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-

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 assur-
15 ance 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

5 is hereby empowered and authorized to enter into and
6 execute, may contain covenants with the holders of such
7 bonds as to:

8 (a) The purpose or purposes to which the proceeds
9 of sale of such bonds or the revenues derived from said
10 combined waterworks and sewerage system may be ap-
11 plied and the securing, use and disposition thereof, in-
12 cluding, if deemed desirable, the appointment of a trustee
13 or depository for any of such funds;

14 (b) The pledging of all or any part of the revenues
15 derived from the ownership, control or operation of such
16 combined waterworks and sewerage system, including
17 any part thereof heretofore or hereafter acquired, con-
18 structed, established, extended, equipped, added to, bet-
19 tered or improved or derived from any other sources,
20 to the payment of the principal of or interest thereon of
21 bonds issued hereunder and for such reserve or other
22 funds as may be deemed necessary or desirable;

23 (c) The fixing, establishing and collecting of such
24 rates or charges for the use of the services and facilities
25 of the combined waterworks and sewerage system, in-
26 cluding the parts thereof heretofore or hereafter acquired,
27 constructed, established, extended, equipped, added to,
28 bettered or improved and the revision of same from time
29 to time, as will always provide revenues at least suffi-
30 cient to provide for all expenses of repair, maintenance
31 and operation of such combined waterworks and sewer-
32 age system, the payment of the principal of and interest
33 upon all bonds or other obligations payable from the
34 revenues of such combined waterworks and sewerage
35 system, and all reserve and other funds required by the
36 terms of the ordinance authorizing the issuance of such
37 bonds;

38 (d) The transfer from the general funds of the mu-
39 nicipality to the account or accounts of the combined
40 waterworks and sewerage system of an amount equal
41 to the cost of furnishing the municipality or any of its
42 departments, boards or agencies with the services and
43 facilities of such combined waterworks and sewerage
44 system;

45 (e) Limitations or restrictions upon the issuance of
46 additional bonds or other obligations payable from the
47 revenues of such combined waterworks and sewerage
48 system, and the rank or priority, as to lien and source
49 and security for payment from the revenues of such
50 combined waterworks and sewerage system, between
51 bonds payable from such revenues;

52 (f) The manner and terms upon which all bonds and
53 other obligations issued hereunder may be declared
54 immediately due and payable upon the happening of a
55 default in the payment of the principal of or interest
56 thereon, or in the performance of any covenant or agree-
57 ment with bondholders, and the manner and terms upon
58 which such defaults may be declared cured and the accel-
59 eration of the maturity of such bonds rescinded and
60 repealed;

61 (g) Budgets for the annual repair, maintenance and
62 operation of such combined waterworks and sewerage
63 system and restrictions and limitations upon expenditures
64 for such purposes, and the manner of adoption, modifica-
65 tion, repeal or amendment thereof, including the ap-
66 proval of such budgets by consulting engineers desig-
67 nated by holders of bonds issued hereunder;

68 (h) The amounts of insurance to be maintained upon
69 such combined waterworks and sewerage system, or any
70 part thereof, and the use and disposition of the proceeds
71 of any insurance; and

72 (i) The keeping of books of account, relating to such
73 undertaking and the audit and inspection thereof, and
74 the furnishing to the holders of bonds issued hereunder
75 or their representatives, reports prepared, certified or
76 approved by accountants designated or approved by the
77 holders of bonds issued hereunder.

78 Any such ordinance or trust indenture may also con-
79 tain such other additional covenants as shall be deemed
80 necessary or desirable for the security of the holders
81 of bonds issued hereunder, notwithstanding that such
82 other covenants are not expressly enumerated above, it
83 being the intention hereof to grant to municipalities
84 plenary power and authority to make any and all cove-

85 nants or agreements necessary in order to secure greater
86 marketability for bonds issued hereunder as fully and
87 to the same extent as such covenants or agreements
88 could be made by a private corporation rendering similar
89 services and facilities and to grant to municipalities full
90 and complete power and authority to enter into any con-
91 tracts, covenants or agreements with holders of bonds
92 issued hereunder not inconsistent with the constitution
93 of this state.

§8-20-9. Operating contract.

1 Any such municipality may enter into contracts or
2 agreements with any persons for (1) the repair, main-
3 tenance and operation and management of the facilities
4 and properties of said combined waterworks and sewer-
5 age system, or any part thereof, or (2) the collection and
6 disbursement of the income and revenues thereof, or for
7 both (1) and (2), for such period of time and under
8 such terms and conditions as shall be agreed upon be-
9 tween such municipality and such persons. Any such
10 municipality shall have plenary power and authority to
11 provide in the ordinance authorizing the issuance of
12 bonds hereunder, or in any trust indenture securing such
13 bonds, that such contracts or agreements shall be valid
14 and binding upon the municipality as long as any of said
15 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
2 of the provisions of this article shall have plenary power
3 and authority to make, enact and enforce all needful rules
4 and regulations for the repair, maintenance and opera-
5 tion and management of the combined waterworks and
6 sewerage system of such municipality and for the use
7 thereof, and shall also have plenary power and authority
8 to make, enact and enforce all needful rules and regula-
9 tions and ordinances for the care and protection of any
10 such system, which may be conducive to the preservation

11 of the public health, comfort and convenience and to
12 rendering the water supply of such municipality pure
13 and the sewerage harmless insofar as it is reasonably
14 possible so to do, and any such municipality shall have
15 plenary power and authority to charge the users for the
16 use and service of such combined waterworks and sewer-
17 age system and to establish rates or charges for such pur-
18 pose. Separate rates or charges may be fixed for the
19 water and sewer services respectively or combined rates
20 or charges for the combined water and sewer services.
21 Such rates or charges, whether separate or combined,
22 shall be sufficient at all times to pay the cost of repair,
23 maintenance and operation of the combined waterworks
24 and sewerage system, provide an adequate reserve fund
25 and adequate depreciation fund and pay the principal of
26 and interest upon all revenue bonds issued under this
27 article. Rates or charges shall be established, revised and
28 maintained by ordinance and become payable as the gov-
29 erning body may determine by ordinance, and such rates
30 or charges shall be changed from time to time as needful,
31 consistent with the provisions of this article.

32 Such rates or charges whenever delinquent, as pro-
33 vided by ordinance of the municipality, shall be liens for
34 the amount thereof upon the real property served, and
35 the municipality shall have plenary power and authority
36 from time to time to enforce such lien in a civil action to
37 recover the money due for such services rendered plus
38 a reasonable attorney's fee.

**§8-20-11. Discontinuance of water service for nonpayment
of rates or charges.**

1 Any such municipality shall also have plenary power
2 and authority, and may covenant with the holders of any
3 bonds issued hereunder, to shut off and discontinue the
4 supplying of the water service of said combined water-
5 works and sewerage system for the nonpayment of the
6 rates or charges for said water service or sewer service,
7 or both.

§8-20-12. Use of revenues; sinking fund.

1 All revenues derived from the operation of any com-
2 bined waterworks and sewerage system under the pro-

3 visions of this article shall be set aside as collected and
4 used only for the purpose of paying the cost of repairing,
5 maintaining and operating such system, providing an
6 adequate reserve fund, an adequate depreciation fund,
7 and paying the principal of and interest upon the revenue
8 bonds issued by the municipality under the provisions of
9 this article. The ordinance pursuant to which any such
10 bonds are issued shall pledge the revenues derived from
11 the combined waterworks and sewerage system to the
12 purposes aforesaid and shall definitely fix and determine
13 the amount of revenues which shall be necessary and set
14 apart in a special fund for the bond requirements. The
15 amounts as and when so set apart into said special fund
16 for the bond requirements shall be remitted to the state
17 sinking fund commission to be retained and paid out by
18 said commission consistent with the provisions of this
19 article and the ordinance pursuant to which such bonds
20 have been issued.

§8-20-13. System of accounts; audit.

1 Any municipality operating a combined waterworks and
2 sewerage system under the provisions of this article shall
3 set up and maintain a proper system of accounts in ac-
4 cordance with the requirements of the public service
5 commission, showing the amount of revenues received
6 from such combined waterworks and sewerage system and
7 the application of the same. At least once each year such
8 municipality shall cause such accounts to be properly
9 audited, and a report of such audit shall be open to the
10 public for inspection at all reasonable times.

§8-20-14. Repair and maintenance of municipal sewerage system outside corporate limits.

1 Whenever a municipality collects rates or charges from
2 users of any part of a sewerage system located outside the
3 corporate limits of such municipality for sewerage service
4 rendered to such users, pursuant to the provisions of this
5 article or other act or law, such municipality shall be
6 responsible for the repair and maintenance of such
7 sewerage system and the county court of the county or
8 counties in which such sewerage system is located shall

9 not be liable or responsible for the repair and maintenance
10 of such sewerage system.

**§8-20-15. 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 seven of this article, pro-
6 tect and enforce any and all rights granted hereunder or
7 under any such ordinance or trust indenture, and may
8 enforce and compel performance of all duties required
9 by the provisions of this article or by any such ordinance
10 or trust indenture to be performed by the municipality
11 or by the governing body or any officer, including the
12 making and collecting of reasonable and sufficient rates
13 or charges for services rendered by the combined water-
14 works and sewerage system. If there be default in the
15 payment of the principal of or interest upon any of such
16 bonds, or of both principal and interest, any court hav-
17 ing jurisdiction shall appoint a receiver to administer
18 said combined waterworks and sewerage system on be-
19 half of the municipality, and the bondholders or trustee,
20 or both, with power to charge and collect rates or charges
21 sufficient to provide for the retirement of the bonds and
22 pay the interest thereon, and for the payment of the
23 repair, maintenance and operation expenses, and such
24 receiver shall apply the revenues in conformity with the
25 provisions of this article and the ordinance pursuant to
26 which such bonds have been issued or trust indenture,
27 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.**

1 Any municipality is hereby empowered and authorized
2 to accept grants, and procure loans or temporary ad-

3 vances, for the purpose of paying part or all of the cost
4 of acquisition, construction, establishment, extension or
5 equipment of combined waterworks and sewerage sys-
6 tems and the construction of additions, betterments and
7 improvements thereto, from the United States of America
8 or any federal or public agency or department of the
9 United States or any private agency, corporation or in-
10 dividual, which loans or temporary advances may be
11 repaid out of the proceeds of bonds authorized to be
12 issued under the provisions of this article and to enter
13 into the necessary contracts and agreements to carry
14 out the purposes hereof with the United States of
15 America or any federal or public agency or department
16 of the United States, or with any private agency, corpora-
17 tion or individual.

18 In no event shall any such loan or temporary advance
19 be a general obligation of the municipality and such
20 loans or temporary advances, including the interest
21 thereon, shall be paid solely from the proceeds of the
22 bonds authorized to be issued under the provisions of this
23 article or the revenues of the combined waterworks and
24 sewerage system so recited in each such contract and
25 agreement.

**§8-20-17. Additional and alternative method for constructing,
etc., and financing combined waterworks and
sewerage system; cumulative authority.**

1 This article shall, without reference to any other statute
2 or charter provision, be deemed full authority for
3 the acquisition, construction, establishment, extension,
4 equipment, additions, betterment, improvement, repair,
5 maintenance and operation of or to the combined water-
6 works and sewerage system herein provided for and for
7 the issuance and sale of the bonds by this article autho-
8 rized, and shall be construed as an additional and alterna-
9 tive method therefor and for the financing thereof, and
10 no petition, referendum or election or other or further
11 proceeding with respect to any such undertaking or to
12 the issuance or sale of bonds under this article and no
13 publication of any resolution, ordinance, notice or pro-
14 ceeding relating to any such undertaking or to the is-

15 suance or sale of such bonds shall be required, except
16 as prescribed by this article, any provisions of other
17 statutes of the state to the contrary notwithstanding:
18 *Provided*, That all functions, powers and duties of the
19 state department of health and the division of water
20 resources of the department of natural resources shall
21 remain unaffected by this article.

22 This article shall be construed as cumulative authority
23 for any undertaking herein authorized, and shall not be
24 construed to repeal any existing laws with respect
25 thereto.

PART V. OPERATION BY BOARD; CONSTRUCTION.

**§8-20-18. Alternative procedure for acquisition, construction,
etc., of combined waterworks and sewerage
system.**

1 (a) As an alternative to the procedure hereinabove
2 provided, any municipality is hereby empowered and
3 authorized to acquire, construct, establish, extend, equip,
4 repair, maintain and operate a combined waterworks and
5 sewerage system or to construct, maintain and operate
6 additions, betterments and improvements thereto,
7 whether acquired, constructed, established, extended or
8 equipped under the provisions of this article or not, and
9 to collect the revenues therefrom for the services ren-
10 dered thereby, through the supervision and control of a
11 committee, by whatever name called, composed of all or
12 of a portion of the governing body, or of a board or com-
13 mission appointed by such governing body, as may be
14 provided by the governing body, and if such alternative
15 is followed, said committee, board or commission shall
16 have and be limited to all the powers, authority and duties
17 granted to and imposed upon a board as provided in
18 article sixteen of this chapter.

19 (b) In the event that the waterworks or sewerage
20 system or both are in existence prior to the creation of
21 the combined waterworks and sewerage system, and the
22 waterworks or sewerage system or both are supervised
23 and controlled by a committee, board or commission, and
24 the alternative provided for in subsection (a) of this

25 section is to be followed with respect to the supervision
26 and control of the combined waterworks and sewerage
27 system, the governing body may by ordinance, after the
28 creation of the combined waterworks and sewerage sys-
29 tem, provide (1) the manner of and procedure for trans-
30 ferring such supervision and control from each such
31 separate committee, board or commission to the com-
32 mittee, board or commission which is supervising and
33 controlling the combined waterworks and sewerage sys-
34 tem, or (2) the manner of and procedure for combining
35 each such separate committee, board or commission into
36 one committee, board or commission and transferring
37 thereto such supervision and control as aforesaid.

§8-20-19. Article to be liberally construed.

1 This article is necessary for the public health, safety
2 and welfare and shall be liberally construed to effectuate
3 its purposes.

**ARTICLE 21. BOARD OF PARK AND RECREATION COMMIS-
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; conveyances 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.

§8-21-13. Public park and recreation bonds.

PART IV. CONSTRUCTION.

§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 appoint-
ment; 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

10 such provision is made, the members of the board shall
11 be elected by the qualified voters of the city at appro-
12 priate regular municipal elections. Membership on the
13 governing body shall not disqualify any member for
14 election to the board. If provision is made for the
15 appointment of members as aforesaid and the board
16 consists of three or four members, one member of the
17 governing body, if otherwise qualified, may be appointed
18 by the governing body, and if the board consists of five
19 members not more than two members of the governing
20 body so qualified may be so appointed. The term of the
21 board membership of any such member of the governing
22 body so appointed shall continue during his term as a
23 member of such governing body and until his successor
24 is appointed or elected and qualified. The terms of other
25 appointed or of elected members shall be for six years,
26 and until their successors have been duly appointed
27 or elected and qualified: *Provided*, That notwithstanding
28 the fact that there be no charter provision or ordinance
29 for appointment of the members of the board, the gov-
30 erning body of the city shall appoint the members of
31 the first board, such appointees to serve, one for a term
32 of six years, one for a term of four years, and one for
33 a term of two years. The date upon which the terms
34 of such board members shall begin shall be specified
35 by ordinance. When any member of the board, during
36 his term of office, shall cease to be a resident and free-
37 holder of the city, he shall thereby be disqualified as a
38 member of said board and his office shall thereupon
39 become vacant.

§8-21-4. Filling vacancies.

1 When a vacancy occurs on said board by reason of
2 death, resignation, change of residence from the city,
3 failure to remain a freeholder of the city, or due to
4 any other cause, the remaining member or members of
5 said board shall appoint a successor or successors, or
6 if there should be no members left on said board, the
7 governing body of the city shall appoint successors, and
8 in either event, the appointments shall be for the unex-
9 pired term or terms.

§8-21-5. Oath of members; organization of board; secretary; treasurer.

1 After appointment or election, the members of the
2 board shall qualify by taking and filing with the recorder
3 of the city the oath prescribed by law for public officials,
4 and they shall not be permitted to serve upon said board
5 until they have so qualified. If any member of said
6 board shall fail to so qualify on or before the date upon
7 which he should assume the duties of his office, a vacancy
8 shall exist which shall be filled as provided in section
9 four of this article.

10 At the first meeting held after the first board has been
11 appointed, as hereinbefore provided, and thereafter on
12 a date to be fixed by ordinance, the members of the
13 board shall organize by electing one of their number
14 president, and another vice president, and by electing
15 a secretary who need not be a member of the board.
16 The secretary shall keep an accurate record of all the
17 fiscal affairs of the board, and shall keep a minute book
18 in which he shall record the proceedings and transactions
19 of each meeting of the board. The secretary shall be
20 paid such compensation for his services as the board
21 shall fix from year to year. The city treasurer shall be
22 ex officio treasurer of said board, and he shall take the
23 oath prescribed by law and shall furnish such bond as
24 may be required by said board.

§8-21-6. Members to be paid expenses; members not to be personally interested in contracts or property controlled by board.

1 The members of said board shall receive no compen-
2 sation for their services but they shall be entitled to
3 reimbursement for all reasonable and necessary expenses
4 actually incurred in the performance of their duties as
5 members of said board. They shall not be personally
6 interested, directly or indirectly, in any contract entered
7 into by said board, or hold any remunerative position
8 in connection with the establishment, construction, im-
9 provement, extension, development, maintenance or
10 operation of any of the property under their control
11 as members of said board.

PART II. POWERS.

§8-21-7. Office; powers.

1 The governing body shall furnish said board an office
2 in the city building where it may hold its meetings
3 and keep its records. Any board operating under the
4 provisions of this article shall have complete and exclu-
5 sive control and management of all of the properties
6 which shall be operated in connection with the public
7 park and recreation system for the city, and shall have
8 power to employ such persons as, in its opinion, may
9 be necessary for the establishment, construction, im-
10 provement, extension, development, maintenance or
11 operation of the property under its control, at such wages
12 or salaries as it shall deem proper, and shall have full
13 control of all employees.

§8-21-8. Purchase, lease or condemnation of real property.

1 The board is hereby granted the power and authority
2 to acquire in its name or in the name of the city by
3 purchase, lease, or by exercise of the power of eminent
4 domain, or otherwise, such land or lands as it shall deter-
5 mine to be necessary, appropriate, convenient or inci-
6 dental to the establishment, construction, improvement,
7 extension, development, maintenance or operation of a
8 system of public parks, parkways, playgrounds, athletic
9 fields, stadiums, swimming pools, skating rinks or arenas
10 and other public park and recreational facilities for the
11 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
2 title in its name or in the name of the city to all real and
3 personal property acquired by it for the use of the public
4 or useful to the public in the establishment, construction,
5 improvement, extension, development, maintenance or
6 operation of all public parks, parkways, playgrounds,
7 athletic fields, stadiums, swimming pools, skating rinks or
8 arenas and all other public park and recreational facilities

9 for the city, whether of a like or different nature, and
10 shall manage and dispose of the same as, in its opinion,
11 will best serve the interests of the public in carrying out
12 the purposes of this article. The city and all other public
13 bodies owning real property intended to be used for public
14 parks and recreation are hereby authorized to convey the
15 same to said board to be held by it for such purposes, and
16 said board is hereby authorized to receive the same.
17 Nothing contained in this chapter shall be construed as
18 limiting said board from going beyond the corporate
19 limits of the city, anywhere within the state, to lease,
20 purchase or otherwise acquire any real property for the
21 purposes herein set forth. The board shall have the right
22 to sell and convey only such part of the real property
23 that it may acquire by gift, devise, purchase or other-
24 wise, as it may determine to be of no advantage in the
25 establishment, construction, improvement, extension, de-
26 velopment, maintenance or operation of said public parks,
27 parkways, playgrounds, athletic fields, stadiums, swim-
28 ming pools, skating rinks or arenas and other public park
29 and recreational facilities, whether of a like or different
30 nature; except that the board shall have the power and
31 authority to make such sales and conveyances of its real
32 property as may be necessary, appropriate or convenient
33 to enable the city to obtain the benefits of article sixteen
34 of this chapter or any other similar act or legislative
35 authorization. Under no circumstances shall any of such
36 real property of the board be sold or conveyed except
37 by unanimous vote of all of the members of said board.
38 All deeds conveying the real property of said board shall
39 be executed in its official name by its president or vice
40 president, shall have its seal affixed and shall be duly
41 attested by its secretary.

**§8-21-10. General powers of board; enactment and enforce-
ment of rules and regulations; counsel.**

1 The board shall have the necessary, appropriate, con-
2 venient and incidental powers and authority to manage
3 and control all public parks, parkways, playgrounds,
4 athletic fields, stadiums, swimming pools, skating rinks
5 or arenas and other public park and recreational facilities

6 of all kinds used as a part of said public park and recrea-
7 tion system or as a means of maintaining places of beauty,
8 education and recreation, and promoting the health,
9 property, lives, decency, morality and good order of the
10 general public, and particularly of the inhabitants of the
11 city and vicinity; to abate or cause to be abated all
12 nuisances affecting same; to regulate or prohibit the sell-
13 ing of any article, goods, wares or merchandise within
14 said park and recreation system so designated; to regulate
15 or prohibit the placing of signs, billboards, posters and
16 advertisements within said park and recreation system
17 as so designated, or the grounds immediately adjacent
18 thereto; to have the same kept in good order and free
19 from obstruction for the use and benefit of the public;
20 to restrict and prohibit vagrants, mendicants, beggars,
21 tramps, prostitutes or disorderly individuals therefrom;
22 to establish, construct, improve, extend, develop, main-
23 tain and operate such parks, parkways, playgrounds,
24 athletic fields, stadiums, swimming pools, skating rinks
25 or arenas and other public park and recreational facilities,
26 whether of a like or different nature, on any grounds
27 controlled by said board; to acquire for public use by
28 lease or otherwise lands either within or without the
29 corporate limits of the city; to cause any public street,
30 avenue, road, alley, way, bridle path or walkway, which
31 is a part of the public park and recreation system, to be
32 graded, drained and surfaced; to construct, maintain and
33 operate all necessary sewers and water lines in connec-
34 tion with said public park and recreation system; and
35 to do any and all other things or acts which may in any
36 way be necessary, appropriate, convenient or incidental
37 to the use and enjoyment of said public park and recrea-
38 tion system by the general public as a place or places of
39 beauty, education, entertainment and recreation.

40 In order to accomplish the foregoing purposes, said
41 board is hereby empowered and authorized to promulgate,
42 and amend from time to time, such rules and regulations
43 as may be necessary, appropriate, convenient or inci-
44 dental thereto; after codification of such rules and regula-
45 tions, or any amendments thereto, by ordinance of the
46 governing body which may provide penalties for a viola-

47 tion thereof, which codification is hereby authorized, to
48 enforce the same by appropriate proceedings in any
49 proper tribunal of this state, or any county, district or
50 municipality thereof; and to employ such police officers
51 as it shall deem proper and necessary. The city attorney
52 shall be the official counsel for said board and shall advise
53 it on all legal matters, but said board may, in its own
54 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.

§8-21-13. Public park and recreation bonds.

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 recre-
6 ational 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, devel-
9 oping, 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

13 and recreation bonds," in order to identify the same,
14 and shall be of such form, denomination and maturity
15 and shall bear such rate of interest as shall be fixed by
16 ordinance of the governing body of the city. The gov-
17 erning body may provide for the issuance of bonds for
18 other lawful purposes of the city in the same ordinance
19 in which provision shall be made for the issuance of
20 bonds under the provisions of this section. The board
21 shall pay all of the costs and expenses of any election
22 which shall be held to authorize the issuance of public
23 park and recreation bonds only. The costs and expenses
24 of holding an election to authorize the issuance of public
25 park and recreation bonds and bonds for other city pur-
26 poses shall be paid by the board and the city respectively,
27 in the proportion that the public park and recreation
28 bonds bear to the total amount of bonds authorized.

29 Whenever the governing body of the city and the
30 requisite majority of the legal votes cast at the election
31 thereon shall authorize, in the manner prescribed by
32 law, the issuance of bonds for the purpose of establishing,
33 constructing, improving, extending, developing, main-
34 taining or operating, or any combination of the fore-
35 going, a system of public parks and recreational facilities
36 for the city, or for refunding any outstanding bonds,
37 the proceeds of which were applied to any of said pur-
38 poses, said bonds shall be issued and delivered to the
39 board to be by it sold in the manner prescribed by law,
40 and the proceeds thereof shall be paid into the treasury
41 of the board, and the same shall be applied and utilized
42 by the board for the purposes prescribed by the ordi-
43 nance authorizing the issuance of such bonds. In any
44 ordinance for the issuance of bonds for such purposes,
45 it shall be a sufficient statement of the purposes for
46 creating the debt to specify that the same is for the
47 purpose of establishing, constructing, improving, extend-
48 ing, developing, maintaining or operating, or any com-
49 bination of the foregoing, a public park and recreation
50 system for the city, without specifying the particular
51 establishment, construction, improvement, extension,
52 development, maintenance or operation contemplated;
53 but an ordinance for refunding bonds shall designate

- 54 the issue and the number of bonds which it is proposed
55 to refund.

PART IV. CONSTRUCTION.

§8-21-14. Construction of article.

- 1 The provisions of this article shall be construed as con-
2 ferring additional power and authority upon cities acting
3 hereunder, and shall not be construed as affecting any
4 power or authority heretofore conferred upon any city
5 by the Legislature by general, special or local law or
6 municipal charter, or parts thereof.

ARTICLE 22. RETIREMENT BENEFITS GENERALLY; POLICE- MEN'S PENSION AND RELIEF FUND; FIREMEN'S PENSION AND RELIEF FUND; PENSION PLANS FOR EMPLOYEES OF WATERWORKS SYSTEM, SEWERAGE SYSTEM OR COMBINED WATER- WORKS 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.
- §8-22-3. Definitions.
- §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.
- §8-22-7. Retirement pensions.
- §8-22-8. Disability pensions; annuities.
- §8-22-9. Death benefits; return of contributions.
- §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; FIREMEN'S PENSION AND RELIEF FUND.

- §8-22-16. Pension and relief funds for policemen and firemen; creation
of boards of trustees; definitions; continuance of funds.
- §8-22-17. 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.
- §8-22-21. Duties and bond of custodian of funds.
- §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.
- §8-22-24. Disability pensions; temporary disability payments.
- §8-22-25. Retirement pensions.
- §8-22-26. Death benefits.
- §8-22-27. General provisions concerning disability pensions, 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
- 2 public employer under the West Virginia public em-
- 3 ployees retirement system created and established by,
- 4 and administered pursuant to, the provisions of article
- 5 ten, chapter five of this code, for the coverage of all
- 6 employees eligible under the provisions of said article
- 7 ten, except policemen and firemen covered by a police-
- 8 men's pension and relief fund or firemen's pension and
- 9 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 heretofore established.

- 1 Every Class I and Class II city which is not a par-
- 2 ticipating public employer in the said West Virginia

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.

§8-22-3. Definitions.

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;

29 (h) "Total disability not in line of duty" shall mean
30 total and permanent disablement from performing any
31 work for pay, whether for the city by which employed
32 at date of disability or other employer, from any cause
33 other than that set forth in subdivision (g) of this
34 section;

35 (i) The term "actuarial equivalent" shall mean an
36 annuity of equal value to the accumulated contributions,
37 annuity or benefit when computed upon the basis of the
38 actuarial tables in use by the fund;

39 (j) "Monthly salary" shall mean the amount earned
40 each month by a member as an employee of the city:
41 *Provided*, That to and including June thirty, one thou-
42 sand nine hundred sixty-seven, the maximum amount
43 of salary to be considered hereunder for purposes of
44 contributions and in the computation of benefits shall be
45 four hundred dollars per month; and

46 (k) "Average salary" shall mean the highest annual
47 average salary earned by a member during a period of
48 five consecutive years within the total service of the
49 member, subject to a maximum amount of four hundred
50 dollars per month to and including June thirty, one
51 thousand nine hundred sixty-seven, and no such maxi-
52 mum amount after such date.

§8-22-4. Board of trustees.

1 The governing body of each such city desiring to estab-
2 lish and maintain a fund as authorized in sections two
3 through fourteen of this article shall by ordinance pro-
4 vide for a board of trustees of the fund.

5 The said board of trustees shall consist of the mayor
6 and four members of the fund, to be appointed by the
7 mayor, with the advice and consent of a majority of
8 the members of the fund. The initial appointments shall
9 be for a term of one, two, three and four years, respec-
10 tively, after which all appointments shall be for a term
11 of four years.

12 The presiding officer of the board shall be the mayor,
13 and the secretary thereof shall be appointed by said
14 board. It shall be the duty of such secretary to keep a
15 full and permanent record of all the proceedings of the

16 board, and said board may fix his compensation for this
17 work which shall be paid out of said fund.

18 The mayor or any three members of the board shall
19 have the power to call a meeting at any time that it is
20 necessary in order to carry out the business of the board.
21 Three members of the board shall constitute a quorum
22 to transact business, but it shall require three or more
23 affirmative votes to pass any matter before the board.

24 The board shall have charge of and administer the
25 fund and shall order payments therefrom, and no money
26 shall be paid out of the fund except upon the order of
27 the board.

28 The governing body shall have plenary power and
29 authority to make any and all rules and regulations per-
30 taining to the fund not inconsistent with the provisions
31 of sections two through fifteen of this article, the con-
32 stitution and the laws of this state.

33 Such board shall be a public corporation by the name
34 and style of "The Board of Trustees of the Employees
35 Retirement and Benefit Fund of (name the city)," by
36 which name the board may sue and be sued, plead and
37 be impleaded, contract and be contracted with, take
38 and hold real and personal property, for the use of said
39 fund, and have and use a common seal. Said board may
40 also in its corporate name do and perform any and all
41 other acts and business pertaining to the trust created
42 hereby or by any conveyance, devise or dedication made
43 for the uses and purposes of said board.

§8-22-5. Employees eligible for participation in fund.

1 Employees eligible for participation in the fund shall
2 include all employees who are employed by the city on
3 a permanent basis. The following employees, however,
4 shall not be eligible for participation in the fund:

5 (1) Appointive members of administrative boards and
6 commissions, except employees of such boards and com-
7 missions;

8 (2) Individuals employed under contract for a definite
9 period or for the performance of a particular or special
10 service;

11 (3) Employees serving on a part-time basis of less
12 than one-half time;

13 (4) Policemen and firemen covered by a policemen's
14 pension and relief fund or firemen's pension and relief
15 fund;

16 (5) Employees who are paid in part by the state,
17 county or other governmental agency, and only in part
18 by the city;

19 (6) Employees who are past sixty years of age on
20 the effective date of the fund; and

21 (7) Employees who are hired after the effective date
22 of the fund and who were past fifty years of age at the
23 time they were so employed.

24 In case of doubt, the board of trustees of the fund may
25 make determination as to any individual's eligibility to
26 become a member of the fund.

27 All employees eligible for participation at the effective
28 date of the fund shall become members of the fund,
29 unless they file a written election not to become a mem-
30 ber within thirty days after the effective date of the fund.

**§8-22-6. Contributions; prior, earned and total service credits;
service breaks.**

1 Until June thirty, one thousand nine hundred sixty-
2 seven, each member shall pay into the fund six percent
3 of his monthly salary up to four hundred dollars a month.
4 After June thirty, one thousand nine hundred sixty-
5 seven, each member shall contribute six percent of his
6 monthly salary without any such maximum limitation.
7 Each member shall continue to make such contributions
8 until such time as such member retires or until he has
9 contributed to the fund for a period of thirty-five years,
10 that is, has thirty-five years of "earned service credit."

11 For prior service, each participating employee, in the
12 employ of the city on the effective date of the fund,
13 shall be credited, as of such date, with a prior service
14 credit equal to the period or periods of service that the
15 member has rendered to the city prior to the effective
16 date of the fund. Any employee who is in the employ
17 of the city on the effective date of the fund and who

18 becomes a member of the fund shall be entitled to prior
19 service credit even though such prior service was not
20 continuous. Any individual who is not in the employ
21 of the city on the effective date of the fund but who
22 has been employed by the city in the past shall be
23 entitled to prior service credit if he returns to the service
24 of the city within two years from the date of the ter-
25 mination of his service and becomes a member of the
26 fund within such two-year period.

27 A member upon separation from the service shall be
28 entitled to withdraw his contributions without interest
29 in lieu of any benefits to which he may be entitled. If
30 such employee returns to the service of the city within
31 two years and becomes a member of the fund, he shall
32 be considered as a new employee and shall have for-
33 feited all prior service credits unless he shall repay to
34 the fund in cash at the time of reemployment the amount
35 of money which he has withdrawn plus four percent
36 interest compounded annually on said amount during
37 the time he was separated from the service. If, however,
38 the break in service of such member is more than two
39 years, he shall not be entitled to any prior service credit
40 nor shall he be entitled to redeposit withdrawals but
41 he shall reenter the fund as a new member.

§8-22-7. Retirement pensions.

1 (a) After the effective date of the fund, any member
2 of the fund who has at least ten years of total service
3 credit shall receive a vested right to a retirement pension
4 which he may exercise upon or after attainment of age
5 sixty. When he has attained the age of sixty years he
6 may, at his option, apply for a retirement pension, the
7 amount thereof to be determined in accordance with
8 the provisions of subsection (d) of this section.

9 (b) Retirement for all members of the fund shall
10 be compulsory at the age of sixty-five, subject to the
11 following conditions: The employee may be permitted
12 to continue in the service if he so desires and if his
13 services are still valuable to the city. Whether an
14 employee's services are valuable at the age of sixty-five
15 shall be determined by the appointing officer of the

16 city. If he determines that such services are valuable,
17 his determination must be certified to the board for
18 approval. If the board approves, the employee may
19 continue in the service of the city. The appointing
20 officer shall annually certify to the board relative to the
21 ability and competency of all employees over age sixty-
22 five. The amount of any pension under the provisions
23 of this subsection shall be determined in accordance
24 with the provisions of subsection (d) of this section.

25 (c) Although he has not attained the age of sixty,
26 any member who has thirty-five years' total service
27 and who becomes so physically or mentally disabled as
28 to render him unfit for the performance of the duties
29 of the position he occupies shall be entitled to an annual
30 retirement pension, the amount thereof to be determined
31 in accordance with the provisions of subsection (d) of
32 this section.

33 (d) A member of the fund, upon retirement, shall
34 be entitled to the following annual retirement pension,
35 payable in twelve monthly installments:

36 For thirty-five years of total service credit to and
37 including twenty-four years of total service credit, fifty
38 percent of average salary plus one and two-thirds per-
39 cent of average salary per year of service for each year
40 above twenty-three years;

41 For twenty-three years of total service credit, fifty
42 percent of average salary: *Provided*, That if a member
43 has twenty-three years of total service credit he shall
44 be entitled to a minimum retirement pension of one
45 hundred dollars per month;

46 For twenty-two years of total service credit, forty-nine
47 percent of average salary;

48 For twenty-one years of total service credit, forty-
49 eight percent of average salary;

50 For twenty years of total service credit, forty-seven
51 percent of average salary;

52 For nineteen years of total service credit, forty-five
53 percent of average salary;

54 For eighteen years of total service credit, forty-three
55 percent of average salary;

56 For seventeen years of total service credit, forty-one
57 percent of average salary;

58 For sixteen years of total service credit, thirty-nine
59 percent of average salary;

60 For fifteen years of total service credit, thirty-six per-
61 cent of average salary;

62 For fourteen years of total service credit, thirty-three
63 percent of average salary;

64 For thirteen years of total service credit, thirty-one
65 percent of average salary;

66 For twelve years of total service credit, twenty-nine
67 percent of average salary;

68 For eleven years of total service credit, twenty-seven
69 percent of average salary; and

70 For ten years of total service credit, twenty-five per-
71 cent of average salary.

72 The rate of a retirement pension shall be prorated for
73 any fractional part of the total service credit of an em-
74 ployee of less than a full year.

75 (e) With the condition that no optional benefit shall
76 be effective if the member dies within thirty days after
77 the effective date of his retirement, such member may
78 elect at least one year prior to such effective date of his
79 retirement to receive a lesser retirement pension, on
80 a joint and last survivor basis, in order to provide, on
81 an actuarial equivalent basis, an annuity to a designated
82 beneficiary under any of the following two options:

83 Option 1. Upon his death while on retirement, his
84 lesser retirement pension shall be continued throughout
85 the life of and paid to such individual having an insur-
86 able interest in his life, as he shall have named in a
87 written designation duly acknowledged and filed with
88 the board.

89 Option 2. Upon his death while on retirement, one
90 half of his lesser retirement pension shall be continued
91 throughout the life of and paid to such individual having
92 an insurable interest in his life as he shall have named
93 in a written designation duly acknowledged and filed
94 with the board.

95 (f) A member who has attained the age of sixty
96 years and who has less than ten years' total service credit
97 shall be entitled to an annuity which shall be the ac-
98 tual equivalent of his total accumulation account at
99 the time of his retirement.

§8-22-8. Disability pensions; annuities.

1 A member may qualify for a disability pension under
2 any one of the following mutually exclusive provisions:

3 (1) If a member receives total disability in line of
4 duty, he shall be entitled during the time of his dis-
5 ability to a monthly disability pension equal to fifty per-
6 cent of the monthly salary of the member at date of
7 disability: *Provided*, That the minimum payment shall
8 be one hundred dollars per month.

9 (2) If a member receives total disability not in line
10 of duty while an employee of the city after he has had
11 at least ten years' total service credit and such member
12 is not entitled to a retirement pension under the pro-
13 visions of section seven of this article, he shall be en-
14 titled during the time of his disability to one half of the
15 retirement pension to which he would have been entitled
16 under the provisions of said section seven had he been
17 sixty years of age at date of disability and had elected
18 to take retirement: *Provided*, That he shall be entitled
19 to a minimum payment of fifty dollars per month and a
20 maximum payment of one hundred dollars per month.

21 (3) If a member becomes so physically or mentally
22 disabled as to render him unfit for the performance of
23 the duties of the position he occupies, but his disability
24 does not constitute either total disability in line of duty
25 or total disability not in line of duty, and such member
26 has less than ten years' total service credit, he shall be en-
27 titled to an annuity which shall be the actuarial equiva-
28 lent of his total accumulation at the date of his disability.

29 The board of trustees of the fund shall order a periodic
30 reexamination of members of the fund receiving a dis-
31 ability pension, and if the disability no longer exists
32 the payment thereunder shall be discontinued: *Provided*,
33 That no such reexamination of any such member shall

34 be ordered as aforesaid after such member attains the
35 age of sixty years.

§8-22-9. Death benefits; return of contributions.

1 (a) A beneficiary or beneficiaries of a deceased mem-
2 ber, which member was not receiving a retirement pen-
3 sion under the provisions of section seven of this article
4 at the date of his death, may qualify for death benefits
5 under either of the following mutually exclusive pro-
6 visions:

7 (1) If the member died as a result of personal injury
8 or disease arising out of and in the course of his em-
9 ployment with the city, the surviving spouse shall be
10 entitled during widowhood or widowerhood to a monthly
11 benefit equal to thirty-three and one-third percent of the
12 final monthly salary of the member, but not to exceed
13 one hundred and twenty-five dollars per month. In the
14 event there be no surviving spouse, or if remarriage
15 occurs before the youngest child attains age eighteen,
16 each child under age eighteen shall be entitled until age
17 eighteen to a monthly benefit equal to twenty percent
18 of the member's final monthly salary, subject to a total
19 payment to all such children of fifty percent of such
20 final monthly salary, or one hundred twenty-five dollars
21 per month, whichever is the lesser. If there be no sur-
22 viving spouse or children under age eighteen, the de-
23 ceased member's dependent father or mother or both,
24 the question of dependency to be determined by the
25 board, shall each be entitled until death to a monthly
26 payment equal to one sixth of the deceased member's
27 final monthly salary, but the payment to either parent
28 shall not exceed fifty dollars per month.

29 (2) If the member died from any cause other than
30 that stated in subdivision (1) of this subsection, and such
31 member at the date of his death had ten or more years'
32 total service credit, his beneficiary or beneficiaries shall
33 be entitled, for a period not to exceed ten years, to death
34 benefits in accordance with the retirement pension table
35 contained in section seven of this article. The death
36 benefits shall be paid to such individual or individuals
37 having an insurable interest in the member's life as such

38 member shall have nominated in a designation filed with
39 the board. As to any spouse beneficiary, the marriage
40 must have occurred at least one year prior to the death
41 of the member in order that the spouse may be eligible
42 for benefits under this subdivision (2).

43 (b) If a member receiving a retirement pension under
44 the provisions of section seven of this article at the date
45 of his death dies with a spouse surviving [concerning
46 which retirement pension the optional benefit provisions
47 set forth in subsection (e) of said section seven are not
48 applicable], and such member had been receiving such
49 retirement pension for less than ten years, such sur-
50 viving spouse shall be entitled to receive death benefits
51 equivalent to the deceased member's retirement pension
52 for the remaining period of ten years dating from the
53 date of the member's retirement; but a surviving spouse
54 shall not be entitled to death benefits under the pro-
55 visions of this subsection unless such surviving spouse
56 was married to the member before the date of his retire-
57 ment and such marriage took place at least one year
58 prior to the date of the death of the member. If the
59 surviving spouse remarries, such spouse's death benefits
60 shall be terminated and shall not be resumed upon sub-
61 sequent change in the marital status of such spouse.

62 (c) If a member dies with less than ten years' total
63 service credit so that he was not entitled to a retirement
64 pension during life, the member's total contributions to
65 the fund, without interest, shall be returned to such
66 individual or individuals having an insurable interest
67 in the member's life as such member shall have nominated
68 in a designation filed with the board, and in the absence
69 of any such designation, to the member's estate.

§8-22-10. Contributions by city.

1 The governing body shall annually provide sufficient
2 funds in the budget of the city, on an actuarially funded
3 basis, to provide for the funded requirements of the fund
4 for current service of the employees over and above
5 the amount contributed by the members, plus an amount
6 to pay the cost of administration of the fund.

7 The city shall also contribute to the fund the amount
8 required, at three and one-half percent interest per
9 annum, to amortize, over a period not to exceed forty
10 years from July one, one thousand nine hundred sixty-
11 seven, any unfunded accrued liability at that date.

§8-22-11. Investment of funds.

1 The board shall keep as an available sum for the pur-
2 pose of making retirement, disability and death payments
3 and administration expense an amount estimated to meet
4 such payments for a period not to exceed ninety days.
5 It shall have full power and authority in its sole discre-
6 tion to invest and reinvest any moneys received by it
7 in the following types of securities: (a) Direct general
8 obligations of the United States government or of this
9 state; (b) direct general obligations of any municipality,
10 county or school district in this state; (c) bonds or
11 debentures of any utility corporation, industrial cor-
12 poration or railroad corporation organized under the
13 laws of any state of the United States, rated "A" or
14 better by any two security rating concerns, provided
15 interest shall have been paid by the corporation on its
16 indebtedness for at least the ten years last past; and
17 (d) federally insured mortgages under sections two hun-
18 dred three and two hundred seven of the National Hous-
19 ing Act.

§8-22-12. Individual accounts; actuarial data; tables.

1 The board of trustees shall maintain an individual
2 account with each member, showing the amount of the
3 member's contributions and the interest accumulations
4 thereon. It shall collect and keep in convenient form
5 such data as may be necessary for the preparation of
6 the required mortality and service tables, and for the
7 compilation of such other information as may be needed
8 for the actuarial valuation of the fund. The board of
9 trustees shall adopt appropriate tables for the purpose
10 of evaluating and computing retirement, disability and
11 death allowances.

§8-22-13. Reports by board of trustees.

1 At such times as the board of trustees may deem it
2 necessary, but at least once within the first three years

3 of the operation of the fund and each five-year period
4 thereafter, the board of trustees shall employ a competent
5 actuary to prepare a report containing an evaluation of
6 the present and prospective assets and liabilities of the
7 fund.

8 The board of trustees shall submit to the governing
9 body an annual report showing the condition of the fund
10 under its control. It shall certify in such report the
11 amount of accumulated cash and securities in the fund
12 and shall present a full account of the operation of the
13 system.

§8-22-14. Custodian of fund; duties; bond.

1 The treasurer of the city shall be the custodian of all
2 of the assets of the fund, and shall deposit and pay out
3 the moneys of the fund upon, and in accordance with,
4 any proper order of the board of trustees. Such treasurer
5 shall be liable upon his official bond as treasurer for the
6 faithful performance of his duties in respect to such
7 fund, and the official bond of the treasurer covering such
8 fund shall be executed with a good and financially respon-
9 sible surety company, authorized to do business in this
10 state, as surety for such fund. Such fund shall not be
11 used for any other purpose than provided in sections two
12 through fourteen of this article.

§8-22-15. Action by city required before new provisions are applicable.

1 Notwithstanding any provisions in sections two through
2 fourteen of this article to the contrary, the provisions
3 of said sections two through fourteen shall not be ap-
4 plicable to any fund established by any city prior to the
5 effective date of this section, unless and until such city
6 shall by ordinance provide for the application thereof.
7 In the absence of any such ordinance, any such estab-
8 lished fund shall be governed and controlled by and
9 administered in accordance with the provisions of chap-
10 ter one hundred fourteen, acts of the Legislature, reg-
11 ular session, one thousand nine hundred forty-seven, and
12 the amendments by (1) chapter ninety-two, acts of the
13 Legislature, regular session, one thousand nine hun-
14 dred forty-nine, (2) chapter one hundred twenty-nine,

15 acts of the Legislature, regular session, one thousand
16 nine hundred fifty-five, and (3) chapter thirty-nine, acts
17 of the Legislature, regular session, one thousand nine
18 hundred sixty-eight, if and only if an ordinance were
19 adopted on and after May eight, one thousand nine hun-
20 dred sixty-eight, and prior to the effective date of this
21 section providing for the application of said chapter
22 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.

1 In every Class I and Class II city having, or which
2 may hereafter have, a paid police department and a paid
3 fire department, or either of such departments, the gov-
4 erning body shall, and in every Class III city and Class
5 IV town or village having, or which may hereafter have,
6 a paid police department and a paid fire department, or
7 either of such departments, the governing body may, by
8 ordinance provide for the establishment and maintenance
9 of a policemen's pension and relief fund, and for a fire-
10 men's pension and relief fund, for the purposes herein-
11 after enumerated, and, thereupon, there shall be created
12 boards of trustees which shall administer and distribute
13 the moneys authorized to be raised by this section and
14 the following sections of this article. For the purposes
15 of this section and sections seventeen through twenty-
16 eight of this article, the term "paid police department"
17 or "paid fire department" shall be taken to mean only a
18 municipal police department or municipal fire depart-
19 ment, as the case may be, maintained and paid for out
20 of public funds and whose employees are paid on a full-
21 time basis out of public funds. The term shall not be
22 taken to mean any such department whose employees
23 are paid nominal salaries or wages or are only paid for
24 services actually rendered on an hourly basis.

25 Unless and until other provision is made by subse-
26 quent legislative action, any policemen's pension and
27 relief fund and any firemen's pension and relief fund
28 established in accordance with the provisions of former

29 article six of this chapter or this article twenty-two
30 shall be or remain mandatory and shall be governed by
31 the provisions of sections sixteen through twenty-eight
32 of this article twenty-two (with like effect, in the case
33 of a Class III city or Class IV town or village, as if such
34 Class III city or Class IV town or village were a Class
35 I or Class II city), and shall not be affected by the transi-
36 tion from one class of municipal corporation to a lower
37 class as specified in section three, article one of this
38 chapter.

§8-22-17. Powers of boards of trustees.

1 Such board of trustees, or boards of trustees, shall be
2 public corporations by the name and style of "The Board
3 of Trustees of the Policemen's Pension and Relief Fund
4 of (name of municipality)," or "The Board of Trustees
5 of the Firemen's Pension and Relief Fund of (name of
6 municipality)," as the case may be, by which names they
7 may sue and be sued, plead and be impleaded, contract
8 and be contracted with, take and hold real and personal
9 property for the use of said policemen's pension and
10 relief fund or said firemen's pension and relief fund
11 and have and use a common seal. In the absence of such
12 a seal, the seal of the president of any such corporation
13 shall be equivalent to such common seal. Any such board
14 of trustees may also in its corporate name do and perform
15 any and all other acts and business pertaining to the
16 trust created hereby or by any conveyance, devise or
17 dedication made for the uses and purposes of said board.

§8-22-18. Members of board of trustees; how elected; presiding officers; secretary.

1 The board of trustees of the policemen's pension and
2 relief fund shall consist of the mayor of the municipality
3 and four members of the paid police department, to be
4 chosen as hereinafter in this section specified. The mayor
5 of such municipality shall give notice of an election
6 to be held on the second Monday of the month following
7 the adoption of the ordinance providing for the estab-
8 lishment and maintenance of such fund, which notice
9 shall be served upon each member of the paid police
10 department and which shall notify each member that

11 between the hours of nine in the forenoon and six in
12 the afternoon, on the day designated for such election,
13 an election will be held for such purpose and that each
14 member shall furnish in writing the names of four
15 members of the paid police department voted for; and
16 all votes so cast shall be counted and canvassed by the
17 mayor and the governing body for the first election,
18 and thereafter the votes shall be counted by the then
19 existing members of such board, who after such election
20 shall announce the results, and the four members of
21 the paid police department receiving the highest num-
22 ber of votes shall, with the mayor, constitute "The Board
23 of Trustees of the Policemen's Pension and Relief Fund
24 of (name of municipality)." As to the first election
25 held following the adoption of the ordinance providing
26 for the establishment and maintenance of such fund,
27 the member receiving the highest number of votes
28 shall serve for a period of four years, the member
29 receiving the second highest number of votes shall serve
30 for a period of three years, the member receiving the
31 third highest number of votes shall serve for a period
32 of two years, and the member receiving the fourth
33 highest number of votes shall serve for a period of one
34 year. After such first election, the board shall hold a
35 similar election each year to elect one member to suc-
36 ceed, for a term of four years, the retiring member.
37 In the case of a tie vote being received by any two
38 individuals for the office of trustee, such tie vote shall
39 be decided by casting lots, or in any other way which
40 may be agreed upon by the individuals for whom such
41 tie vote was cast. The results of such election shall be
42 entered in the record of the proceedings of the board
43 and the members so elected shall, except as hereinabove
44 specified with respect to the first election, serve for
45 four years and until their successors are elected and
46 have qualified. The election for such members of the
47 board of trustees shall be held annually upon the
48 second Monday of the same month during which the
49 first election was held. In case of a vacancy by death,
50 resignation, or otherwise, among the members so
51 elected, the remaining members of the board shall

52 choose the successor, or successors, until the next annual
53 election at which latter time all vacancies shall be
54 filled.

55 The board of trustees of the firemen's pension and
56 relief fund shall consist of the mayor of the municipi-
57 pality and four members of the paid fire department,
58 to be chosen in the same manner and for such terms
59 as is provided above in this section for the election
60 of policemen to the policemen's pension and relief fund
61 board of trustees.

62 The presiding officer of any such board of trustees
63 shall be the mayor of the municipality, and the secre-
64 tary thereof shall be appointed by the board. It shall
65 be the duty of such secretary to keep a full and per-
66 manent record of all of the proceedings of the board,
67 and said trustees may fix the secretary's compensation
68 for this work, which shall be paid out of the funds of
69 said policemen's pension and relief fund or firemen's
70 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.**

1 In every municipality in which there shall be a
2 policemen's pension and relief fund or a firemen's pension
3 and relief fund, or both, the same shall be maintained
4 as follows: The governing body of the municipality
5 shall levy annually and in the manner provided by
6 law for other municipal levies, and include within the
7 maximum levy or levies permitted by law, and if neces-
8 sary in excess of any charter provision, a tax at such
9 rate as will, after crediting all interest, if any, to be
10 received in such year from the investments of the
11 respective boards, provide funds equal to the sum of
12 (1) the full amount of estimated expenditures of the
13 boards of trustees of the respective funds, and (2) an
14 additional amount equal to ten percent of such estimated
15 expenditures, said ten percent amount to be taken,
16 accumulated and invested, if possible, as surplus reserve:
17 *Provided*, That in no event shall such levy for each of
18 the respective boards of trustees be less than one cent
19 nor more than five cents on each one hundred dollars

20 of all real and personal property as listed for taxation
21 in such municipality.

22 The levies authorized under the provisions of this
23 section, or any part of them, may by the governing
24 body be laid in addition to all other municipal levies,
25 and to that extent, beyond the limit of levy imposed
26 by the charter of such municipality; and such levies
27 shall supersede and if necessary exclude levies for other
28 purposes if such priority or exclusion is necessary under
29 limitations upon taxes or tax levies imposed by law.

30 Such public corporations are authorized to take by
31 gift, grant, devise or bequest, any money or real or per-
32 sonal property, upon such terms as to the investment
33 and expenditure thereof as may be fixed by the grantor
34 or determined by said trustees.

35 In addition to all other sums provided for pensions
36 in this section, it shall be the duty of every munici-
37 pality in which any such fund or funds have been or
38 shall be established to assess and collect from each
39 member of the paid police department or paid fire de-
40 partment or both each month, the sum of four percent
41 of the actual salary or compensation of such member;
42 and the amount so collected shall become a regular
43 part of the policemen's pension and relief fund, if
44 collected from a policeman, and of the firemen's pension
45 and relief fund, if collected from a fireman.

46 Any member of a paid police or fire department who
47 is removed or discharged or who before retirement
48 on any retirement pension or disability pension severs
49 his connection with said department, provided he has
50 served two full years or more, whether or not consec-
51 utive, shall, upon request, be refunded all pension and
52 relief fund deductions made from his salary or compen-
53 sation, but without interest. In the event such refund
54 is made and such member subsequently reenters the
55 department no credit shall be allowed him for any
56 former service, unless any such member of a paid police
57 or fire department repays to the pension and relief
58 fund all sums refunded to him within one year from
59 the date he reenters the department with interest at
60 the rate of six percent per annum: *Provided, however,*

61 That any member who, on or before June three, one
62 thousand nine hundred fifty-five, reentered the paid
63 police or fire department shall be allowed credit for
64 any former service in the same department reentered
65 if he within one year from said June three, one thousand
66 nine hundred fifty-five, repaid all sums withdrawn or
67 refunded to him with interest at the rate of six percent
68 per annum, but in no case shall interest be charged
69 for more than three years. Any probationary member
70 of a paid police or fire department who is not given
71 an absolute appointment at the end of his probationary
72 period shall, upon request, be refunded all pension and
73 relief fund deductions made from his salary or com-
74 pensation, but without interest.

**§8-22-20. When arrest fee to be collected for municipal police-
men's pension and relief fund.**

1 In case of conviction for violation of any municipal
2 ordinance or any state law of any person arrested by
3 any member of the paid police department of any
4 municipality having a policemen's pension and relief
5 fund, or of the forfeiture of bail not vacated after arrest
6 for violation of any municipal ordinance or any state
7 law by any person so arrested, whether the conviction
8 or forfeiture be in the court of a justice of the peace,
9 or in the mayor's court of a municipality, or in the
10 police court or municipal court of a city, or in any
11 other court of criminal jurisdiction, an arrest fee of one
12 dollar shall be taxed as part of the costs, in addition
13 to other fees authorized by law, and shall be collected
14 from the person convicted or furnishing bail, and such
15 arrest fee shall be paid into the policemen's pension
16 and relief fund of the municipality of the arresting
17 officer.

§8-22-21. Duties and bond of custodian of funds.

1 The treasurer of the municipality shall be the cus-
2 todian of all of the assets of the policemen's pension
3 and relief fund and firemen's pension and relief fund,
4 and shall deposit and pay out the moneys thereof upon,

5 and in accordance with, any proper order of the board
6 of trustees. Such treasurer shall be liable upon his
7 official bond as treasurer for the faithful performance
8 of his duties in respect to such fund or funds, and the
9 official bond of the treasurer covering such fund or
10 funds shall be executed with a good and financially
11 responsible surety company, authorized to do business
12 in this state, as surety for such fund or funds. Such
13 fund or funds shall be trust funds and shall not be used
14 for any other purpose than provided herein.

**§8-22-22. How trustees of funds to invest moneys received;
annual report.**

1 The said board of trustees shall invest any moneys
2 received by it either in interest-bearing general obliga-
3 tion bonds of the United States, or of this state, or of the
4 municipality, or of the county or school district in which
5 the municipality or any portion of the territory thereof
6 may be located, or in improved real estate first lien
7 security worth at least twice the amount loaned thereon,
8 based on a sound appraisal by a competent appraiser
9 and duly certified by him, or in savings accounts in
10 state and national banking institutions to the extent
11 that such accounts are insured by the federal deposit
12 insurance corporation, or in state building and loan
13 associations or federal savings and loan associations to
14 the extent that such interests are insured by the federal
15 savings and loan insurance corporation or by any other
16 similar federal instrumentality that may be hereafter
17 created, or in any combination of the foregoing invest-
18 ments. Said board of trustees shall make a report to
19 the governing body of the municipality on the condition
20 of its fund on the thirty-first day of December of each
21 year.

**§8-22-23. Rules and regulations as to distribution of funds;
proof of age.**

1 The board of trustees of the policemen's pension and
2 relief fund and the board of trustees of the firemen's
3 pension and relief fund shall make rules and regula-
4 tions, not inconsistent with the provisions of sections

5 sixteen through twenty-eight of this article, for the
6 distribution of the moneys of such funds according to
7 the qualifications of those to whom any portion of such
8 moneys shall be paid and the amount thereof: *Provided,*
9 That such rules and regulations shall not be enforced
10 until the same have been approved by the governing
11 body.

12 At the time of the original appointment of any mem-
13 ber to the paid police or fire department, such member
14 shall, at the request of the board of trustees, furnish to
15 said board a certified copy of his birth certificate or
16 other proof of his date of birth satisfactory to the board.

§8-22-24. Disability pensions; temporary disability payments.

1 (a) If any member of any such paid police or fire de-
2 partment of any such municipality shall become and be
3 found upon examination by a majority of a board of
4 medical examiners, which board shall consist of not less
5 than three physicians appointed by the board of trustees,
6 to have become so physically or mentally permanently
7 disabled by reason of service rendered in the perform-
8 ance of his duties in such department, as to render neces-
9 sary his retirement from all service in such department,
10 or if any member who has been such a member of either
11 of such departments for a period of not less than five
12 consecutive years preceding his disability become and be
13 found upon such an examination to have become so
14 physically or mentally permanently disabled, from any
15 reason other than as specified above in this section, as
16 to render necessary his retirement from all service in
17 such department, such board of trustees shall retire such
18 permanently disabled members from all service in such
19 department; and said board of trustees of such pension
20 and relief fund shall authorize the payment to each
21 such permanently disabled member monthly from the
22 pension and relief fund a disability pension, the amount
23 thereof to be determined as specified in subsection (f)
24 of this section.

25 (b) If any member of any such department shall at
26 any time be injured or become sick, regardless of the
27 cause therefor, so as to render such member temporarily

28 disabled, he shall be paid, during such disability for not
29 exceeding twenty-six weeks, from said pension and
30 relief fund temporary disability payments, the amount
31 thereof to be determined as specified in said subsection
32 (f) for the determination of payments under a disability
33 pension.

34 (c) No member shall be eligible for any disability
35 pension or any temporary disability payments unless such
36 member shall have presented himself for an examination
37 at the time of his appointment to the department and his
38 condition was then approved by a majority of a board
39 of medical examiners appointed as aforesaid by such
40 pension board: *Provided*, That this provision shall not
41 apply to any individual who became a member of either
42 of said departments on or before March eight, one thou-
43 sand nine hundred thirty-five. Any such pension board
44 may, if it so elects, designate as a member or members
45 of its board of medical examiners any physician or
46 physicians appointed by the policemen's civil service
47 commission or firemen's civil service commission of such
48 municipality to conduct medical examinations on behalf
49 of any such commission under the provisions of article
50 fourteen or article fifteen of this chapter, as the case
51 may be.

52 (d) Any member who has been heretofore, or shall
53 hereafter be, allowed a disability pension or temporary
54 disability payments under the provisions of sections six-
55 teen through twenty-eight of this article may be re-
56 quired by such board to be reexamined at any time and
57 if he is then not disabled as aforesaid he shall be ordered
58 by the mayor of the municipality to return to duty in
59 his former position in the paid police or fire department,
60 as the case may be, and his disability pension or tem-
61 porary disability payments shall be discontinued: *Pro-*
62 *vided, however*, That this provision shall not apply to
63 any member until such member can and shall be restored
64 to his former position in such department.

65 (e) All medical examinations conducted under the
66 provisions of this section shall be ordered by the pension
67 board.

68 (f) The monthly sum to be paid to each permanently
69 disabled member of a paid police or fire department en-
70 titled thereto shall be equal to fifty percent of the month-
71 ly salary or compensation being received by such
72 member, at the time he is so disabled, or the sum of one
73 hundred fifty dollars per month, whichever shall be
74 greater: *Provided*, That any member who is permanently
75 disabled, after having served twenty years in such de-
76 partment, shall be entitled to such sum in twelve
77 monthly installments as shall equal fifty percent of such
78 member's average annual salary or compensation re-
79 ceived during the five fiscal years, not necessarily con-
80 secutive, in which he received his highest salary or
81 compensation while a member of the department, and
82 also one additional percent (to be added to the fifty
83 percent) per each year served in excess of said twenty
84 years (up to a maximum of five additional percent), or a
85 total amount of one hundred fifty dollars per month,
86 whichever shall be greater.

§8-22-25. Retirement pensions.

1 (a) Any member of a paid police or fire department
2 who is entitled to a retirement pension hereunder, and
3 who has been in the honorable service of such depart-
4 ment for twenty years, may, upon written application
5 to the board of trustees, be retired from all service in
6 such department without medical examination or dis-
7 ability; and on such retirement the board of trustees
8 shall authorize the payment of annual retirement pension
9 benefits commencing upon his retirement or upon his
10 attaining the age of fifty years, whichever is later, pay-
11 able in twelve monthly installments for each year of
12 the remainder of his life, in an amount equal to fifty
13 percent of such member's average annual salary or com-
14 pensation received during the five fiscal years, not neces-
15 sarily consecutive, in which such member received his
16 highest salary or compensation while a member of the
17 department, or an amount of one hundred fifty dollars
18 per month, whichever shall be greater.

19 (b) Any member of any such department who is en-
20 titled to a retirement pension under the provisions of

21 subsection (a) of this section and who has been in the
22 honorable service of such department for more than
23 twenty years at the time of his retirement, as herein pro-
24 vided, shall, in addition to the fifty percent authorized in
25 said subsection (a), receive one additional percent, to be
26 added to the fifty percent, per each year served in excess
27 of said twenty years, up to a maximum of five additional
28 percent.

29 (c) Any member of any such department whose
30 service has been interrupted by duty with the armed
31 forces of the United States as provided in section twenty-
32 seven of this article, shall be eligible for retirement
33 pension benefits immediately upon retirement, regard-
34 less of his age, if he shall otherwise be eligible for such
35 retirement pension benefits.

36 (d) Any member of a paid police or fire department
37 shall be retired at the age of sixty-five years in the man-
38 ner provided in this subsection. When a member of the
39 paid police or fire department shall have reached the age
40 of sixty-five years, the said board of trustees shall notify
41 the mayor of this fact, within thirty days of such member's
42 sixty-fifth birthday; and the mayor shall cause such sixty-
43 five-year-old member of the paid police or fire department
44 to be retired within a period of not more than thirty addi-
45 tional days. Upon retirement under the provisions of this
46 subsection (d), such member, whether he has been em-
47 ployed in said department for twenty years or not, shall
48 receive retirement pension benefits payable in twelve
49 monthly installments for each year of the remainder of his
50 life, in an amount equal to fifty percent of such member's
51 average annual salary or compensation received during
52 the five fiscal years, not necessarily consecutive, in which
53 such member received his highest salary or compensation
54 while a member of the department, or an amount of one
55 hundred fifty dollars per month, whichever shall be
56 greater, and if such member has been employed in said
57 department for more than twenty years, the provisions
58 of subsection (b) of this section shall apply.

59 (e) It shall be the duty of each member of a paid
60 police or fire department at the time a fund is hereafter

61 established to furnish the necessary proof of his date
62 of birth to the said board of trustees, as specified in
63 section twenty-three of this article, within a reasonable
64 length of time, said length of time to be determined by
65 the said board of trustees; and then the board of trustees
66 and the mayor shall proceed to act in the manner pro-
67 vided in subsection (d) of this section and shall cause
68 all members of the paid police or fire department who
69 are over the age of sixty-five years to be retired in not
70 less than sixty days from the date the fund is established.
71 Upon retirement under the provisions of this subsection
72 (e), such member, whether he has been employed in
73 said department for twenty years or not, shall re-
74 ceive retirement pension benefits payable in twelve
75 monthly installments for each year of the remainder of
76 his life, in an amount equal to fifty percent of such
77 member's average annual salary or compensation re-
78 ceived during the five fiscal years, not necessarily con-
79 secutive, in which such member received his highest
80 salary or compensation while a member of the depart-
81 ment, or an amount of one hundred fifty dollars per
82 month, whichever shall be greater, and if such member
83 has been employed in said department for more than
84 twenty years, the provisions of subsection (b) of this
85 section shall apply.

§8-22-26. Death benefits.

- 1 (a) In case:
- 2 (1) Any member of a paid police or fire department
- 3 who has been in continuous service for more than five
- 4 years shall die, from any cause other than as specified
- 5 in subsection (b) of this section twenty-six, before re-
- 6 tirement on a disability pension under the provisions of
- 7 section twenty-four of this article or a retirement pen-
- 8 sion under the provisions of subsection (a) or both sub-
- 9 sections (a) and (b) of section twenty-five of this article,
- 10 leaving in either case surviving a dependent spouse, or
- 11 any dependent child or children under the age of eighteen
- 12 years, or dependent father or mother or both, or any
- 13 dependent brothers or sisters or both under the age of
- 14 eighteen years; or

15 (2) Any former member of any such department
16 who is on a disability pension under the provisions of
17 said section twenty-four, or has attained the age of fifty
18 years and is receiving or is entitled to receive retire-
19 ment pension benefits under the provisions of subsection
20 (a) or both subsections (a) and (b) of section twenty-
21 five of this article, shall die, from any cause other than
22 as specified in subsection (b) of this section twenty-six,
23 leaving in either case surviving a dependent spouse to
24 whom the marriage took place prior to the date of such
25 member's retirement on a disability pension or a retire-
26 ment pension, or any dependent child or children under
27 the age of eighteen years who were born prior to or
28 within ten months after the date of such member's re-
29 tirement on a disability pension or a retirement pension,
30 or dependent father or mother or both, or any dependent
31 brothers or sisters or both under the age of eighteen
32 years; or

33 (3) Any former member of any such department who
34 has retired under the provisions of subsection (a) or both
35 subsections (a) and (b) of section twenty-five of this
36 article, shall die before attaining the age of fifty years,
37 from any cause other than as specified in subsection (b) of
38 this section twenty-six, leaving surviving a dependent
39 spouse, or any dependent child or children under the
40 age of eighteen years, or dependent father or mother or
41 both, or any dependent brothers or sisters or both under
42 the age of eighteen years; then in any of the cases set
43 forth above in (1), (2) and (3), the board of trustees
44 of such pension and relief fund shall, immediately follow-
45 ing the death of such member, pay to or for each of
46 such entitled surviving dependents the following pen-
47 sion benefits, viz.: To such dependent spouse, until death
48 or remarriage, a sum per month equal to twenty-five
49 percent of such member's average monthly salary or
50 compensation received during the five fiscal years, not
51 necessarily consecutive, in which such member received
52 his highest salary or compensation while a member of
53 the department, hereinafter for convenience referred to
54 in this section as "monthly average," or an amount of
55 seventy-five dollars per month, whichever shall be greater;

56 to each such dependent child a sum per month equal to
57 ten percent of such monthly average, or the sum of thirty
58 dollars per month for each such child, whichever shall
59 be greater, until such child shall attain the age of
60 eighteen years or marry, whichever first occurs; to each
61 such dependent orphaned child a sum per month equal
62 to fifteen percent of such monthly average, or the sum
63 of forty-five dollars per month for each such child, which-
64 ever shall be greater, until such child shall attain the
65 age of eighteen years or marry, whichever first occurs;
66 to each such dependent father or mother a sum per
67 month for each equal to ten percent of such monthly
68 average, or the sum of thirty dollars per month for each
69 such father and mother, whichever shall be greater; to
70 each such dependent brother or sister the sum of five
71 dollars per month until such individual shall attain the
72 age of eighteen years or marry, whichever first occurs,
73 but in no event shall the aggregate amount paid to such
74 brothers and sisters exceed thirty dollars per month; but
75 if at any time, because of the number of dependents,
76 all such dependents cannot be paid in full as herein
77 provided, then each dependent shall receive his pro rata
78 share of such payments: *Provided, however,* That in no
79 case shall the payments to the surviving spouse and
80 children be cut below sixty percent of the total amount
81 to be paid to all dependents.

82 (b) The dependent spouse, child or children, or de-
83 pendent father or mother, or dependent brothers or sis-
84 ters, of any such member who shall die by reason of
85 service rendered in the performance of such member's
86 duties shall, regardless of the length of such member's
87 service and irrespective of whether such member was
88 or was not entitled to receive or was or was not receiv-
89 ing a disability pension or temporary disability payments
90 at the time of his death, receive the death benefits pro-
91 vided for in subsection (a) of this section, and if such
92 member had less than five years' service at the time of
93 his death, the monthly average shall be computed on the
94 basis of the actual number of years of service.

95 (c) The provisions of this section shall not be con-
96 strued as creating or establishing any contractual or

97 vested rights in favor of any individual who may be or
98 become qualified as a beneficiary of the death benefits
99 herein authorized to be made, all the provisions hereof
100 and benefits provided for hereunder being expressly sub-
101 ject to such subsequent legislative enactments as may
102 provide for any change, modification or elimination of
103 the beneficiaries or benefits specified herein.

**§8-22-27. General provisions concerning disability pensions,
retirement pensions and death benefits.**

1 (a) In determining the years of service of a member
2 in a paid police or fire department for the purpose of
3 ascertaining certain disability pension benefits, all re-
4 tirement pension benefits and certain death benefits, the
5 following provisions shall be applicable:

6 (1) Absence from the service because of sickness or
7 injury shall not be construed as time out of service; and

8 (2) Any member of any paid police or fire department
9 covered by the provisions of sections sixteen through
10 twenty-eight of this article who has been required to
11 or shall at any future time be required to enter the
12 armed forces of the United States by conscription, by
13 reason of being a member of some reserve unit of the
14 armed forces or a member of the West Virginia national
15 guard or air national guard, or who enlists in one of
16 the armed forces of the United States during hostilities,
17 and who upon receipt of an honorable discharge from
18 such armed forces presents himself for resumption of
19 duty to his appointing municipal official within six
20 months from his date of discharge, and is accepted by the
21 pension board's board of medical examiners as being
22 mentally and physically capable of performing his re-
23 quired duties as a member of such paid police or fire de-
24 partment, shall be given credit for continuous service in
25 said paid police or fire department, and his rights shall be
26 governed as herein provided. No member of a paid police
27 or fire department shall be required to pay the monthly
28 assessment as now required by law, during his period of
29 service in the armed forces of the United States.

30 (b) As to any former member of a paid police or fire
31 department receiving disability pension benefits or re-

32 retirement pension benefits from a policemen's or firemen's
33 pension and relief fund, on the effective date of this
34 article, the following provisions shall govern and control
35 the amount of such pension benefits:

36 (1) A former member who on June thirty, one thou-
37 sand nine hundred sixty-two, was receiving disability
38 pension benefits or retirement pension benefits from a
39 policemen's or firemen's pension and relief fund, shall
40 continue to receive pension benefits in the amount of
41 one hundred fifty dollars per month; and

42 (2) A former member who became entitled to dis-
43 ability pension benefits or retirement pension benefits
44 on or after July one, one thousand nine hundred sixty-
45 two, shall receive the disability pension benefits or re-
46 tirement pension benefits provided for in section twenty-
47 four or section twenty-five of this article, as the case
48 may be.

49 (c) As to any dependent spouse, child or children, or
50 dependent father or mother, or dependent brothers or
51 sisters, of any former member of a paid police or fire
52 department, receiving any death benefits from a police-
53 men's pension and relief fund or firemen's pension and
54 relief fund, on the effective date of this article, the
55 following provisions shall govern and control the amount
56 of such death benefits:

57 (1) A dependent spouse, child or children, or de-
58 pendent father or mother, or dependent brothers or
59 sisters, of any former member, who on June thirty, one
60 thousand nine hundred sixty-two, was receiving any
61 death benefits from a policemen's pension and relief fund
62 or firemen's pension and relief fund, shall continue to
63 receive death benefits in the following amounts: To a
64 dependent spouse, until death or remarriage, the sum
65 of seventy-five dollars per month; to each dependent
66 child the sum of thirty dollars per month, until such
67 child shall attain the age of eighteen years or marry,
68 whichever first occurs; to each dependent orphaned child
69 the sum of forty-five dollars per month, until such child
70 shall attain the age of eighteen years or marry, which-
71 ever first occurs; to each dependent father and mother
72 the sum of thirty dollars per month for each; to each

73 dependent brother or sister the sum of five dollars per
74 month, until such individual shall attain the age of
75 eighteen years or marry, whichever first occurs, but in
76 no event shall the aggregate amount paid to such brothers
77 and sisters exceed thirty dollars per month; but if at
78 any time, because of the number of dependents, all such
79 dependents cannot be paid in full as herein provided,
80 then each dependent shall receive his pro rata share of
81 such payments: *Provided further*, That in no case shall
82 the payments to the surviving spouse and children be
83 cut below sixty percent of the total amount to be paid to
84 all dependents;

85 (2) A dependent spouse, child or children, or de-
86 pendent father or mother, or dependent brothers or
87 sisters, of any former member, who became eligible for
88 death benefits on or after July one, one thousand nine
89 hundred sixty-two, shall receive the death benefits pro-
90 vided 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
2 the creation of any such fund, unless otherwise autho-
3 rized by ordinance of the municipality, no payment shall
4 be made to any member or beneficiary except from the
5 income arising from said fund; and if at any time there
6 shall not be sufficient money to the credit of said pension
7 and relief fund to pay each member and beneficiary
8 entitled to the benefits thereof the full amount per
9 month, as herein provided, then an equal percentage
10 of such monthly payments shall be made to each mem-
11 ber and beneficiary thereof, until said fund is so replen-
12 ished as to warrant payment in full to each of such
13 members and beneficiaries.

**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.**

1 Any city which owns a waterworks system or sewer-

2 age system or combined waterworks and sewerage sys-
3 tem, which does not hereafter become a participating
4 public employer under the said West Virginia public
5 employees retirement system, which does not establish
6 and maintain an employees' retirement and benefit fund
7 in accordance with the provisions of sections two
8 through fourteen of this article and which has hereto-
9 fore provided, under the provisions of former section
10 twenty-one-a, article four of this chapter, a pension
11 plan or plans on behalf of and pertaining to all or part
12 of the employees of said waterworks system or sewer-
13 age system or combined waterworks and sewerage
14 system, may continue to maintain such plan or plans,
15 financed from the general operation funds of said water-
16 works system or sewerage system or combined water-
17 works and sewerage system, and administered by a
18 pension board or pension commission. Any such pension
19 board or pension commission shall continue to be
20 composed of such members as shall be approved by
21 the governing body, giving proper representation to
22 the employees of such waterworks system or sewerage
23 system or combined waterworks and sewerage system.
24 The chief financial executive officer or treasurer of such
25 pension board or pension commission shall continue to
26 maintain bond with a surety company qualified to do
27 business in this state in an amount equal to the value
28 of any funds or securities in the control of or owned
29 by the pension board or pension commission. After
30 reserving such funds as may be deemed necessary by
31 the pension board or pension commission to provide
32 such amounts as may be required to meet temporary
33 commitments, the remainder shall continue to be in-
34 vested in general obligation bonds of the United States,
35 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.

§8-23-2. Definitions.

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.

- §8-23-9. Construction.

PART I. PURPOSE; DEFINITIONS.

§8-23-1. Statement of purpose.

1 It is the purpose of this article to permit local govern-
2 mental units to make the most efficient use of their
3 power and authority by enabling them to cooperate
4 with each other on a basis of mutual advantage and to
5 consolidate functions and thereby to provide services
6 and facilities in a manner and pursuant to forms of
7 governmental organization which will result in econ-
8 omies in the operation of local government and which
9 will accord best with the geographic, economic, popula-
10 tion and other factors influencing the needs and devel-
11 opment of local governmental services and facilities,
12 and thus promote the public health, safety and welfare.

§8-23-2. Definitions.

1 For the purposes of this article:

2 (1) The term "public agency" shall mean any mu-
3 nicipality, county or other political subdivision of this
4 state, or any county board of education of this state;
5 and

6 (2) The term "public works" shall mean any im-
7 provement or project involving an outlay of a capital
8 nature which may be required by or convenient for
9 the purposes of any public agency, including, without
10 limiting the generality of the foregoing, the construc-
11 tion, reconstruction, establishment, acquisition, improve-
12 ment, renovation, extension, enlargement, increase,
13 equipment, maintenance, repair (including replace-

14 ments) and operation of jails, jail facilities, municipal
15 buildings, police stations, fire stations, libraries, mu-
16 seums, other public buildings, incinerator plants, land
17 fill or other garbage disposal systems, hospitals, piers,
18 docks, terminals, airports, drainage systems, flood con-
19 trol systems, floodwalls, sewers, culverts, bridges (in-
20 cluding approaches, causeways, viaducts, underpasses
21 and connecting roadways), public markets, cemeteries,
22 motor vehicle parking facilities (including parking lots,
23 buildings, ramps, curb-line parking, meters and other
24 facilities deemed necessary, appropriate, useful, con-
25 venient or incidental to the regulation, control and
26 parking of motor vehicles), stadiums, gymnasiums,
27 sports arenas, auditoriums, public recreation centers,
28 public recreation parks, swimming pools, roller skating
29 rinks, ice skating rinks, tennis courts, golf courses, polo
30 grounds, or other public improvements, or the grading,
31 regrading, paving, repaving, surfacing, resurfacing, curb-
32 ing, recurbing, widening or otherwise improving of any
33 street, avenue, road, alley or way.

PART II. INTERGOVERNMENTAL AGREEMENTS AND CONTRACTS.

§8-23-3. Intergovernmental agreements generally.

1 Any power or powers, privilege or privileges, authority
2 or undertaking, exercised or capable of exercise, or
3 which may be engaged in, and any public works which
4 may be undertaken, by a public agency acting alone
5 may be exercised, enjoyed, engaged in or undertaken
6 jointly with any other public agency which could like-
7 wise act alone.

8 Any two or more public agencies may enter into a
9 written agreement with one another for joint or coop-
10 erative action pursuant to the provisions of this section.
11 Appropriate action by ordinance, resolution, or other-
12 wise pursuant to law, of the governing bodies of the
13 participating public agencies shall be necessary before
14 any such agreement shall become effective.

15 Any such agreement shall specify the following:

16 (1) Its duration;

17 (2) The precise organization, composition and nature
18 of any separate legal or administrative entity created

19 thereby, together with the powers delegated thereto,
20 provided such entity may be legally created;

21 (3) Its purpose or purposes;

22 (4) The manner of financing the joint or cooperative
23 undertaking and of establishing and maintaining a
24 budget therefor;

25 (5) The permissible method or methods to be em-
26 ployed in accomplishing the partial or complete ter-
27 mination of the agreement and for disposing of property
28 upon such partial or complete termination; and

29 (6) Any other necessary and proper matters.

30 In the event that the agreement does not establish a
31 separate legal or administrative entity to conduct the
32 joint or cooperative undertaking, the agreement shall,
33 in addition to the items enumerated above, contain the
34 following:

35 (1) Provision for an administrator or a joint board
36 responsible for administering the joint or cooperative
37 undertaking, and in the event a joint board is provided
38 for, there shall be a representative on the board from
39 each of the public agencies which are party to the
40 agreement; and

41 (2) The manner of acquiring, holding and disposing
42 of real and personal property used in the joint or coop-
43 erative undertaking.

44 No agreement made pursuant to the provisions of this
45 section shall relieve any public agency of any obliga-
46 tion or responsibility imposed upon it by law, except
47 that to the extent of actual and timely performance
48 thereof by a joint board or other legal or administrative
49 entity created by an agreement made hereunder, said
50 performance may be offered in satisfaction of the obliga-
51 tion or responsibility.

52 Every agreement made pursuant to the provisions of
53 this section shall, prior to and as a condition precedent
54 to its becoming effective, be submitted to the attorney
55 general who shall determine whether the agreement is
56 in proper form and is compatible with the laws of this
57 state. The attorney general shall approve any such
58 agreement submitted to him unless he shall find that

59 it does not meet the conditions set forth herein, in which
60 event he shall detail in writing to the governing bodies
61 of the public agencies concerned the specific respects
62 in which the proposed agreement fails to meet the re-
63 quirements of law. Failure to disapprove any such
64 agreement so submitted within thirty days of its sub-
65 mission shall constitute approval thereof.

66 The financing of joint projects by agreement shall be
67 as provided by law.

§8-23-4. Filing of intergovernmental agreements.

1 Before an agreement made pursuant to the provisions
2 of section three of this article may become effective, a
3 copy of the same must be filed with the recorder of any
4 municipality party thereto and with the clerk of the
5 county court of any county party thereto, and, as to any
6 other public agency party thereto, with the officer in
7 charge of the records thereof. When a municipality is
8 a party, a copy of the agreement must also be filed with
9 the state tax commissioner before such agreement be-
10 comes effective.

§8-23-5. Additional approval of intergovernmental agreements required in certain cases.

1 In the event that an agreement entered into pursuant
2 to the provisions of section three of this article shall
3 deal in whole or in part with the providing of services
4 or facilities with respect to which an officer or agency
5 of this state has constitutional or statutory powers of
6 control, the agreement shall, as a condition precedent
7 to its becoming effective, be submitted to the state officer
8 or agency having such power of control and shall be
9 approved or disapproved by him or it as to all matters
10 within his or its jurisdiction in the same manner and
11 subject to the same requirements and provisions govern-
12 ing the action of the attorney general under said section
13 three of this article. This requirement of the submission
14 and approval shall be in addition to and not in sub-
15 stitution for the requirement of submission to and ap-
16 proval by the attorney general.

§8-23-6. Appropriations; furnishing of property, personnel and services.

1 Any public agency entering into an agreement pur-
2 suant to the provisions of section three of this article
3 is hereby empowered and authorized to appropriate
4 funds to, and to sell, lease, transfer or otherwise supply
5 real or personal property to, and to furnish personnel
6 and services to, the administrative joint board or other
7 legal or administrative entity created to operate the
8 joint or cooperative undertaking, and such board or entity
9 is hereby empowered and authorized to receive, expend
10 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 em-
2 powered and authorized to contract with any one or
3 more other public agencies for the performance of any
4 governmental service, activity or undertaking which each
5 public agency entering into the contract is authorized
6 by law to perform, provided that such contract shall be
7 authorized by the governing body of each party to the
8 contract. Such contract shall set forth fully the pur-
9 poses, power, authority, rights, objectives and responsi-
10 bilities of the contracting parties. Any contracting party
11 may make such payments for the performance of such
12 service, activity or undertaking and as reimbursement
13 for expenses incurred with respect thereto, as may be
14 specified in the contract, and the public agency to which
15 such payments are to be made is hereby empowered and
16 authorized to receive the same.

§8-23-8. Duration of intergovernmental agreements and contracts.

1 Any intergovernmental agreement entered into in ac-
2 cordance with the provisions of section three of this
3 article, and any contract for the performance of a service,
4 activity or undertaking entered into in accordance with
5 the provisions of section seven of this article, shall be
6 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.

§8-23-9. 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 employees; special and temporary services; legal assistance.
- §8-24-13. Municipal-county commission; powers and authority; expenses.

PART III. SAME—POWERS, AUTHORITY AND DUTIES.

- §8-24-14. Administrative powers and authority.
- §8-24-15. Appropriations; expenditures; disposition of gifts; participation in federal planning assistance programs.

PART IV. SAME—COMPREHENSIVE PLAN.

- §8-24-16. Comprehensive plan for physical development of territory—Generally.
- §8-24-17. Same—Contents.
- §8-24-18. Same—Notice and public hearing.
- §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.

- §8-24-39. Zoning authority generally.

PART IX. SAME—ZONING DISTRICTS.

- §8-24-40. Zoning districts—Generally.
- §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.

§8-24-66. Enforcement.

§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
2 county court of every county may by ordinance create
3 a planning commission in order to promote the orderly
4 development of its governmental units and its environs.
5 It is the object of this article to encourage local units
6 of government to improve the present health, safety,
7 convenience and welfare of their citizens and to plan
8 for the future development of their communities to the
9 end that highway systems be carefully planned; that new
10 community centers grow only with adequate highway,
11 utility, health, educational and recreational facilities;
12 that the needs of agriculture, industry and business be
13 recognized in future growth; that residential areas pro-
14 vide healthy surroundings for family life; and that the
15 growth of the community is commensurate with and
16 promotive of the efficient and economical use of public
17 funds.

18 In accomplishing this objective, it is intended that the
19 planning commission shall serve in an advisory capacity
20 to the governing body of a municipality or a county
21 court, that certain regulatory powers be created over
22 developments affecting the public welfare and not now
23 otherwise controlled, and that additional powers and
24 authority be granted to the governing bodies of munici-
25 palities and to counties to carry out the objective and
26 overall purposes of this article.

§8-24-2. Continuation of planning commissions heretofore established.

1 Any planning commission heretofore established shall
2 continue to operate as though established under the
3 terms of this article. All actions lawfully taken under
4 prior acts are hereby validated and continued in effect
5 until amended or repealed by action taken under the
6 authority of this article.

7 The membership of existing commissions shall con-
8 tinue unchanged until the first regular meeting of the
9 governing body of a municipality or the county court in
10 January of the year following enactment of this article.
11 At that time, any appointments or changes necessary
12 shall be made to bring the membership of the commis-
13 sions 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
3 a municipal planning commission or a county planning
4 commission, as the case may be;

5 (2) "Comprehensive plan" shall mean a complete com-
6 prehensive plan or any of its parts such as a compre-
7 hensive plan of land use and zoning, of thoroughfares,
8 of sanitation, of recreation and other related matters,
9 and including such ordinance or ordinances as may be
10 deemed necessary to implement such complete compre-
11 hensive plan or parts thereof by legislative approval and
12 provision for such rules and regulations as are deemed
13 necessary and their enforcement;

14 (3) "Public place" includes any tracts owned by the
15 state or its subdivisions;

16 (4) "Streets" includes streets, avenues, boulevards,
17 highways, roads, lanes, alleys and all public ways;

18 (5) "Unit of government" means any federal, state,
19 regional, county or municipal government or govern-
20 mental corporation; and

21 (6) "Utility" means any facility used in rendering
22 service which the public has a right to demand.

PART II. SAME—EXERCISE OF POWERS AND AUTHORITY;
ORGANIZATION AND FUNCTION OF COMMISSIONS.

§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

29 shall be selected for terms of three years each. Vacancies
30 shall be filled for the unexpired term only, in the same
31 manner as original selections are made. Members of the
32 commission shall serve without compensation, but shall
33 be reimbursed for all reasonable and necessary expenses
34 actually incurred in the performance of their official
35 duties.

§8-24-6. County planning commission generally.

1 A county planning commission shall consist of not less
2 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 county, who shall be qualified by knowledge
6 and experience in matters pertaining to the development
7 of the county, who shall include representatives of busi-
8 ness, industry, labor and farming, and who shall be ap-
9 pointed by the county court. At least three fifths of all
10 of the members must have been residents of the county
11 for at least ten years prior to appointment. One member
12 of the commission shall also be a member of the county
13 court, the term of such member to be coextensive with
14 the term of office to which he has been elected, unless
15 the county court at the first regular meeting of the com-
16 mission each year appoints another member to serve
17 as its representative. The remaining members of the
18 commission first appointed shall serve respectively for
19 terms of one year, two years and three years, divided
20 equally or as nearly equally as possible between these
21 terms. Thereafter, members shall be appointed for terms
22 of three years each. Vacancies shall be filled by appoint-
23 ment by the county court for the unexpired term only.
24 Members of the commission shall serve without compen-
25 sation, but shall be reimbursed for all reasonable and
26 necessary expenses actually incurred in the performance
27 of their official duties. An individual may at the same
28 time serve as a member of a municipal planning com-
29 mission and as a member of a county planning com-
30 mission.

§8-24-7. Advisory members.

1 In the event a municipality which has or shall establish
2 a planning commission is located within or partly within

3 a county which has or shall have a county planning com-
4 mission, a designated representative of the county plan-
5 ning commission shall be an advisory member of the
6 municipal planning commission. A designated representa-
7 tive of a municipal planning commission of a municipality
8 located within or partly within a county which has or
9 shall have a county planning commission shall be an
10 advisory member of the county planning commission. All
11 such advisory members shall have all the privileges of
12 membership except the right to vote.

§8-24-8. Regular and special meetings.

1 The commission shall fix the time for holding regular
2 meetings, but it shall meet at least once in the months
3 of January, April, July and October.

4 Special meetings of the commission may be called by
5 the president or by at least two members upon written
6 request to the secretary. Whether called by the president
7 or by two or more members, the secretary shall send to
8 all of the members, at least two days in advance of a
9 special meeting, a written notice fixing the date, time
10 and place of the meeting, but written notice of a special
11 meeting is not required if the date, time and place of the
12 special meeting have been fixed in a regular meeting,
13 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 con-
2 stitute a quorum. No action of a commission shall be
3 official, however, unless authorized by a majority of all
4 of the members of the commission at a regular or properly
5 called special meeting.

§8-24-10. Offices; appropriation for expenses.

1 The county court in the case of a county planning
2 commission, and the governing body of the municipality
3 in the case of a municipal planning commission, shall
4 provide the commission with suitable offices for the hold-
5 ing of meetings and the preservation of plans, maps,
6 documents and accounts, and shall provide by appro-
7 priation a sum sufficient to defray the reasonable ex-
8 penses 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

16 all the powers, authority and duties granted under this
17 article to a municipal planning commission. A municipal
18 planning commission designated as a county planning
19 commission shall have for that county all the powers,
20 authority and duties granted under this article to a
21 county planning commission.

22 Any municipality designating a county planning com-
23 mission as its municipal planning commission may con-
24 tract annually to pay to the county a proportionate part
25 of the expenses which is properly chargeable to the plan-
26 ning service rendered to such municipality, and any such
27 payments received by the county shall be appropriated
28 by the county to the county planning commission in
29 addition to any funds budgeted for planning purposes,
30 although the county court may, if it so elects, agree to
31 pay the total cost. Any county designating a municipal
32 planning commission as its county planning commission
33 may contract annually to pay to the municipality a pro-
34 portionate part of the expenses which is properly charge-
35 able to the planning service rendered to such county,
36 and any such payments received by the municipality
37 shall be appropriated by the municipality to the municip-
38 al planning commission in addition to any funds budgeted
39 for planning purposes.

PART III. SAME—POWERS, AUTHORITY AND DUTIES.

§8-24-14. Administrative powers and authority.

1 To effectuate the purposes of this article, a commission
2 shall have the power, authority and duty to:

3 (1) Exercise general supervision of and make rules
4 and regulations for the administration of the affairs of
5 the commission;

6 (2) Prescribe uniform rules and regulations per-
7 taining to its investigations and hearings;

8 (3) Supervise the fiscal affairs and responsibilities of
9 the commission;

10 (4) Prescribe the qualifications of, appoint, remove
11 and fix the compensation of, the employees of the com-
12 mission, such compensation to be in conformity to and
13 in compliance with the salaries and compensation there-

14 tofore fixed by the governing body or county court of such
15 municipalities or counties;

16 (5) Delegate to employees authority to perform
17 ministerial acts in all cases except where final action
18 of the commission is necessary;

19 (6) Keep an accurate and complete record of all de-
20 partmental proceedings, and record and file all bonds
21 and contracts and assume responsibility for the custody
22 and preservation of all papers and documents of the
23 commission;

24 (7) Make recommendations and an annual report to
25 the governing body of the municipality or to the county
26 court concerning the operation of the commission and
27 the status of planning within its jurisdiction;

28 (8) Prepare, publish and distribute reports, ordinances
29 and other material relating to the activities authorized
30 under this article;

31 (9) Adopt a seal, and certify all official acts;

32 (10) Invoke any legal, equitable or special remedy
33 for the enforcement of the provisions of this article or
34 any ordinance, rule and regulation or any action taken
35 thereunder;

36 (11) Prepare and submit an annual budget in the same
37 manner as other departments of municipal and county
38 government and the commission shall be limited in all
39 expenditures to the provisions made therefor by the
40 governing body of such municipality or by the county
41 court of such county;

42 (12) If deemed advisable, establish an advisory com-
43 mittee or committees; and

44 (13) Delegate to a committee composed of one or more
45 members of the commission the power to hold any public
46 hearings or conferences required or permitted under
47 this article to be held by the commission. If the hearing
48 or conference is held by a committee, a written record
49 of the substance of the hearing or conference shall be
50 made and preserved with the records of the commission
51 for not less than five years. The committee shall have

52 authority only to conduct the hearing and report to
53 the commission.

**§8-24-15. Appropriations; expenditures; disposition of gifts;
participation in federal planning assistance pro-
grams.**

1 After the governing body of a municipality or a county
2 court has adopted an ordinance creating a planning
3 commission, the governing body or county court shall
4 appropriate funds to carry out the duties of the com-
5 mission.

6 The planning commission shall have the power and
7 authority to expend, under regular municipal or county
8 procedure as provided by law, all sums appropriated
9 to it for the purposes and activities authorized under
10 this article.

11 A municipality or county may accept gifts and dona-
12 tions for planning commission purposes. Any moneys
13 so accepted shall be deposited with the municipality or
14 county in a special nonreverting planning commission
15 fund to be available for expenditures by the planning
16 commission for the purpose designated by the donor.
17 The disbursing officer of a municipality or county shall
18 draw warrants against such special nonreverting fund
19 only upon vouchers signed by the president and secre-
20 tary of the planning commission.

21 A municipal or county planning commission is em-
22 powered and authorized to spend funds made available
23 for the purposes of this article, and to accept and use
24 funds provided for the purposes of this article by the
25 government of the United States and any other agency
26 or group whose interests are in harmony with such
27 purposes, in accordance with federal requirements and
28 subject to such conditions or limitations as the constitu-
29 tion or law of the state may provide. In this connection
30 a municipal or county planning commission is hereby
31 expressly authorized to participate in the federal plan-
32 ning assistance programs as set forth in the "Federal
33 Housing Act of 1954," as amended, and any subsequent
34 acts.

PART IV. SAME—COMPREHENSIVE PLAN.

§8-24-16. Comprehensive plan for physical development of territory—Generally.

1 A planning commission shall make and recommend
2 for adoption to the governing body of the municipality
3 or to the county court, as the case may be, a compre-
4 hensive plan for the physical development of the terri-
5 tory within its jurisdiction. Any county plan may
6 include the planning of towns or villages to the extent
7 to which, in the commission's judgment, they are re-
8 lated to the planning of the unincorporated territory
9 of the county as a whole: *Provided*, That the plan shall
10 not be considered as a comprehensive plan for any town
11 or village without the consent of any planning com-
12 mission and the governing body of such town or village.
13 The county plan shall be coordinated with the plans of
14 the state road commission, insofar as it relates to high-
15 ways or thoroughfares under the jurisdiction of that
16 commission. A county planning commission may pre-
17 pare, and the county court is empowered and authorized
18 to adopt, a comprehensive plan and zoning ordinance
19 for either the entire county, or for any part or parts
20 thereof which constitute an effective region or regions
21 for planning and zoning purposes without the necessity
22 of adopting a plan and ordinance for any other part.
23 In determining what constitutes an effective region or
24 regions for planning and zoning purposes, due consider-
25 ation shall be given to such factors as population density,
26 health, general welfare, water and sanitation require-
27 ments, and future potential for residential, commercial,
28 industrial or public use. The procedure for the prepara-
29 tion and adoption of a comprehensive plan and zoning
30 ordinance for a part of such county shall be the same as
31 the procedure for the preparation and adoption of a plan
32 and ordinance for the entire county, except that the
33 election provided for in section forty-eight of this article
34 shall be restricted to the qualified electors residing within
35 the part or parts affected.

36 The comprehensive plan, with the accompanying
37 maps, plats, charts and descriptive and explanatory mat-
38 ter, shall show recommendations for the development

39 of the territory covered by the plan and may include,
40 among other things, the general location, character and
41 extent of streets, viaducts, bridges, waterways and
42 waterfront developments, parkways, playgrounds, for-
43 ests, reservations, parks, airports and other public ways,
44 grounds, places and spaces; the general location and
45 extent of publicly owned utilities and terminals, and
46 other purposes; the acceptance, widening, removal, ex-
47 tension, relocation, narrowing, vacation, abandonment
48 or change of use of any of the foregoing public ways,
49 grounds, places, spaces, buildings, properties, utilities
50 or terminals; the general character, location and extent
51 of community centers, municipal sites or housing devel-
52 opment; the general location and extent of forests, agricul-
53 tural areas and open-development areas for the purposes
54 of conservation, food and water supply, sanitary drainage
55 facilities or the protection of urban development; a land
56 classification and utilization program; the distribution
57 of population, and the uses of land for trade, industry,
58 habitation, recreation, agriculture, forestry, soil and water
59 conservation and other purposes.

60 In the preparation of a comprehensive plan, a planning
61 commission shall make careful and comprehensive sur-
62 veys and studies of the existing conditions and probable
63 future changes of such conditions within the territory
64 under its jurisdiction. The comprehensive plan shall be
65 made with the general purpose of guiding and accom-
66 plishing a coordinated, adjusted and harmonious devel-
67 opment of the area which will, in accordance with present
68 and future needs and resources, best promote the health,
69 safety, morals, order, convenience, prosperity or general
70 welfare of the inhabitants, as well as efficiency and
71 economy in the process of development, including, among
72 other things, such distribution of population and of the
73 uses of land for urbanization, trade, industry, habitation,
74 recreation, agriculture, forestry and other purposes as
75 will tend:

76 (1) To create conditions favorable to health, safety,
77 transportation, prosperity, civic activities and recrea-
78 tional, educational and cultural opportunities;

79 (2) To reduce the wastes of physical, financial or

80 human resources which result from either excessive
81 congestion or excessive scattering of population; and

82 (3) Toward the efficient and economic utilization,
83 conservation and production of the supply of food and
84 water and of drainage, sanitary and other facilities and
85 resources.

§8-24-17. Same—Contents.

1 A comprehensive plan may include the following or
2 a study of the following:

3 (a) Careful and comprehensive surveys and studies
4 of existing conditions and the probable future growth
5 of the municipality and its environs or of the county;

6 (b) Maps, plats, charts and descriptive material pre-
7 senting basic information, locations, extent and character
8 of any of the following:

9 (1) History, population and physical site conditions;

10 (2) Land use, including the height, area, bulk, location
11 and use of private and public structures and premises;

12 (3) Population densities;

13 (4) Community centers and neighborhood units;

14 (5) Blighted and slum areas;

15 (6) Streets, including bridges, viaducts, subways,
16 parkways and other public ways and places;

17 (7) Sewers, sanitation and drainage, including han-
18 dling, treatment and disposal of excess drainage waters,
19 sewage, garbage, refuse, wastes, ashes, trash and other
20 similar matters;

21 (8) Stream pollution;

22 (9) Flood control and prevention;

23 (10) Public and private utilities, including water,
24 light, heat, communication and other services;

25 (11) Transportation, including rail, bus, truck, air
26 and water transport and their terminal facilities;

27 (12) Local mass transportation, including motor and
28 trolley busses; street, elevated or underground railways
29 and taxicabs;

30 (13) Parks and recreation, including parks, play-
31 grounds, 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.

§8-24-18. Same—Notice and public hearing.

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.

5 At least thirty days prior to the date set for hearing,
6 the commission shall publish a notice of the date, time
7 and place of the hearing as a Class I legal advertisement
8 in compliance with the provisions of article three, chap-
9 ter fifty-nine of this code, and the publication area for
10 such publication shall be the municipality or county,
11 as the case may be.

§8-24-19. Same—Adoption by commission.

1 After a public hearing has been held, the commission
2 may by resolution adopt the comprehensive plan and
3 recommend the ordinance to the governing body of the
4 municipality or to the county court.

§8-24-20. Same—Certification and presentment to governing body or county court.

1 Upon adoption of the comprehensive plan and recom-
2 mendation of the ordinance, the secretary shall certify
3 a copy of the plan to the governing body of the city or
4 to the county court.

5 At the first meeting of the governing body of the
6 municipality or of the county court after adoption of
7 the plan, the secretary or a member of the commission
8 shall present the plan and ordinance to the governing
9 body or to the county court.

§8-24-21. Same—Consideration of plan and ordinance by governing body or county court; publication.

1 After certification of the plan and ordinance to the
2 governing body of the municipality or to the county
3 court, the governing body of the municipality or the
4 county court shall proceed to a consideration of the
5 plan and ordinance and shall either adopt, reject or
6 amend the same. If the ordinance adopting the compre-
7 hensive plan is published, the plan may be incorporated
8 by reference in the ordinance and the full text of said
9 plan not published.

§8-24-22. Same—Rejection or amendment by governing body or county court; consideration and report by commission.

1 If the governing body of the municipality or the county
2 court rejects the plan and ordinance or amends it, then

3 it shall be returned to the commission for its consider-
4 ation, with a written statement of the reasons for its
5 rejection or amendment.

6 The commission shall have forty-five days in which
7 to consider the rejection or amendment and report
8 thereon to the governing body of the municipality or
9 to the county court. If the commission approves the
10 amendment, the ordinance shall stand as adopted by the
11 governing body of the municipality or the county court
12 as of the date of the filing of the commission's report
13 with the governing body of the municipality or with
14 the county court. If the commission disapproves the
15 rejection or amendment, it shall state its reasons in the
16 report, and the governing body of the municipality or
17 the county court shall again consider said plan and
18 ordinance, and its action in rejecting or amending said
19 plan and ordinance, after such consideration, shall be
20 final.

21 In case the commission does not file a report with the
22 governing body of the municipality or with the county
23 court within forty-five days, the action in rejecting or
24 amending the ordinance shall be final.

§8-24-23. Same—Amendment of plan and ordinance after adoption.

1 After the adoption of a comprehensive plan and ordi-
2 nance, all amendments to it shall be adopted according
3 to the procedures set forth in sections eighteen through
4 twenty-two of this article, except that publication of
5 notice of the date, time and place of hearing upon amend-
6 ment of the zoning ordinance need be only fifteen or
7 more days prior to the date set for such hearing, and
8 except that, if the governing body of the municipality
9 or the county court desires an amendment, it may direct
10 the planning commission to prepare an amendment and
11 submit it to public hearing within sixty days after formal
12 written request by the governing body of the municipality
13 or by the county court.

§8-24-24. Same—Validation of prior action.

1 The adoption of a comprehensive plan or any general
2 development plans by a planning commission under the

3 authority of prior acts is hereby validated and shall con-
4 tinue in effect until amended under the authority of this
5 article.

§8-24-25. Same—Intergovernmental cooperation.

1 Whenever the commission undertakes the preparation
2 of a comprehensive plan, the departments and officials
3 of the state and of municipal, county and separate tax-
4 ing units operating within lands under the jurisdiction
5 of the commission shall make available, upon the request
6 of the commission, such information, documents and
7 plans as have been prepared, or upon the request of the
8 commission shall provide such information as relates to
9 the commission's activity.

§8-24-26. Same—Jurisdiction of municipal planning commission.

1 A municipal planning commission shall adopt a com-
2 prehensive plan for the development of the municipality,
3 but the authority of such municipal planning commis-
4 sion shall not extend beyond the corporate limits of the
5 municipality.

**§8-24-27. Cooperation between planning commissions; co-
operation between commissions and governing and
administrative bodies and officials.**

1 In the exercise of the powers and authority granted
2 by this article, the planning commission of any munici-
3 pality or county may cooperate with the planning com-
4 missions or governing and administrative bodies and
5 officials of other municipalities within or without such
6 county and of other counties, with a view to coordinating
7 and integrating the planning and zoning of such munici-
8 pality or county with the plans of such other munici-
9 palities and of such other counties, and may appoint such
10 committee or committees and may adopt such rules and
11 regulations as may be thought proper to effect such
12 cooperation. Such planning commissions and governing
13 and administrative bodies and officials of other munici-
14 palities and counties are hereby authorized to cooperate
15 with such municipal or county planning commissions for
16 the purposes of such coordination and integration. Sim-

17 ilarly, 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 recordation.

1 After a comprehensive plan and an ordinance contain-
2 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 municip-
7 al 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
2 shall be granted, the commission shall determine if the
3 plat provides for:

4 (1) Coordination of subdivision streets with existing
5 and planned streets;

6 (2) Coordination with and extension of facilities in-
7 cluded in the comprehensive plan;

8 (3) Establishment of minimum width, depth and
9 area of lots within the projected subdivision;

10 (4) Distribution of population and traffic in a manner
11 tending to create conditions favorable to health, safety,
12 convenience and the harmonious development of the
13 municipality or county; and

14 (5) Fair allocations of areas for streets, parks, schools,
15 public and semipublic buildings, homes, utilities, busi-
16 ness and industry.

17 As a condition of approval of a plat the commission
18 may specify:

19 (1) The manner in which streets shall be laid out,
20 graded and improved;

21 (2) Provisions for water, sewage and other utility
22 services;

23 (3) Provision for schools;

24 (4) Provision for essential municipal services; and

25 (5) Provision for recreational facilities.

§8-24-31. Same—Effect of approval or disapproval.

1 After hearing and within a reasonable time after the
2 filing of an application for approval of the plat, the com-
3 mission shall approve or disapprove it. If the commission
4 approves the application, it shall affix the commission's
5 seal upon the plat. If it disapproves the application, it
6 shall set forth its reasons in its own records and provide
7 the applicant with a copy thereof.

§8-24-32. Same—Application fees.

1 The commission may establish a uniform schedule of
2 fees proportioned to the cost of checking and verifying

3 proposed plats. An applicant shall pay the specified fee
4 at the time of filing his application.

§8-24-33. Same—Plats filed without approval.

1 After a comprehensive plan and an ordinance contain-
2 ing provisions for subdivision control and the approval
3 of plats and replats have been adopted and a certified
4 copy of the ordinance has been filed with the clerk of
5 the county court as aforesaid, the filing and recording
6 of a plat involving the subdivision of lands covered by
7 such comprehensive plan and ordinance shall be without
8 legal effect unless approved by the commission: *Provided*,
9 That failure to comply with this section shall not in-
10 validate or affect the title to any land within the area of
11 such plat: *Provided, however*, That if such plat shall
12 bear the seal of the commission it shall be presumed to
13 have been approved thereby.

§8-24-34. Same—Conditional approval; bonds.

1 The commission may approve a plat for a subdivision
2 in which the improvements and installations have not
3 been completed as required by the ordinance for the
4 approval of plats if the applicant provides a bond which
5 shall:

6 (1) Run to the municipality or county which estab-
7 lished the commission;

8 (2) Be in an amount determined by the commission
9 to be sufficient to complete the improvements and in-
10 stallations in compliance with the ordinance;

11 (3) Be with surety satisfactory to the commission;
12 and

13 (4) Specify the time for the completion of the im-
14 provements and installations.

15 Any funds received from any such bonds shall be used
16 by the legally constituted body charged with making
17 public improvements for the municipality or county only
18 for completion of the improvements and installations for
19 which such bonds were provided, and without prior ap-
20 propriation. The municipality or county is hereby au-
21 thorized to make these improvements and installations.

§8-24-35. Same—Jurisdiction and control; inconsistent provisions for platting control repealed.

1 After a comprehensive plan and an ordinance con-
2 taining provisions for subdivision control and the ap-
3 proval of plats and replats have been adopted and a
4 certified copy of the ordinance has been filed with the
5 clerk of the county court as aforesaid, the municipal
6 planning commission, in the case of a municipal plan and
7 ordinance, shall have exclusive control over the approval
8 of all plats involving land covered by such municipal
9 plan and ordinance and located within the corporate
10 limits of such municipality, and the county planning
11 commission, in the case of a county plan and ordinance,
12 shall have exclusive control over the approval of plats
13 involving unincorporated lands covered by such county
14 plan and ordinance and located within its jurisdiction.

15 All control over plats granted by other statutes, so far
16 as such statutes are in harmony with the provisions of
17 this article, shall be transferred to the commission having
18 jurisdiction over the lands involved. Existing provisions
19 for platting control, so far as they are inconsistent with
20 the provisions of this article, are hereby repealed to the
21 extent of such inconsistency.

PART VI. SAME—IMPROVEMENT LOCATION PERMITS.

§8-24-36. Improvement location permits—Conformity of structure to comprehensive plan and ordinance.

1 Within the corporate limits of the municipality, a
2 structure shall not be located and an improvement loca-
3 tion permit for a structure on platted or unplatted lands
4 shall not be issued unless the structure and its location
5 conform to the municipality's comprehensive plan and
6 ordinance. A structure shall not be located and an im-
7 provement location permit shall not be issued for a struc-
8 ture on unincorporated lands within the jurisdiction of
9 the county planning commission unless the structure and
10 its location conform to the county's comprehensive plan
11 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.**§8-24-39. Zoning authority 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

19 trades, callings, industries, commercial enterprises and
20 the location of buildings designed for specified uses;

21 (5) To regulate and control, or prohibit in certain
22 areas, junk yards, salvage yards, used parts yards, dumps
23 or automobile or appliance graveyards, or the mainte-
24 nance and operation of secondhand stores or outlets in
25 residential areas;

26 (6) To classify and designate the rural lands among
27 agricultural, industrial, commercial, residential and other
28 uses and purposes; and

29 (7) To divide the municipality or county into dis-
30 tricts of such kind, character, number, shape and area
31 as may be deemed necessary to carry out the purposes
32 of this section.

PART IX. SAME—ZONING DISTRICTS.

§8-24-40. Zoning districts—Generally.

1 The various kinds of districts created and designated
2 as use, height, area, volume or bulk districts, as well as
3 districts created for any other purpose necessary to carry
4 out the purposes of section thirty-nine of this article,
5 need not necessarily cover or include the same territory,
6 and may overlap or coincide. The districts created shall
7 also be subject to the following:

8 (1) Rules and regulations as to height, area, bulk
9 and use of buildings and as to the area of all yards, courts
10 and open spaces shall be uniform for each class of build-
11 ings throughout each district;

12 (2) For each district designated for the location of
13 trades, callings, industries, commercial enterprises or
14 buildings designated for specified uses, rules and regula-
15 tions may be enforced specifying uses that shall be ex-
16 cluded or subjected to reasonable requirements of a
17 special nature and designating the use for which build-
18 ings may not be erected, altered or used;

19 (3) The rules and regulations in one or more districts
20 of the same kind or character may differ from those in
21 other like districts but shall be uniform for each district;
22 and

23 (4) Several parts of the municipality or county may
24 be classified within a single district although not con-
25 tiguous.

§8-24-41. Same—Preliminary study.

1 In establishing such districts and rules and regulations
2 the governing body of a municipality or the county court
3 shall give reasonable regard to existing conditions, the
4 character of buildings erected in each district, the most
5 desirable use for which the land in each district may be
6 adapted and the conservation of property values through-
7 out the municipality or county.

PART X. SAME—ZONING DISTRICTS—PROCEDURES.

§8-24-42. Same—Tentative report; notice and hearings.

1 Recommendations as to the boundaries of districts and
2 the rules and regulations and restrictions to be enforced
3 therein shall be prepared by the planning commission.
4 The commission may prepare the tentative report on
5 its own initiative or the governing body of the munici-
6 pality or the county court may require its preparation.
7 The commission shall hold public preliminary hearings
8 and conferences, on such dates and at such times and
9 places and upon such notice as it may determine to be
10 necessary to inform and aid itself in the preparation of
11 the tentative report.

12 The tentative report, which shall include the proposed
13 zoning ordinance with explanatory maps, shall be made
14 to the governing body of the municipality or to the county
15 court by the planning commission.

§8-24-43. Same—Action by governing body or county court on tentative report.

1 The governing body of the municipality or the county
2 court shall consider the tentative report of the planning
3 commission and shall return it, with any suggestions
4 and recommendations, to the planning commission for
5 its final report.

6 No zoning ordinance hereunder shall be adopted until
7 after the final report of the planning commission has
8 been received by the governing body of the municipality
9 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 plan-
2 ning commission, the governing body of the municipality
3 or the county court shall afford all interested persons
4 an opportunity to be heard with reference to it at public
5 hearings, convenient for all persons affected, to be held
6 on dates and at times and places to be specified in notices
7 to be published, within fourteen consecutive days next
8 preceding the date set for the hearings, as Class II legal
9 advertisements in compliance with the provisions of
10 article three, chapter fifty-nine of this code, and the
11 publication area for such publication shall be the munici-
12 pality or county, as the case may be. The notices shall
13 state the dates, times and places of the hearings, that
14 the report contains a comprehensive zoning ordinance
15 for the municipality or county, that written objections
16 to the final report filed with the recorder of the munici-
17 pality or with the clerk of the county court at or before
18 the hearings will be heard and that the hearings will
19 be continued from time to time as may be found neces-
20 sary. During the period between the date of the first
21 publication of the notice and the date of the hearing,
22 the final report shall be on file in the office of the plan-
23 ning commission for public examination. Upon com-
24 pletion of the public hearings, the governing body of
25 the municipality or the county court shall proceed to the
26 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
2 court may, from time to time, amend, supplement or
3 change the rules and regulations and districts fixed by
4 ordinance hereunder.

**§8-24-46. Changes of zoning rules and regulations—Petition
for change.**

1 Petitions, duly signed, may be presented to the recorder
2 of the municipality or to the clerk of the county court
3 requesting an amendment, supplement or change of the
4 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

11 or general election or special election called for that
12 purpose. The petition may be in any number of counter-
13 parts but must be signed in their own handwriting by
14 a number of qualified voters residing in the area affected
15 by the proposed zoning equal, notwithstanding the pro-
16 visions of subdivision (10), subsection (b), section two,
17 article one of this chapter, to not less than fifteen percent
18 of the total legal votes cast in the affected area for
19 all candidates for governor at the last preceding general
20 election at which a governor was elected. Only quali-
21 fied voters residing in the area affected by the pro-
22 posed ordinance shall be eligible to vote with respect
23 thereto.

24 Upon the ballots, or ballot labels where voting ma-
25 chines are used, there shall be written or printed the
26 following:

27 ☐ For Zoning

28 ☐ Against Zoning

29 If a majority of the legal votes cast upon the question
30 be for zoning, the provisions of said zoning ordinance
31 shall, upon the date the results of such an election are
32 declared, be effective. If a majority of the legal votes
33 cast upon the question be against zoning, said zoning
34 ordinance shall not take effect, but the question may
35 again be submitted to a vote at any regular primary
36 or general election in the manner herein provided.

37 Subject to the provisions of the immediately preced-
38 ing sentence, voting upon the question of zoning may
39 be conducted at any regular primary or general election
40 or special election, as the governing body of the munici-
41 pality or the county court in its order submitting the
42 same to a vote may designate.

43 Notice of all elections at which the question of zoning
44 is to be voted upon shall be given by publication of the
45 order calling for a vote on such question as a Class
46 II-0 legal advertisement in compliance with the pro-
47 visions of article three, chapter fifty-nine of this code,
48 and the publication area for such publication shall be
49 the area in which voting on the question of zoning is to
50 be conducted.

51 Any election at which the question of zoning is voted
52 upon shall be held at the voting precincts established
53 for holding primary or general elections. All of the
54 provisions of the general election laws of this state
55 concerning primary, general or special elections, when
56 not in conflict with the provisions of this article, shall
57 apply to voting and elections hereunder, insofar as prac-
58 ticable.

PART XIII. SAME--EXISTING ORDINANCES AND USES.

§8-24-49. Validation of existing ordinances.

1 All zoning ordinances, and all amendments, supple-
2 ments and changes thereto, legally adopted under any
3 prior enabling acts, and all actions taken under the
4 authority of any such ordinances, are hereby validated
5 and continued in effect until amended or repealed by
6 action of the governing body of the municipality or the
7 county court taken under authority of this article. These
8 ordinances shall have the same effect as though previ-
9 ously adopted as a comprehensive plan of land use or
10 parts thereof.

§8-24-50. Existing uses safeguarded.

1 Such zoning ordinance or ordinances shall not prohibit
2 the continuance of the use of any land, building or
3 structure for the purpose for which such land, building
4 or structure is used at the time such ordinance or ordi-
5 nances take effect, but any alteration or addition to any
6 land or any alteration, addition or replacement of or
7 to any existing building or structure for the purpose of
8 carrying on any use prohibited under the zoning rules
9 and regulations applicable to the district may be pro-
10 hibited: *Provided*, That no such prohibition shall apply
11 to alterations or additions to or replacement of buildings
12 or structures by any farm, industry or manufacturer,
13 or to the use of land presently owned by any farm,
14 industry or manufacturer but not used for agricultural,
15 industrial or manufacturing purposes, or to the use or
16 acquisition of additional land which may be required
17 for the protection, continuing development or expansion
18 of any agricultural, industrial or manufacturing oper-
19 ation or any present or future satellite agricultural,

20 industrial or manufacturing use. If a nonconforming
21 use has been abandoned, any future use of such land,
22 building or structure shall be in conformity with the
23 provisions of the ordinance regulating the use in the
24 district in which such land, building or structure may
25 be located: *Provided, however,* That abandonment of
26 any particular agricultural, industrial or manufacturing
27 process shall not be construed as abandonment of agri-
28 cultural, industrial or manufacturing use.

29 Nothing contained in this article shall be deemed to
30 authorize an ordinance, rule and regulation which would
31 prevent, outside of urban areas, the complete use and
32 alienation of any timber and any and all minerals, in-
33 cluding coal, oil and gas, by the owner or alienee thereof.
34 For the purpose of this section, urban area shall include
35 all lands or lots within the jurisdiction of a municipal
36 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.**

1 As a part of the zoning ordinance, the governing body
2 of the municipality or the county court shall create a
3 board of zoning appeals consisting of five members to
4 be appointed by the governing body of the municipality
5 or by the county court, as the case may be.

6 The members of the board of zoning appeals shall
7 be individuals who are freeholders and residents of the
8 municipality or county, as the case may be, and at least
9 three fifths of such members must have been residents
10 of the municipality or county, as the case may be, for
11 at least ten years preceding the time of their appoint-
12 ment. No member of the board of zoning appeals shall
13 be a member of the planning commission nor shall any
14 member hold other elective or appointive office in the
15 municipal or county government. Members of the board
16 shall serve without compensation, but shall be reim-
17 bursed for all reasonable and necessary expenses actually
18 incurred in the performance of their official duties.

19 Upon the creation of a board of zoning appeals, the
20 members shall be appointed for the following terms:
21 One for a term of one year; two for a term of two
22 years; and two for a term of three years. The terms
23 shall expire on the first day of January of the first,
24 second and third year, respectively, following their
25 appointment. Thereafter, as their terms expire, each
26 new appointment shall be for a term of three years.

27 If a vacancy occurs, by resignation or otherwise, among
28 the members of the board of zoning appeals, the govern-
29 ing body of the municipality or the county court, as the
30 case may be, shall appoint a member for the unexpired
31 term.

§8-24-52. Same—Officers; quorum; compensation of secretary and employees.

1 At its first meeting of each year, the board of zoning
2 appeals shall elect a chairman and vice chairman from
3 its membership. The vice chairman shall have the power
4 and authority to act as chairman during the absence or
5 disability of the chairman.

6 A majority of the members of a board of zoning appeals
7 shall constitute a quorum. No action of a board shall
8 be official, however, unless authorized by a majority
9 of all of the members of the board.

10 The board of zoning appeals may appoint and fix the
11 compensation of a secretary and such employees as are
12 necessary for the discharge of its duties, all in con-
13 formity to and in compliance with the salaries and com-
14 pensation theretofore fixed by the municipality or county
15 court.

§8-24-53. Same—Offices; appropriation for expenses.

1 The governing body of the municipality in the case
2 of a municipal board of zoning appeals and the county
3 court in the case of a county board of zoning appeals
4 shall provide the board with suitable offices for the
5 holding of meetings and the preservation of plans, maps,
6 documents and accounts, and shall provide by appro-
7 priation a sum sufficient to defray the reasonable expenses
8 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
2 and regulations concerning the filing of appeals, appli-
3 cations for variances and exceptions, the giving of notice
4 and the conduct of hearings as shall be necessary to
5 carry out its duties under the terms of this article.

6 The board shall keep minutes of its proceedings, keep
7 records of all official actions and shall record the vote
8 on all actions taken. All minutes and records shall be
9 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
3 any order, requirement, decision or determination made
4 by an administrative official or board charged with the
5 enforcement of any ordinance or rule and regulation
6 adopted pursuant to sections thirty-nine through forty-
7 nine of this article;

8 (2) Permit and authorize exceptions to the district
9 rules and regulations only in the classes of cases or in
10 particular situations, as specified in the ordinance;

11 (3) Hear and decide special exceptions to the terms
12 of the ordinance upon which the board is required to
13 act under the ordinance; and

14 (4) Authorize upon appeal in specific cases such
15 variance from the terms of the ordinance as will not be
16 contrary to the public interest, where, owing to special
17 conditions, a literal enforcement of the provisions of
18 the ordinance will result in unnecessary hardship, and
19 so that the spirit of the ordinance shall be observed and
20 substantial justice done.

21 In exercising its powers and authority, the board of
22 zoning appeals may reverse or affirm, in whole or in
23 part, or may modify the order, requirement, decision
24 or determination appealed from, as in its opinion ought
25 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

5 taken shall certify to the board of zoning appeals that
6 by reason of facts stated in the certificate a stay would
7 cause imminent peril to life or property. If such certifi-
8 cate be filed, proceedings or work on the premises shall
9 not be stayed except by a restraining order which may
10 be granted by the circuit court of the county in which
11 the premises affected are located, upon application
12 therefor, on notice to the official or board from whom
13 or which the appeal is taken and the owner of the prem-
14 ises 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.

1 Every decision or order of the board of zoning appeals
2 shall be subject to review by certiorari.

3 Any person or persons jointly or severally aggrieved
4 by any decision or order of the board of zoning appeals
5 may present to the circuit court of the county in which
6 the premises affected are located a petition duly verified,
7 setting forth that such decision or order is illegal in
8 whole or in part, and specifying the grounds of the
9 alleged illegality. The petition must be presented to
10 the court within thirty days after the date of the decision
11 or the order of the board of zoning appeals complained of.

§8-24-60. Notice to adverse parties.

1 Upon filing a petition for a writ of certiorari with
2 the clerk of the circuit court of the county in which
3 the premises affected are located, the petitioner shall
4 cause a notice to be issued and served by the sheriff
5 of the county upon the adverse party or parties, if any,
6 as shown by the record of the appeal in the office of
7 the board of zoning appeals, and upon the chairman
8 or secretary of the board of zoning appeals.

9 The adverse party or parties shall be any property
10 owner whom or which the record of the board of zoning
11 appeals shows to have appeared at the hearing before
12 the board in opposition to the petitioner. If the record
13 shows a written remonstrance or other document op-
14 posing the request of petitioner containing the names

15 of more than three property owners, the petitioner shall
16 be required to cause notice to be issued and served upon
17 the three property owners whose names first appear
18 upon the remonstrance or document. Notice to the other
19 parties named in the remonstrance or document shall
20 not be required.

21 The notice shall state that a petition for a writ of
22 certiorari has been filed in the circuit court of the
23 county asking for a review of the decision or order of
24 the board of zoning appeals, shall designate the premises
25 affected and shall specify the date of the decision or
26 order complained of.

27 Service of the notice by the sheriff on the chairman
28 or secretary of the board of zoning appeals shall con-
29 stitute notice to the board and to the municipality or
30 county and to any official or board thereof charged with
31 the enforcement of the zoning ordinance, and no further
32 summons or notice with reference to the filing of such
33 petition shall be necessary.

§8-24-61. Action of court or judge on petition.

1 Upon presentation of a petition for a writ of certiorari,
2 the circuit court of the county in which the premises
3 affected are located, or a judge thereof in vacation, shall
4 direct the board of zoning appeals to show cause within
5 twenty days from the date of such citation why a writ
6 of certiorari should not issue. If such board fails to show
7 to the satisfaction of the court or judge that a writ
8 should not issue then the court or judge may allow a
9 writ of certiorari directed to the board of zoning appeals.
10 The writ shall prescribe the time in which a return
11 shall be made to it. This time shall not be less than
12 ten days from the date of issuance of the writ and may
13 be extended by the court or judge thereof.

§8-24-62. Stay of work on allowance of writ.

1 The allowance of the writ of certiorari shall not stay
2 proceedings or work on the premises affected by the
3 decision or order to be brought up for review. The
4 court or judge may, however, upon application and on
5 notice to all parties to the decision or order and on due

6 cause shown grant such relief as the circumstances of
7 the case may require, including an order staying the
8 proceedings or work until final determination of the case
9 by the court or judge thereof.

10 Such staying order may be issued by the court or
11 judge without requiring the petitioner to enter into a
12 written undertaking with the adverse party or parties
13 affected thereby for the payment of damages by reason
14 of such staying order.

§8-24-63. Return to writ by board of zoning appeals.

1 The return to the writ of certiorari by the board of
2 zoning appeals must concisely set forth such facts and
3 data as may be pertinent and present material to show
4 the grounds of the decision or order appealed from.
5 The return must be verified by the secretary of the
6 board.

7 The board shall not be required to return the original
8 papers acted upon by it. It shall be sufficient to return
9 certified copies of all or such portion of the papers as
10 may be called for by the writ.

§8-24-64. Action by circuit court or judge thereof.

1 The court or judge may consider and determine the
2 sufficiency of the allegations of illegality contained in
3 the petition without further pleadings and may make
4 a determination and render a judgment with reference
5 to the legality of the decision or order of the board of
6 zoning appeals on the facts set out in the petition and
7 return to the writ of certiorari.

8 If it shall appear to the court or judge that testimony
9 is necessary for the proper disposition of the matter,
10 the court or judge may take evidence to supplement the
11 evidence and facts disclosed by the petition and return
12 to the writ of certiorari, but no such review shall be
13 by trial de novo.

14 In passing upon the legality of the decision or order
15 of the board of zoning appeals, the court or judge may
16 reverse or affirm, in whole or in part, or may modify such
17 decision or order.

§8-24-65. Appeal from final judgment of circuit court or judge thereof.

1 An appeal may be taken to the supreme court of
2 appeals of this state from the final judgment of the
3 court or judge reversing, affirming or modifying the
4 decision or order of the board of zoning appeals within
5 the same time, in the same manner, and upon the same
6 terms, conditions and limitations as appeals in other
7 civil cases.

PART XVIII. ENFORCEMENT PROVISIONS.

§8-24-66. Enforcement.

1 The governing body of a municipality or the county
2 court may provide penalties, as set out in section sixty-
3 eight of this article, for failure to comply with the pro-
4 visions of any ordinance or rule and regulation adopted
5 pursuant to the provisions of this article and may declare
6 that any buildings erected, raised or converted or land
7 or premises used in violation of any provision of any
8 ordinance or rule and regulation adopted under the
9 authority of sections thirty-nine through sixty-five of
10 this article shall be common nuisances and the owner
11 of the building, land or premises shall be liable for
12 maintaining a common nuisance.

§8-24-67. Injunction.

1 The planning commission, the board of zoning appeals
2 or any designated enforcement official may seek an in-
3 junction in the circuit court of the county to restrain
4 a person or unit of government from violating the
5 provisions of this article or of any ordinance or rule
6 and regulation adopted pursuant hereto. The planning
7 commission, the board of zoning appeals or any desig-
8 nated enforcement official may also seek a mandatory
9 injunction in the circuit court directing a person or
10 unit of government to remove a structure erected in
11 violation of the provisions of this article or of any
12 ordinance or rule and regulation adopted pursuant
13 hereto. If the planning commission, the board of zoning
14 appeals or the designated enforcement official is suc-
15 cessful in any such suit, the respondent shall bear the
16 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,

9 the provisions of the ordinance or rule and regulation
10 adopted under the authority of this article shall govern.
11 Whenever any other statute, including a special legis-
12 lative charter, or local ordinance or rule and regulation
13 requires a greater width of size of yards, courts or other
14 open spaces, or requires a lower height of building or
15 a less number of stories, or requires a greater percentage
16 of lot to be left unoccupied, or imposes other higher
17 standards than are required by any ordinance or rule
18 and regulation adopted under the authority of this article,
19 the provisions of such other statute, including a special
20 legislative charter, or such other local ordinance or rule
21 and regulation shall govern.

§8-24-71. General repealer; planning and zoning outside corporate limits exercised under prior acts.

1 All acts or parts of acts, including special legislative
2 charters, inconsistent with the provisions of this article
3 are hereby repealed to the extent of their inconsistency,
4 except as provided in section seventy of this article.

5 In amplification of the provisions of sections two,
6 twenty-four and forty-nine of this article, and notwith-
7 standing any other provision of this article to the con-
8 trary, any comprehensive plan and any zoning ordinance
9 or rule and regulation adopted by any municipality af-
10 fecting land located beyond the corporate limits of such
11 municipality under any prior planning and zoning act
12 of the Legislature granting such extraterritorial juris-
13 diction to such municipality shall remain valid and en-
14 forceable, and any such municipality which adopted or
15 enacted any such plan or ordinance or rule and regu-
16 lation under such prior act may continue to exercise
17 planning and zoning control and authority, under the
18 provisions of this article, over any territory located be-
19 yond the corporate limits thereof which is covered under
20 the plan or ordinance or rule and regulation adopted or
21 enacted under any such prior act, and under no circum-
22 stances whatever shall a municipality which has not
23 heretofore exercised extraterritorial jurisdiction under
24 any such prior act hereafter have any power or authority,
25 notwithstanding any provision of this chapter to the con-
26 trary, to exercise any such extraterritorial jurisdiction.

ARTICLE 25. INTERGOVERNMENTAL RELATIONS — REGIONAL PLANNING.**PART I. PURPOSE; CREATION; ORGANIZATION AND FUNCTION.**

- §8-25-1. Statement of purpose.
- §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.

- §8-25-9. Powers and duties of regional planning commission generally.

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.

- §8-25-13. Annual report.

PART I. PURPOSE; CREATION; ORGANIZATION AND FUNCTION.**§8-25-1. Statement of purpose.**

1 The Legislature hereby recognizes the social and eco-
2 nomic interdependence of the people residing within a
3 given region of the state and the common interest they
4 share in its future development. The Legislature hereby
5 further recognizes that plans and decisions made by local
6 governments within a region with respect to land use,
7 circulation patterns, capital improvements and the like,
8 affect the welfare of neighboring jurisdictions and there-
9 fore should be developed jointly. It is, therefore, the
10 aim of this article to provide a means for: (1) Formula-
11 tion and execution of objectives and policies necessary
12 for the orderly growth and development of a region as
13 a whole; and (2) coordination of the objectives, plans
14 and policies of the separate units of government com-
15 prising the area; all being hereby declared to be public
16 purposes.

§8-25-2. Creation of a regional planning commission.

1 A regional planning commission may be established
2 as a public agency pursuant to the following procedures
3 and with the approval of the commissioner of commerce:

4 (a) Two or more municipalities, two or more coun-
5 ties, or one county or two or more counties and a munici-
6 pality or municipalities within the county or counties
7 may, by agreement among their respective governing
8 bodies, create or reorganize a regional planning commis-
9 sion: *Provided*, That a municipality or county not having
10 a planning commission shall not participate in the
11 creation or reorganization of a regional planning com-
12 mission: *Provided, however*, That (1) in the case of
13 municipalities, the one within the region with the largest
14 population shall be a party to the agreement; and (2)
15 the total number of both counties and municipalities
16 participating in the agreement shall equal fifty percent
17 or more of the total number of counties and municipalities
18 within the region. The agreement shall be effected
19 through the adoption by the governing body of each
20 participating government, acting individually, of an ap-
21 propriate resolution. A copy of such agreement shall
22 be filed with the commissioner of commerce.

23 (b) Any additional county or municipality within
24 the region may become a party to the original agreement
25 or a new agreement reorganizing the commission.

§8-25-3. Definition of the term "region."

1 As used in this article, the term "region" shall mean
2 a specific geographic area in which a regional planning
3 commission shall have jurisdiction, which area shall be
4 fixed and determined by the commissioner of commerce
5 and be stipulated with his approval in the agreement
6 by which the commission is established or reorganized:
7 *Provided*, That no territory within a municipality or
8 county not having a planning commission shall be in-
9 cluded in the area, except that territory within a
10 municipality having a planning commission may be
11 included even though the county in which it is located
12 does not have a planning commission.

§8-25-4. Membership and organization of commission; meetings.

1 Except as provided below, the membership of a re-
2 gional planning commission shall consist of representa-
3 tives from each participating government or stipulated
4 combinations thereof, in number to be specified in the
5 agreement: *Provided*, That at least one member of the
6 planning commission of each participating government
7 and one member of the governing body of each par-
8 ticipating government shall be members of the commis-
9 sion, and all members of the commission shall be
10 qualified by knowledge and experience in matters
11 pertaining to the planning and development of munici-
12 palities, counties or regions, with the exception of the
13 member or members of the governing body of each
14 participating governmental unit. A commission may
15 appoint not to exceed two members from the general
16 public, such members to have demonstrated outstanding
17 leadership in community affairs. The terms of the mem-
18 bers of a commission, the manner of their appointment
19 or removal, and the method and manner of filling any
20 vacancies on a commission, as well as any additional
21 qualifications for membership on a commission, shall be
22 specified in the agreement. A representative of the state
23 government may be designated by the governor to attend
24 meetings of a commission.

25 The members of a commission shall serve without
26 compensation, but shall be reimbursed for all reasonable
27 and necessary expenses actually incurred in the per-
28 formance of their commission duties. A commission shall
29 elect a chairman from among its members, and shall
30 establish its own rules and regulations and such com-
31 mittees as it deems necessary to carry on its work.
32 Such committees may have as members persons other
33 than members of the commission. A commission shall
34 meet as often as necessary, but not less than four times
35 a year.

§8-25-5. Annual budget; appropriations; depositories; expenditures; accounting.

1 A regional planning commission shall adopt an annual
2 budget, to be submitted to the participating governments

3 which shall each contribute to the financing of the
4 commission according to the formula specified in the
5 agreement, and each such government is hereby em-
6 powered and authorized to appropriate and expend funds
7 for services rendered to it by the commission. Money
8 received by a commission shall be deposited in such
9 depository as may be specified in the agreement and be
10 paid out in such manner as the commission may deter-
11 mine. A commission shall upon demand at any time
12 make a full and complete accounting of all funds to
13 the participating government, and shall in every event
14 without demand make to the participating governments
15 an annual accounting thereof.

§8-25-6. Financial aid; contracts; reports.

1 A regional planning commission is hereby empowered
2 and authorized to accept and expend funds and grants
3 provided for the purposes hereof by the government of
4 the United States or its departments or agencies, by
5 departments and agencies of this state or of any other
6 state, by one or more municipalities, counties or other
7 political subdivisions of this state or of any other state,
8 or by any other agency whose interests are in harmony
9 with the purposes hereof, including planning commis-
10 sions, all in accordance with any federal requirements
11 and subject to any conditions or limitations the constitu-
12 tion or law of the state may provide, and to contract
13 with respect thereto, either separately, jointly, or coop-
14 eratively, if the contract is approved by the attorney
15 general, and to provide such information and reports
16 as may be necessary to secure such financial aid. In
17 this connection, any such commission is hereby expressly
18 empowered and authorized to participate in any federal
19 planning assistance program.

**§8-25-7. Cooperation by and with other planning commissions,
governmental units and officials; authority of polit-
ical subdivisions to expend funds.**

1 To effectuate the purposes of this article, a regional
2 planning commission and the planning commissions of
3 the participating governments in the region may co-
4 operate with regional planning commissions for other

5 regions or the planning commissions of the participating
6 governments therein, with the governing or administra-
7 tive bodies and officials of any municipality, county or
8 other political subdivision, including those in other
9 states, with federal and state departments, agencies and
10 officials, including those of other states, and with any
11 other agency whose interests are in harmony with the
12 purposes of this article, with a view to coordinating and
13 integrating the planning for the cooperating govern-
14 mental units, and may appoint such committees and may
15 adopt such rules and regulations as may be thought
16 proper to effect such cooperation; and, for the purpose
17 of such coordination and integration, may contract with
18 respect thereto with such bodies, departments, agencies
19 and officials, all in accordance with any federal require-
20 ments and subject to any conditions or limitations the
21 constitution or law of the state may provide, if the con-
22 tract is approved by the attorney general. The governing
23 or administrative bodies and officials of municipalities,
24 counties and other political subdivisions within this
25 state are hereby empowered and authorized to cooperate
26 in this manner with such planning commissions and with
27 the governing or administrative bodies and officials of
28 political subdivisions in other states for the purposes of
29 such coordination and integration.

30 All municipalities, counties and other political sub-
31 divisions within this state are hereby empowered and
32 authorized to appropriate and expend funds for services
33 they obtain through cooperative arrangements made pur-
34 suant to the provisions of this section.

§8-25-8. Director and staff.

1 A regional planning commission may appoint a director,
2 who shall be qualified for the position by training and
3 experience and who shall serve at the will and pleasure
4 of the commission. The director shall be the chief ad-
5 ministrative and planning officer and regular technical
6 advisor of the commission, and shall appoint and remove
7 the staff of the commission. When authorized by the
8 regional planning commission, such director may enter
9 into agreements with the planning commissions of the
10 participating governments for the temporary transfer

11 or joint use of staff employees, and may contract for
12 professional or consultant services from other govern-
13 mental and private agencies.

14 In the event a director is not appointed, a commission
15 may exercise the power and authority granted to a di-
16 rector by the provisions of this section as well as the
17 other power and authority granted to it by the provisions
18 of this article.

PART II. POWERS AND DUTIES.

§8-25-9. Powers and duties of regional planning commission generally.

1 A regional planning commission shall:

2 (a) Prepare, and from time to time revise, amend,
3 extend or add to, a plan or plans for the development
4 of the region. Any such plan or plans shall be based
5 on studies of physical, social, economic and governmental
6 conditions and trends, and shall aim at the coordinated
7 development of the region in order to promote the general
8 health, welfare, convenience and prosperity of its peo-
9 ple. The plan or plans shall embody the policy recom-
10 mendations of the regional planning commission, and
11 may include, but shall not be limited to:

12 (1) A statement of the objectives, standards and prin-
13 ciples sought to be expressed in the plan or plans.

14 (2) Recommendations for the most desirable pattern
15 and intensity of general land use within the region in
16 the light of the best available information concerning
17 natural environmental factors, the present and prospec-
18 tive economic and demographic bases of the region, and
19 the relation of land use within the region to land use in
20 adjoining areas. The land use pattern shall include pro-
21 vision for open as well as urban, suburban and rural
22 development.

23 (3) Recommendations for the general circulation pat-
24 tern for the region, including land, water and air trans-
25 portation and communication facilities, whether used for
26 movement within the region or to and from adjacent
27 areas.

28 (4) Recommendations concerning the need for and
29 proposed general location of public and private works
30 and facilities, which by reason of their function, size,
31 extent or for any other cause are of a regional, as dis-
32 tinguished from purely local, concern.

33 (5) Recommendations for the long-range program-
34 ming and financing of capital projects and facilities.

35 (6) Such other recommendations as it may deem ap-
36 propriate concerning such current and impending prob-
37 lems as may affect the region.

38 (b) Prepare, and from time to time revise, recom-
39 mended ordinances and rules and regulations which
40 would implement the regional plan or plans.

41 (c) Prepare studies of the region's resources, both
42 natural and human, with respect to existing and emerg-
43 ing problems of industry, commerce, transportation, popu-
44 lation, housing, agriculture, public service, local govern-
45 ments and any other matters which are relevant to re-
46 gional planning.

47 (d) Collect, process and analyze, at regular intervals,
48 the social and economic statistics for the region which
49 are necessary to planning studies, and make the results
50 of such collection, processing and analysis available to
51 the general public.

52 (e) Participate with other governmental agencies,
53 educational institutions and private organizations in the
54 coordination of the regional research activities described
55 in subdivisions (c) and (d) of this section.

56 (f) Cooperate with, and provide planning assistance
57 to, municipalities, counties and municipal and county
58 planning commissions within the region, and coordinate
59 regional planning with the planning activities and plans
60 of the state and of the municipalities and counties within
61 the region, as well as neighboring areas, including those
62 in adjoining states, and the programs of federal depart-
63 ments and agencies.

64 (g) Provide information to officials, departments,
65 agencies and instrumentalities of the federal, state and
66 local governments, and to the public at large, in order
67 to foster public awareness and understanding of the

68 objectives of the regional plan and the functions of re-
69 gional and local planning, and in order to stimulate pub-
70 lic interest and participation in the orderly, integrated
71 development of the region.

72 (h) Receive and review for compatibility with re-
73 gional plans all proposed comprehensive land use, circu-
74 lation and public facilities plans and projects, ordinances
75 and rules and regulations, official maps and building
76 codes of local governments in the geographic area and
77 all amendments or revisions of such plans, rules and
78 regulations and maps, and make recommendations for
79 their modification where deemed necessary to achieve
80 such compatibility.

81 (i) Review applications of participating governments
82 for capital project financial assistance from the federal
83 government and state governments, and comment upon
84 their consistency with the regional development plan;
85 and review and comment upon state plans for highways
86 and public works within the area to promote coordina-
87 tion of all intergovernmental activities in the region on
88 a continuing basis.

89 (j) Exercise all other power and authority necessary
90 and proper for the discharge of its duties.

91 In developing a comprehensive plan, the plan may be
92 for all or part of the territory in the region, or for all
93 or part of the territory in the region and any territory
94 adjacent to the region, including that without the state,
95 which, in the opinion of the commission, bears a sub-
96 stantial relation to the planning for territory within the
97 region: *Provided*, That any plan for a part of the region
98 shall be for territory which does not begin and terminate
99 within the boundaries of any single participating gov-
100 ernment. In developing a plan, a commission shall give
101 consideration to any comprehensive or general develop-
102 ment plan existing in any participating government.

103 During the preparation of a plan, a commission shall
104 periodically consult with the planning commissions of
105 the various participating governments involved in the
106 plan and make every effort to develop a plan which will
107 meet with the approval of the planning commissions of
108 such governments.

PART III. IMPLEMENTATION OF REGIONAL PLANS.**§8-25-10. Certification and implementation of regional plans.**

1 All comprehensive regional plans, including zoning
2 ordinances and subdivision regulations, prepared pur-
3 suant to the provisions of this article, shall, after adoption
4 by the regional planning commission, be certified by the
5 commission to all planning commissions of the participat-
6 ing governments within the region.

§8-25-11. Adoption of plan by local planning commissions and governing bodies; amendments to plan.

1 A plan shall not be considered the comprehensive plan
2 or a part thereof for any participating government until
3 it has been adopted by its governing body in accordance
4 with the provisions of sections eighteen through twenty-
5 two, article twenty-four of this chapter, and when so
6 adopted it shall supersede any previous comprehensive
7 plan or any part of such plan of the participating govern-
8 ment inconsistent therewith. Before rejecting or amend-
9 ing a plan as certified by the regional planning commis-
10 sion, the planning commission or the governing body of
11 the participating government shall refer the plan to the
12 regional planning commission which prepared it for its
13 recommendations in regard to such rejection or amend-
14 ment, but any report of such regional planning commis-
15 sion after such a reference shall be advisory only.

16 Amendments to a regional plan, including ordinances
17 and regulations, shall be adopted in the same manner
18 as provided herein for the adoption of the original plan,
19 except that if the planning commission or governing body
20 of a participating government desires an amendment, it
21 may request the regional planning commission to prepare
22 the amendment and certify it to the local planning com-
23 mission as herein provided.

24 After the adoption or rejection of a regional plan, a
25 regional planning commission shall from time to time
26 reexamine the plan with the view of keeping it up to
27 date.

28 After the adoption of such plan by a participating
29 government, its planning commission shall thereafter
30 act in effectuating the plan in that jurisdiction.

§8-25-12. Cooperation by local governments.

1 Any municipality or county within the geographic area
2 of the region may, and all participating governments and
3 their planning commissions shall, file with the regional
4 planning commission all current and proposed plans,
5 zoning ordinances, official maps, building codes, sub-
6 division regulations, and project plans for capital facilities,
7 and amendments to and revisions of any of the foregoing,
8 as well as copies of their regular and special reports
9 dealing with planning matters. Each municipality or
10 county within the geographic area of the region shall
11 afford the regional planning commission having jurisdic-
12 tion therein a reasonable opportunity to comment upon
13 any such proposed plans, zoning ordinances, subdivision
14 regulations and project plans for capital facilities and
15 shall consider such comments, if any, prior to adopting
16 any such plan, ordinance, regulation or project plan.

PART IV. REPORTS.**§8-25-13. Annual report.**

1 A regional planning commission shall submit an annual
2 report to the commissioner of commerce and to the
3 governing bodies and planning commissions of all par-
4 ticipating governments in the region.

**ARTICLE 26. INTERGOVERNMENTAL RELATIONS — INTER-
STATE 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 commis-
sion.

§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 munic-
2 ipalities or counties, or any combination thereof, may

3 cooperate with political subdivisions of other states
4 bordering on this state for the purpose of creating, by
5 an agreement, an interstate regional planning commis-
6 sion, whenever such political subdivisions comprise a
7 region which would benefit from cooperative planning.
8 The agreement entered into by the several political sub-
9 divisions shall specify the extent of the region included
10 within the jurisdiction of the interstate regional planning
11 commission; and shall fix the membership comprising
12 the commission, the terms of office and method of ap-
13 pointment of the members thereof, the duration of the
14 commission, the method for terminating the commission,
15 the method of disposal of all property belonging to the
16 commission, the distribution of the proceeds, and the
17 apportionment of the costs of maintaining the planning
18 commission to be borne respectively by the various po-
19 litical subdivisions included within the agreement, such
20 apportionment to be based on the population of the
21 various participating political subdivisions. Any such
22 agreement shall be executed on behalf of any munici-
23 pality by the governing body thereof and on behalf of a
24 county by the county court.

25 The state of West Virginia may be an ex officio mem-
26 ber of any such interstate regional planning commission
27 formed under the provisions of this article. The com-
28 missioner of commerce or a representative designated by
29 him shall represent the state in the deliberations of
30 any interstate regional planning commission or its
31 agencies or instrumentalities but this state shall not be a
32 voting member of any interstate regional planning com-
33 mission or any agency or instrumentality thereof.

§8-26-2. Region defined.

1 The term "region," as used in this article, shall mean a
2 specific metropolitan interstate area designated by the
3 proper federal agency pursuant to the "Demonstration
4 Cities and Metropolitan Development Act of 1966" and
5 any amendments thereto, as well as all other interstate
6 areas which would benefit from cooperative planning.
7 Before any area in this state is included within an inter-
8 state region for interstate planning, it shall be approved

9 by the commissioner of the department of commerce:
10 *Provided*, That no territory within any municipality or
11 county not having a planning commission shall be in-
12 cluded in an interstate area.

§8-26-3. Membership and organization of commission; reports and audits.

1 Any member of an interstate regional planning com-
2 mission may hold any other public office, appointive or
3 elective, if not prohibited by some other statute or con-
4 stitutional provision, and a member thereof may also
5 serve as a member of a municipal, county or regional
6 planning commission. The members of the commission
7 shall serve without compensation but may be reimbursed
8 for all reasonable and necessary expenses actually in-
9 curred in the discharge of their commission duties. The
10 commission shall elect its own chairman or other of-
11 ficers from among its members and shall establish its own
12 rules and regulations and bylaws, schedule of meetings
13 and such committees with such powers as it may deem
14 necessary to carry on its work.

15 Any such commission shall make a quarterly report to
16 the governing body of each municipality and to the
17 county court of each county contributing to the financial
18 support of such commission, containing an itemized ac-
19 count of its receipts and disbursements during the pre-
20 ceding quarter. Such report shall be made within thirty
21 days after the end of each quarter. At the end of each
22 fiscal year, any such commission shall arrange for an
23 independent audit of its financial affairs and within
24 thirty days after the end of such fiscal year, such com-
25 mission shall furnish a copy of the report of such audit
26 to any such governing body or county court and shall
27 cause a copy thereof to be published as a Class I legal
28 advertisement in compliance with the provisions of article
29 three, chapter fifty-nine of this code, and the publication
30 area for such publication shall be each municipality and
31 county which contributed to the financial support of such
32 commission.

PART II. POWERS AND DUTIES.

§8-26-4. Powers and duties of an interstate regional planning commission.

1 (a) An interstate regional planning commission may
2 make studies, maps, plans and reports relative to the
3 region and shall recommend procedures and policies to
4 the appropriate authorities, based on physical, social,
5 economic and governmental conditions and trends, to
6 promote the coordinated development of the region and
7 the general health, welfare, convenience and prosperity
8 of the people of the region. Such planning and coordina-
9 tion may reflect the following planning criteria:

10 (1) Goals, objectives, standards and principles for the
11 development of the region;

12 (2) The distribution and intensity of general land
13 use and open space;

14 (3) The general circulation pattern for the region,
15 including land, water and air transportation and com-
16 munication facilities, and continuing comprehensive trans-
17 portation planning;

18 (4) The general location, character and extent of pub-
19 lic and private works and facilities which are of area-
20 wide or regional, as distinguished from purely local, con-
21 cern; and

22 (5) Long-range programming and financing of capital
23 projects and facilities.

24 (b) The commission shall:

25 (1) Review plans and proposals for projects and pro-
26 grams of interstate or regional significance which may be
27 proposed by others;

28 (2) Review and make recommendations concerning
29 administrative and regulatory measures to implement
30 area-wide or regional plans;

31 (3) Review and make recommendations concerning
32 effective utilization of such federal and state assistance
33 as may be available on a regional basis or as may have
34 a regional impact;

35 (4) Collect, analyze and report on statistics and other
36 information concerning traffic, housing, population and
37 social, economic and physical conditions of the region;

38 (5) Make recommendations to governmental bodies
39 within such region for such actions as are necessary and
40 proper to further the coordinated development of the
41 region; and

42 (6) Conduct necessary investigations and research
43 and cooperate with other public and private agencies
44 or persons to conduct such investigations and research
45 on planning problems affecting the region.

§8-26-5. Appropriations, receipts and expenses.

1 (a) Any political subdivision which becomes a mem-
2 ber of any interstate regional planning commission may
3 contract each fiscal year with said interstate regional
4 planning commission to pay a proportionate part of the
5 expenses properly chargeable to the planning services
6 rendered to such political subdivision, and any funds
7 budgeted for interstate planning may be paid over by
8 the political subdivision to the interstate regional plan-
9 ning commission.

10 (b) An interstate regional planning commission may
11 accept and use funds, grants and services from the federal
12 government or its agencies, from departments, agencies
13 and instrumentalities of any adjoining state, and from
14 any municipality, county or other political subdivision
15 of this or any adjoining state, including municipal, county,
16 regional or other planning commissions of this or any
17 adjoining state, or from private sources, or services from
18 departments, agencies or instrumentalities of this state,
19 and may contract with respect thereto and provide such
20 information and reports as may be necessary to secure
21 such financial or other aid. Within the amounts thus
22 agreed upon and appropriated or otherwise received,
23 any commission may employ such engineers, planners,
24 consultants and other employees as are necessary and
25 may rent or own such space and make such purchases
26 as it deems necessary to its use.

**ARTICLE 27. INTERGOVERNMENTAL RELATIONS—URBAN MASS
TRANSPORTATION SYSTEMS.**

**PART I. TITLE; FINDINGS; DEFINITIONS; CREATION OF
AUTHORITIES.**

§8-27-1. Short title.

§8-27-2. Legislative findings and declaration of policy.

§8-27-3. Definitions.

§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.

§8-27-9. Budget.

PART III. POWERS AND DUTIES OF AUTHORITIES.

§8-27-10. Powers and duties of authorities generally.

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.

§8-27-14. Revenue and refunding bonds generally.

§8-27-15. Trust indenture generally.

§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.

§8-27-19. Indebtedness of authorities.

§8-27-20. Exemption from taxation.

PART IX. EMPLOYEES OF EXISTING SYSTEMS.

§8-27-21. Protection of employees of existing transportation 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.

§8-27-24. Bonds made legal investments.

§8-27-25. Article constitutes complete authority; liberal construction.

PART I. TITLE; FINDINGS; DEFINITIONS; CREATION OF
AUTHORITIES.

§8-27-1. Short title.

1 This article may be cited as the "Urban Mass Trans-
2 portation 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
3 state is located in expanding urban areas;

4 (b) That in certain of these areas there are no urban
5 mass transportation systems and in others there are urban
6 mass transportation systems which are inadequate or in
7 imminent danger of becoming inadequate or in imminent
8 danger of discontinuing such service;

9 (c) That the establishment and maintenance of ade-
10 quate urban mass transportation systems in such areas
11 is essential for preserving viable urban areas and further
12 promoting the healthful, safe, orderly and economical
13 development and expansion of such urban areas;

14 (d) That the creation of urban mass transportation
15 authorities to establish and maintain urban mass trans-
16 portation systems in such areas is for the welfare of the
17 people of this state in general and of the participating
18 governments in particular, and is a public purpose for
19 which public money may be spent and private property
20 acquired; and

21 (e) This article is enacted in view of these findings
22 and shall be liberally construed in the light thereof.

§8-27-3. Definitions.

1 As used in this article, unless a different meaning ap-
2 pears from the context:

3 (a) "Authority" means any urban mass transportation
4 authority created pursuant to the provisions of this
5 article;

6 (b) "Board" means the board of any urban mass
7 transportation authority;

8 (c) "Contiguous counties" means two or more coun-
9 ties which constitute a compact territorial unit within

10 an unbroken boundary wherein one county touches at
11 least one other county, but does not require that each
12 county touch all of the other counties so combining;

13 (d) "Facilities and equipment" means all real and
14 personal property of every kind and character owned or
15 held by any urban mass transportation system for the
16 purpose of providing transportation by bus or rail or
17 other conveyance serving the public;

18 (e) "Participating government" means any munici-
19 pality or county establishing or participating in an urban
20 mass transportation authority;

21 (f) "Project" means any undertaking of an authority;

22 (g) "Revenues" means the gross receipts derived di-
23 rectly or indirectly from or in connection with the opera-
24 tion by an authority of any urban mass transportation
25 system or systems and shall include, without limitation,
26 all fees, rates, fares, rentals or other income actually
27 received or receivable by or for the account of an au-
28 thority from the operation of the system, and any other
29 receipts from whatever source derived;

30 (h) "Service area of the authority" means and in-
31 cludes an area commensurate with the area served by an
32 existing system or systems acquired or to be acquired
33 by an authority, or if there be no existing system, the
34 area shall extend to and include an area to be defined
35 in the certificate of convenience and necessity issued
36 by the public service commission under the applicable
37 provisions of chapter twenty-four and chapter twenty-
38 four-a of this code;

39 (i) "System" means any urban mass transportation
40 system;

41 (j) "Trust indenture" means a security instrument
42 entered into by an authority pursuant to which bonds or
43 notes are issued;

44 (k) "Urban area" means any area that includes a
45 municipality or other built-up place which is appropriate
46 for a system to serve commuters or others in the locality
47 taking into consideration the local patterns and trends
48 of growth;

49 (l) "Urban mass transportation system" means any
50 common carrier of passengers for hire which operates
51 equipment over regular routes within the service area of
52 the authority; and

53 (m) The singular shall include the plural and the
54 plural shall include the singular.

**§8-27-4. Urban mass transportation authorities authorized;
authorities to be public corporations.**

1 Any municipality or county, or both, or any two or
2 more municipalities within any county or contiguous
3 counties, or any two or more contiguous counties, or any
4 combination thereof, may create an urban mass transpor-
5 tation authority. Such authority shall be created upon
6 the adoption, by the governing body of each participating
7 government, acting individually, of an appropriate ordi-
8 nance or order. Each authority shall constitute a public
9 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.**

1 The management and control of any authority, its
2 operations, business and affairs shall be lodged in a board
3 of not less than five nor more than fifteen individuals
4 who shall be known as members of the board and who
5 shall be appointed for terms of three years each by the
6 governing bodies of the participating governments. Prior
7 to making the initial appointments to the board, the
8 governing bodies of the participating governments shall
9 agree to make such initial appointments so that approxi-
10 mately one third of the total number of the members to
11 be so appointed shall be appointed for a term of one year,
12 approximately one third of such total number of the
13 members shall be appointed for a term of two years and
14 approximately one third of such total number of the
15 members shall be appointed for a term of three years.
16 As the term of each such initial appointee expires, the
17 successor to fill the vacancy created by such expired term

18 shall be appointed for a term of three years. The number
19 of members representing each participating government
20 shall be as agreed upon from time to time by the govern-
21 ing bodies of the said participating governments. Each
22 member of the board shall have one vote on all matters
23 coming before it. Any individual who is a resident of,
24 or member of the governing body of, any participating
25 government is eligible to serve as a member of the board.
26 The governing body of each participating government shall
27 inform the authority of its appointments or reappoint-
28 ments to the board by delivering to the authority a cer-
29 tified copy of the ordinance or order making the appoint-
30 ment or reappointment. If any member of the board
31 dies, resigns, or for any other reason ceases to be a mem-
32 ber of the board, the governing body of the participating
33 government which such member represented shall ap-
34 point another individual to fill the unexpired portion of
35 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-
7 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-
4 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

11 the authority. The treasurer, and such other officers and
12 employees as the board shall direct, shall furnish bond
13 for the use and benefit of the authority in such penal
14 sum as may be fixed by the board and conditioned upon
15 the faithful discharge by such treasurer and such other
16 officers and employees so directed by the board of the
17 duties of their respective offices or employment, and upon
18 accounting for and paying over all moneys which may
19 come into their possession by virtue of such office or
20 employment. At its first meeting the board shall also
21 fix the time and place for holding regular meetings, but
22 it shall meet at least once in the months of January, April,
23 July and October. Special meetings of the board may be
24 called by the president or by two members upon written
25 request to the secretary. The secretary shall send to all
26 the members, at least two days in advance of a special
27 meeting, a written notice setting forth the time and place
28 of the special meeting and the matters to be considered
29 at such special meeting. Written notice of a special meet-
30 ing is not required if the time of the special meeting has
31 been fixed in a regular meeting, or if all the members
32 are present at the special meeting. All regular meetings
33 shall be general meetings for the consideration of any and
34 all matters which may properly come before an authority.
35 All proceedings of the authority shall be entered in a
36 permanently bound record book, properly indexed, and
37 the same shall be carefully preserved by the secretary
38 of the authority. All records of the authority shall be
39 public records.

§8-27-8. Quorum; majority vote required.

1 A majority of the members of the board, which majority
2 must include members from a majority of the partici-
3 pating governments, shall constitute a quorum. The vote
4 of a majority of all members present at any meeting of
5 the board shall be necessary to take any action.

§8-27-9. Budget.

1 The board shall establish the beginning and ending of
2 its fiscal year, which period shall constitute its budget
3 year, and at least thirty days prior to the beginning of

4 the first full fiscal year after the creation of the authority
5 and annually thereafter the treasurer shall prepare and
6 submit to the board a tentative budget. Such tentative
7 budget shall be considered by the board, and, subject
8 to any revisions or amendments that may be determined
9 by said board, shall be adopted as the budget for the en-
10 suing fiscal year. No expenditures in excess of the budget
11 shall be made during such fiscal year unless expressly
12 authorized and directed by the board. It shall not be
13 necessary to include in such budget any statement of
14 necessary expenditures for annual interest or principal
15 payments on bonds or for capital outlays, but it shall be
16 the duty of the board to make provisions for their pay-
17 ment as they become due.

PART III. POWERS AND DUTIES OF AUTHORITIES.

§8-27-10. Powers and duties of authorities generally.

- 1 Each authority is hereby given the power:
- 2 (a) To sue and be sued, implead and be impleaded;
- 3 (b) To have and use a seal and alter the same at
4 pleasure;
- 5 (c) To make and adopt all rules and regulations and
6 bylaws as may be necessary or desirable to enable it to
7 exercise the powers and perform the duties conferred or
8 imposed upon it by the provisions of this article;
- 9 (d) To employ, in its discretion, planning, architec-
10 tural and engineering consultants, attorneys, accountants,
11 construction, financial, transportation and traffic experts
12 and consultants, superintendents, managers and such
13 other employees and agents as may be necessary in its
14 judgment, and to fix their compensation;
- 15 (e) To acquire by grant, purchase, gift, devise or lease
16 and to hold, use, sell, lease or otherwise dispose of real
17 and personal property of every kind and nature whatso-
18 ever, licenses, franchises, rights and interests necessary
19 for the full exercise of its powers pursuant to the pro-
20 visions of this article, or which may be convenient or
21 useful for the carrying out of such powers;
- 22 (f) To acquire, construct, reconstruct, complete, de-
23 velop, improve, own, equip, maintain and operate any

24 system or systems, or any part thereof, including, without
25 limitation, the power to acquire by purchase, lease or gift
26 all or any part of any licenses, franchises, rights, interests,
27 engineering and technical studies, data or reports owned
28 or held by any person and determined by its board to be
29 necessary, convenient or useful to the authority in con-
30 nection with the acquisition, construction, reconstruction,
31 completion, development, improvement, ownership, equip-
32 ping, maintenance or operation of any system or systems
33 and to reimburse public utilities for relocation of any
34 utility line or facility made necessary by the construction,
35 reconstruction, completion, development, improvement,
36 equipping, maintenance or operation of any system or
37 systems;

38 (g) To acquire any land, rights or easements deemed
39 necessary or incidental for the purposes of the authority
40 by eminent domain to the same extent and to be exer-
41 cised in the same manner as now or hereafter provided by
42 law for such right of eminent domain by business corpo-
43 rations;

44 (h) To enter into contracts and agreements which are
45 necessary, convenient or useful to carry out the pur-
46 poses of this article with any person, public corporation,
47 state or any agency or political subdivision thereof and
48 the federal government and any department or agency
49 thereof, including, without limitation, contracts and
50 agreements for the joint use of any property and rights
51 by the authority and any person or authority operating
52 any system, whether within or without the service area
53 of the authority, and contracts and agreements with any
54 person or authority for the maintenance, servicing, stor-
55 age, operation or use of any system or part thereof,
56 facility or equipment on such basis as shall seem proper
57 to its board;

58 (i) To enter into contracts and agreements for super-
59 intendence and management services with any person,
60 who has executive personnel with experience and skill
61 applicable to the superintendence and management of
62 any system, for the furnishing of its services and the
63 services of experienced and qualified personnel for the

64 superintendence and management of any system or any
65 part thereof, including, without limitation, superintend-
66 ence over personnel, purchases, properties and opera-
67 tions and all matters relating thereto, and any revenue
68 bond trust indenture may require such contract or agree-
69 ment, but the personnel whose services are to be so
70 furnished under any such contract or agreement shall
71 not include any member of the board, any member of the
72 immediate family of a member of the board or any agents
73 or employees of the authority, and no such contract or
74 agreement shall extend beyond a term of ten years or such
75 longer time as there are outstanding any revenue bonds
76 under a trust indenture which requires such contract or
77 agreement;

78 (j) To assume any lien indebtedness of any system
79 or part thereof acquired by it under the provisions of
80 this article;

81 (k) To execute security agreements, contracts, leases,
82 equipment trust certificates and any other forms of
83 contracts or agreements, granting or creating a lien,
84 security interest, encumbrance or other security in, on
85 or to facilities and equipment, containing such terms and
86 provisions as the board deems necessary;

87 (l) To apply for, receive and use grants, grants-in-
88 aid, donations and contributions from any source or
89 sources, including, but not limited to, the federal govern-
90 ment and any agency or department thereof, and a state
91 government whose constitution does not prohibit such
92 grants, grants-in-aid, donations and contributions, and
93 any agency or department thereof, and to accept and use
94 bequests, devises, gifts and donations from any person;

95 (m) To lease any system or any part thereof to, or
96 contract for the use of any system or any part thereof
97 by, any person, but a trust indenture may prohibit,
98 limit or restrict the exercise of such power;

99 (n) To acquire for cash or in exchange for its bonds
100 all or any part of any publicly or privately owned
101 system or systems;

102 (o) To make or cause to be made either by itself or
103 in cooperation with other persons or organizations,

104 whether public or private, traffic surveys, population
105 surveys and such other surveys and studies as it shall
106 consider useful in the performance of its duties or the
107 exercise of its powers under the provisions of this article
108 and in connection therewith the authority may contract
109 with any person or organization for such planning
110 services;

111 (p) To enter into contracts and agreements with any
112 public or private system either within or contiguous to
113 its boundaries for the transfer of passengers between it
114 and the system operating in territory contiguous to its
115 boundaries;

116 (q) To fix and establish from time to time, subject
117 to the approval of the public service commission, such
118 fees, rates or other charges and routes, time schedules
119 and standards of service as will provide revenues in each
120 year at least sufficient to pay the principal of and interest
121 on all bonds issued by the authority, and reasonable re-
122 serves therefor, as the same shall become due, together
123 with the cost of administration, maintenance, repair and
124 operation of such system or systems in each year, to-
125 gether with all other payments required in each such
126 year by the resolution which authorized the issuance of
127 such bonds, or the trust indenture securing the same, in-
128 cluding, without limitation, reasonable reserves or mar-
129 gins for any of such purposes, and every authority shall
130 file and keep on file the information specified in section
131 two, article six, chapter twenty-four-a of this code in
132 the manner and form as therein provided;

133 (r) To issue revenue bonds of the authority for any
134 of its purposes or projects and to refund its bonds, all as
135 provided in this article;

136 (s) To encumber or mortgage all or any part of its
137 facilities and equipment;

138 (t) To prepare plans for and assist in the relocation
139 of persons displaced by the authority and to make re-
140 location payments to or with respect to such persons for
141 moving expenses and losses of property for which reim-
142 bursement or compensation is not otherwise made, in-

143 cluding the making of such payments financed by the
144 federal government; and

145 (u) To do any and all things necessary or convenient
146 to carry out the powers given in this article unless other-
147 wise forbidden by law.

148 The exercise of any of the powers herein granted is
149 expressly made subject to the provisions of section
150 eighteen of this article, wherever the same are applicable.

PART IV. FUNDS OF AUTHORITIES.

§8-27-11. Contributions to authorities; funds and accounts of authorities; reports; audit by state tax department.

1 Contributions may be made to authorities from time
2 to time by the participating governments and by any
3 other municipalities, counties or persons that shall desire
4 to do so. All such funds and all of the other funds
5 received by any authority shall be deposited in a separate
6 account in such banking institution or institutions as
7 its board may direct and shall be withdrawn therefrom
8 only in such manner as its board may direct. Each
9 authority shall keep strict account of all its receipts
10 and expenditures and shall make a quarterly report
11 to the participating governments which have made con-
12 tributions to it and such report shall contain an itemized
13 account of its receipts and disbursements during the
14 preceding quarter. Such report shall be made within
15 sixty days after the termination of the quarter. Within
16 ninety days after the end of each fiscal year, each author-
17 ity shall make an annual report containing an itemized
18 statement of its receipts and disbursements for the pre-
19 ceding fiscal year, and any and all other information
20 which the board may deem pertinent, to all of the par-
21 ticipating governments. The books, records and accounts
22 of each authority shall be subject to audit and exam-
23 ination 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.

1 The authority, as soon as practical after its organiza-
2 tion, 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;

7 (b) The probable sources of revenue and the esti-
8 mated amount thereof;

9 (c) The estimated cost of administration, mainte-
10 nance, repair and operation thereof;

11 (d) The proposed methods of financing; and

12 (e) Any other information which the authority shall
13 deem appropriate.

14 Such resolution shall also:

15 (a) Order the acquisition or construction of such
16 system;

17 (b) If appropriate, direct that revenue bonds in such
18 amount as the authority may deem necessary to pay all
19 or any part of the cost of acquisition or construction of
20 such system be issued pursuant to the provisions of
21 this article; and

22 (c) Set forth the amount of the principal of the
23 indebtedness, the maximum term the bonds proposed to
24 be issued shall run before maturity and the maximum
25 rate of interest to be paid and such other details with
26 respect to the bonds and the trust indenture, if any,
27 securing the same as the authority may deem necessary
28 or desirable.

29 Before such resolution shall become effective, the
30 authority shall submit such resolution to the governing
31 bodies of the participating governments and hold a
32 public hearing in the service area on the resolution. At
33 least thirty days prior to the date set for hearing, the
34 authority shall publish a notice of the time and place
35 of hearing as a Class II legal advertisement in com-
36 pliance with the provisions of article three, chapter fifty-
37 nine of this code, and the publication area for such
38 publication shall be the service area of the authority.
39 At such hearing all objections and suggestions shall be
40 heard and after the hearing has been held the authority
41 shall take such action as it shall deem proper.

§8-27-14. Revenue and refunding bonds generally.

1 The authority is hereby empowered and authorized
2 to provide by resolution, from time to time, for the
3 issuance of revenue bonds of the authority for the
4 purpose of paying all or any part of the cost of acquiring,

5 constructing or improving a system or systems, or any
6 part thereof, or the facilities and equipment therefor,
7 as the case may be, or for any other purpose or project
8 authorized by the provisions of this article. The purposes
9 for which revenue bonds may be issued may include
10 the payment of all costs and estimated costs incidental
11 to or connected with the accomplishment of such pur-
12 pose or project including, without limitation, engineering,
13 inspection and legal fees, the fees of fiscal agents and
14 financial consultants and other fees, bond and other
15 reserve funds, working capital, bond interest estimated
16 to accrue during the construction period and for a period
17 not to exceed two years thereafter, and expenses of all
18 proceedings for the authorization, issuance and sale of
19 the bonds.

20 The bonds of each issue shall be dated, shall bear
21 interest at such rate or rates not exceeding six percent
22 per annum, payable semiannually, and shall mature at
23 such time or times not exceeding forty years from their
24 date or dates, as may be determined by the authority,
25 and may be made redeemable before maturity, at the
26 option of the authority, at such price or prices and under
27 such terms and conditions as may be fixed by the
28 authority prior to the issuance of the bonds. The author-
29 ity shall determine the form of the bonds, including
30 any interest coupons to be attached thereto, and shall
31 fix the denomination or denominations of the bonds
32 and the place or places of payment of the principal and
33 interest, which may be at any banking institution or
34 trust company within or without the state. The bonds
35 shall be signed by the president of the authority or
36 shall bear his facsimile signature, and the official seal
37 of the authority, or a facsimile thereof, shall be impressed
38 or imprinted thereupon and attested by the secretary
39 of the authority, and any coupons attached to the bonds
40 shall bear the facsimile signature of the president of
41 the authority. All such signatures, countersignatures
42 and seal may be printed, lithographed or mechanically
43 reproduced, except that one of such signatures or counter-
44 signatures on the bonds shall be manually affixed,
45 unless the resolution authorizing the issuance of such

46 bonds shall otherwise provide. If any officer whose
47 signature or countersignature or a facsimile of whose
48 signature or countersignature appears on bonds or
49 coupons ceases to be such officer before the delivery of
50 the bonds, his signature shall be as effective as if he
51 had remained in office until such delivery. The bonds
52 may be issued in coupon or in registered form, or both,
53 as each authority may determine and provision may
54 be made for the registration of any coupon bonds as
55 to principal alone, and also as to both principal and
56 interest, for the reconversion into coupon bonds of any
57 bonds registered as to both principal and interest, and
58 for the interchange of registered and coupon bonds.
59 Notwithstanding the form or tenor thereof, and in the
60 absence of any express recital on the face thereof that
61 the bond is nonnegotiable, all such bonds shall be, and
62 shall be treated as, negotiable instruments for all
63 purposes except when registered in the name of a
64 registered owner.

65 The authority may exchange its bonds, in whole or
66 in part, for any system or systems, or any parts thereof,
67 or facilities and equipment therefor, or may sell its
68 bonds, in whole or in part, in such manner either at
69 public or private sale and for such price as it may
70 determine will best effect the purposes of this article
71 and be for the best interest of the authority.

72 Prior to the preparation of definitive bonds, the
73 authority may, under like restrictions, issue interim
74 receipts or temporary bonds with or without coupons,
75 exchangeable for definitive bonds when such bonds shall
76 have been executed and are available for delivery. The
77 authority may also provide for the replacement of any
78 bonds which shall become mutilated or shall be destroyed
79 or lost.

80 The authority is hereby empowered and authorized
81 to provide by resolution, from time to time, for the
82 issuance, sale or exchange of revenue refunding bonds
83 of such authority for the purpose of refunding any
84 bonds then outstanding which shall have been issued
85 under the provisions of this article, including the pay-
86 ment of any redemption premium thereon and any

87 interest accrued or to accrue to the date of redemption
88 of such bonds, and the payment of all expenses incidental
89 thereto. The authority is further empowered and autho-
90 rized to provide by resolution, from time to time, for
91 the issuance, sale or exchange of revenue bonds of such
92 authority for the combined purpose of refunding any
93 bonds then outstanding, as herein provided, and paying
94 all or any part of the cost of any additional project or
95 projects. All provisions of this article applicable to
96 the issuance of revenue bonds are applicable to the
97 issuance of refunding bonds and to the sale or exchange
98 thereof.

§8-27-15. Trust indenture generally.

1 In the discretion of the authority, any bonds issued
2 under the provisions of this article may be secured by
3 a trust indenture by and between such authority and
4 a corporate trustee, which may be any trust company
5 or banking institution having the powers of a trust
6 company within or without the state, or any person
7 in the United States having power to enter into the same,
8 including any federal agency.

9 Any resolution authorizing the issuance of such bonds
10 or any trust indenture securing the same may contain
11 such provisions for protecting and enforcing the rights
12 and remedies of the bondholders and of the trustee
13 as the authority may deem necessary and proper and
14 not in violation of law, including provisions pledging
15 all or any part of the revenues of such authority or
16 encumbering all or any part of the facilities and equip-
17 ment of such authority to secure the payment of the
18 bonds subject to such agreements with bondholders
19 as may then exist; limiting the purpose to which the
20 proceeds of sale of any bonds then or thereafter to
21 be issued may be applied; defining the duties of such
22 authority in relation to the acquisition, construction,
23 improvement, maintenance, repair, operation and in-
24 surance of any project or projects in connection with
25 which such bonds shall have been authorized; providing
26 for the custody, safeguarding and application of all
27 moneys; limiting the issuance of additional bonds; pre-
28 scribing a procedure by which the provisions of any

29 trust indenture or contract with bondholders may be
30 amended or modified; requiring such authority to fix
31 and establish such fees, rates or other charges and
32 routes, time schedules and standards of service as will
33 provide revenues in each year at least sufficient to
34 pay the principal of and interest on all bonds issued
35 by such authority and reasonable reserves therefor
36 as the same shall become due, together with the cost
37 of administration, maintenance, repair and operation
38 of such system or systems in each year, including,
39 without limitation, reasonable reserves or margins or
40 sinking funds for any of such purposes, subject to the
41 provisions of section eighteen of this article; defining
42 the acts or omissions to act which shall constitute a
43 default in the duties of such authority to the holders
44 of its bonds and providing the rights and remedies
45 of such holders and of the trustee in the event of
46 default and the manner and terms upon which such
47 default may be declared cured; vesting in a trustee
48 such property rights, powers and duties, in trust, as
49 such authority may determine; and such other additional
50 provisions as such authority may deem necessary or
51 desirable for the security of the holders of bonds
52 issued under the provisions of this article, notwith-
53 standing that such other provisions are not expressly
54 enumerated in this section, it being the intention to
55 grant to the authority the power to make any and all
56 covenants or agreements necessary to secure greater
57 marketability of bonds issued under the provisions of
58 this article, as fully and to the same extent as such
59 covenants or agreements could be made by a private
60 corporation rendering similar services, and to grant
61 to such authorities full and complete power to enter
62 into any contract, covenant or agreement with holders
63 of bonds issued under the provisions of this article
64 not inconsistent with this article or the constitution of
65 this state.

**§8-27-16. Sinking fund; sinking fund commission; purchase of
outstanding bonds.**

1 Before the issuance of any bonds under the provisions
2 of this article, the authority shall, by resolution, provide

3 for a sinking fund for the payment of the bonds and
4 the interest thereon, and the payment of the charges
5 of banking institutions or trust companies for making
6 payment of such bonds and interest, out of the net
7 revenues of said system, and, in this connection, shall
8 set aside and pledge a sufficient amount of the net
9 revenues of the system for such purpose, such net
10 revenues being hereby defined to mean the revenues
11 of the system remaining after the payment of the reason-
12 able expense of administration, maintenance, repair and
13 operation, such amount to be paid by such authority
14 into the sinking fund at intervals, to be determined by
15 resolution adopted prior to the issuance of the bonds,
16 for (a) the interest upon such bonds as such interest
17 shall fall due; (b) the necessary fiscal agency charges
18 for paying bonds and interest; (c) the payment of the
19 bonds as they fall due, or, if all the bonds mature at
20 one time, the proper maintenance of a sinking fund
21 sufficient for the payment thereof at such time; and
22 (d) a margin for safety and for the payment of premium
23 upon bonds retired by call or purchase as provided in
24 this article. Such required payments shall constitute
25 a first charge upon all the net revenues of such authority.
26 Prior to the issuance of any bonds, the authority may,
27 by resolution, be given the right to use or direct the
28 state sinking fund commission to use such sinking fund,
29 or any part thereof, in the purchase of any of the out-
30 standing bonds payable therefrom, at the market prices
31 thereof, but not exceeding the price, if any, at which
32 the same shall in the same year be payable or redeem-
33 able, and all bonds redeemed or purchased shall forth-
34 with be cancelled, and shall not again be issued. In
35 addition to the payments into the sinking fund provided
36 for above, the authority may at any time in its dis-
37 cretion transfer all or any part of the balance of the
38 net revenues, after reserving an amount deemed by
39 such authority sufficient for maintenance, repair and
40 operation for an ensuing period of not less than twelve
41 months and for depreciation, into the sinking fund.

42 The amounts of the balance of the net revenues as
43 and when so set apart shall be remitted to the state

44 sinking fund commission at such periods as shall be
45 designated in the resolution, but in any event at least
46 thirty days previous to the time interest or principal
47 payments become due, to be retained and paid out by
48 said commission consistent with the provisions of this
49 article and the resolution pursuant to which such bonds
50 have been issued. The state sinking fund commission
51 is hereby authorized to act as fiscal agent for the admin-
52 istration of such sinking fund under any resolution
53 adopted pursuant to the provisions of this article and
54 shall invest all sinking funds as provided by general law.

§8-27-17. Remedies of bondholders.

1 Any holder of bonds issued under the provisions of
2 this article or any of the coupons appertaining thereto,
3 and the trustee under any trust indenture securing
4 the same, except to the extent the rights herein given
5 may be restricted by such trust indenture, may, by civil
6 action, mandamus or other proceeding, protect and en-
7 force any and all rights under the laws of this state or
8 granted under the provisions of this article or under
9 the resolution authorizing the issuance of such bonds,
10 or the trust indenture securing same, and may enforce
11 and compel the performance of all duties required by
12 the provisions of this article or by such resolution or
13 trust indenture to be performed by any authority or by
14 any officer thereof.

PART VII. PUBLIC SERVICE COMMISSION.

§8-27-18. Authority and duty of public service commission.

1 Each authority which undertakes to engage in trans-
2 porting passengers for hire by motor vehicles or other
3 conveyances over regular routes shall be deemed a com-
4 mon carrier of passengers for hire and shall be subject to
5 the jurisdiction and authority of the public service com-
6 mission of West Virginia as provided in chapter twenty-
7 four and chapter twenty-four-a of this code, to the same
8 extent as any other common carrier of passengers for
9 hire: *Provided*, That it shall be the mandatory duty of
10 the public service commission to fix and establish, from
11 time to time, such fees, rates or other charges and routes,

12 time schedules and standards of service for each au-
13 thority as will provide revenues in each year at least
14 sufficient to pay the principal of and interest on all bonds
15 issued by that authority, and reasonable reserves therefor,
16 as the same shall become due in each year, together with
17 the cost of administration, maintenance, repair and opera-
18 tion of such system or systems in each year, together with
19 all other payments required in each year by the resolu-
20 tion which authorized the issuance of such bonds or the
21 trust indenture securing the same, including reasonable
22 reserves, margins or sinking funds for any of such pur-
23 poses.

PART VIII. INDEBTEDNESS; EXEMPTION FROM TAXATION.

§8-27-19. Indebtedness of authorities.

1 Each authority may issue bonds, borrow money and
2 incur any proper indebtedness and issue any other obliga-
3 tions as authorized by law or provided in this article.
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 par-
15 ticipating 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.

§8-27-20. Exemption from taxation.

1 It is hereby found, determined and declared that the
2 creation of any authority and the carrying out of its

3 purposes is in all respects for the benefit of the people
4 of this state in general, and of the participating govern-
5 ments in particular, and is a public purpose; and that
6 the authority will be performing an essential govern-
7 mental function in the exercise of the powers conferred
8 upon it by the provisions of this article. Accordingly, each
9 authority and, without limitation, its revenues, property,
10 operations and activities shall be exempt from the pay-
11 ment of any taxes or fees to the state or any of its political
12 subdivisions or to any officer or employee of the state or
13 any of its political subdivisions, except the special assess-
14 ment provided for in section six, article six, chapter
15 twenty-four-a of this code. The revenue bonds and other
16 evidences of indebtedness issued pursuant to the pro-
17 visions of this article, and the interest thereon, shall be
18 exempt from taxation, except inheritance and transfer
19 taxes.

PART IX. EMPLOYEES OF EXISTING SYSTEMS.

§8-27-21. Protection of employees of existing transportation systems.

- 1 Whenever any authority acquires any existing system
2 pursuant to the provisions of this article, the employees of
3 such system shall be protected in the following manner:
 - 4 (a) The employees of such system shall be retained to
5 the fullest extent possible consistent with sound manage-
6 ment, and if terminated or laid off shall be assured
7 priority of reemployment;
 - 8 (b) The individual employees who are retained shall
9 be retained in positions the same as, or no worse than,
10 their positions prior to the acquisition of such system;
 - 11 (c) The rights, privileges and benefits of the em-
12 ployees under existing collective bargaining agreements
13 shall not be affected and the owning authority shall
14 assume the duties and obligations of the acquired system
15 under any such agreement;
 - 16 (d) Collective bargaining rights shall be continued
17 with respect to employees of any acquired system;
 - 18 (e) The rights, privileges and benefits of the employees
19 under any existing pension or retirement plan or plans

20 shall not be affected and the owning authority shall as-
21 sume the duties and obligations of the acquired system
22 under any such plan or plans;

23 (f) The owning authority shall provide paid training
24 or retraining programs when necessary; and

25 (g) The authority owning a system, or any of the
26 employees of any system owned by the authority, shall,
27 in the case of any labor dispute relating to the terms and
28 conditions of employment which is not settled through
29 any established grievance procedure, have the right to
30 submit the dispute to final and binding arbitration by a
31 board of arbitration consisting of three arbitrators, one
32 arbitrator to be chosen by the authority, one by the em-
33 ployee and the third to be chosen by the two arbitrators
34 selected by the authority and the employee. A decision
35 of a majority of the members of the board of arbitration
36 shall be final and binding on the parties. The parties
37 shall each pay the arbitrator of its or his own selection,
38 and they shall jointly pay the third arbitrator and any
39 other expenses connected with submitting such labor
40 dispute to the board of arbitration.

41 In the event any authority acquires a system and (1)
42 leases such acquired system, or (2) enters into a manage-
43 ment contract for superintendence and management
44 services for the operation of such acquired system pur-
45 suant to any provision of this article, the lease or con-
46 tract shall include terms and provisions insuring the pro-
47 tection 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,
2 employees, agents or consultants, shall have any interest
3 in any firm, partnership, corporation, company, associa-
4 tion or joint-stock association engaged in the business of
5 providing public transportation in the area encompassed
6 by the authority, or in the manufacture, sale or lease of
7 passenger transportation equipment or facilities. No
8 member of any authority, nor any of its officers, em-
9 ployees, agents or consultants, shall contract with the

10 authority or be interested in, either directly or indirectly,
11 any contract with such authority or in the sale of prop-
12 erty, either real or personal, to such authority. The term
13 "agents" as used in this section shall not be deemed for
14 the purposes of this section to include any persons or
15 authorities which lease from or contract for superin-
16 tendence and management services with any authority
17 for the administration, maintenance, repair or operation
18 of any system.

§8-27-23. Competitive bids; publication of solicitation for sealed bids.

1 A purchase of or contract for all supplies, equipment
2 and materials and a contract for the construction of
3 facilities by any authority, when the expenditure required
4 exceeds the sum of one thousand dollars, shall be based
5 on competitive sealed bids. Such bids shall be obtained
6 by public notice published as a Class II legal advertise-
7 ment in compliance with the provisions of article three,
8 chapter fifty-nine of this code, and the publication area
9 for such publication shall be the service area of such
10 authority. The second publication shall be made at least
11 fourteen days before the final date for submitting bids.
12 In addition to such publication, the notice may also be
13 published by any other advertising medium such au-
14 thority may deem advisable, and such authority may also
15 solicit sealed bids by sending requests by mail to pro-
16 spective suppliers and by posting notice on a bulletin
17 board in the office of such authority.

§8-27-24. Bonds made legal investments.

1 Banking institutions, building and loan associations,
2 and insurance companies organized under the laws of
3 this state, may lawfully invest their own funds in bonds
4 issued under the provisions of this article.

§8-27-25. Article constitutes complete authority; liberal construction.

1 This article shall constitute full and complete authority
2 for the creation of any authority and for carrying out
3 the powers and duties of any such authority and for the
4 issuance, sale or exchange of revenue bonds by such

5 authority as provided in this article. The provisions of
6 this article shall be liberally construed to accomplish
7 its purpose and no procedure or proceedings, notices,
8 consents or approvals shall be required in connection
9 therewith except as may be prescribed by this article:
10 *Provided*, That all applicable functions, powers, authori-
11 ties and duties of the public service commission shall
12 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

3 section one, article two-a, chapter twenty-nine of this
4 code.

**§8-28-2. Establishment, lease and operation of airports by
municipalities and counties; jurisdiction of county
court.**

1 Any municipality or county may acquire, establish,
2 construct, lease, equip, improve, maintain and operate for
3 such municipality or county an airport for the use of air-
4 craft, and may acquire or lease for such purpose real
5 property within or without or partly within and partly
6 without the corporate limits of such municipality, or
7 within or without or partly within and partly without
8 such county, or may set apart and use for such purpose
9 real property owned by the municipality or county,
10 which is not needed for any other public use, however
11 such real property was acquired. Any county court now
12 owning or leasing or hereafter acquiring or leasing any
13 real property without or partly without the limits of its
14 county for the purpose of acquiring, establishing, con-
15 structing, improving, maintaining and operating an air-
16 port, shall have the same and all jurisdiction over such
17 property, its maintenance and operation, as it has with
18 respect to real property owned or leased and operated
19 by it for airport purposes within the limits of its own
20 county.

§8-28-3. Acquisition of property for airport; payment therefor.

1 Real property necessary for such airport may be ac-
2 quired by gift, or by purchase if such municipality or
3 county is able to agree with the owners of such real
4 property on the terms thereof, and otherwise by con-
5 demnation, in the manner provided by law under which
6 such municipality or county is authorized to acquire real
7 property for public use. The purchase price or award for
8 any property acquired for airport purposes may be paid
9 by appropriation of moneys available therefor or wholly
10 or partly from the proceeds of sale of the bonds of such
11 municipality or county, as the governing body or county
12 court shall determine, subject, however, to the general
13 provisions of law for the issuance and sale of bonds of
14 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.

15 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.

1 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

10 reasonable charges for the use of the parking space so
11 metered or otherwise allocated, so as to provide maximum
12 opportunity for the public use thereof.

13 Violation of any such rule and regulation shall con-
14 stitute a misdemeanor and the offender, upon conviction
15 in the manner provided by law, may be fined not less
16 than two dollars nor more than ten dollars for each such
17 violation.

18 Justices of the peace shall have concurrent jurisdic-
19 tion with the circuit courts and with statutory courts of
20 record having criminal jurisdiction for the trial of of-
21 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.

1 One or more municipalities or counties or both may join
2 with another or other municipalities or counties or both
3 for the purpose of acquiring, establishing, constructing,
4 leasing, equipping, improving, maintaining and operating
5 an airport. Any such airport may be located at such
6 point as the governing bodies and county courts of the
7 municipalities and counties joining therein may agree
8 upon, and such municipalities and counties may raise, by
9 levy or otherwise as provided in this article, funds for
10 the purpose of acquiring, establishing, constructing, leas-
11 ing, equipping, improving, maintaining and operating
12 any such airport, and the municipalities and counties
13 shall agree upon the proportionate part of the cost and
14 expense of such airport to be paid by each municipality
15 and county joining therein. The provisions of sections
16 two, three, four, five, seven and eight of this article
17 shall apply to any such joint airport, and as to section
18 five, the rules and regulations authorized therein shall
19 be jointly adopted and promulgated.

20 In case any such joint airport is abandoned and such
21 airport is owned by such municipalities and counties, the
22 same may be sold with the approval of the governing
23 bodies and county courts of the municipalities and coun-

24 ties jointly owning same. The proceeds of such sale shall
25 be distributed to the municipalities and counties in the
26 proportion to which such municipalities and counties had
27 contributed to the acquisition, establishment, construc-
28 tion, equipment, improvement, maintenance and opera-
29 tion of such airport. In case of a failure of the munici-
30 palities and counties to agree upon the disposition of such
31 airport and the equipment thereat or connected there-
32 with or used in its maintenance or operation, any one
33 or more of the municipalities and counties interested
34 therein may bring a suit in the circuit court of the county
35 in which such airport or the major portion thereof is
36 located, and upon a trial of the cause, held in the manner
37 provided by law for other civil actions seeking equitable
38 relief, the court shall make such decree or decrees with
39 reference to the disposition of the property and distri-
40 bution of the proceeds or other moneys involved as to
41 the court may seem to the best interests of all the parties
42 involved, and an appeal from any such decree or decrees
43 to the supreme court of appeals shall lie as in other
44 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,
2 or any municipality or county, owning, either severally
3 or jointly with other governmental units, an airport
4 and any grounds used or useful in connection therewith
5 may severally or jointly lease the same to others, for use
6 as an airport and for any other purposes incidental to
7 and not inconsistent therewith, for a term not exceeding
8 thirty years: *Provided*, That no lease shall be executed
9 by such owner or owners of any such airport or grounds
10 unless and until such owner or owners shall have given
11 notice by publication of the following described notice
12 as a Class II legal advertisement in compliance with the
13 provisions of article three, chapter fifty-nine of this code,
14 and the publication area for such publication shall be
15 the state if it is the state which proposes to make
16 such lease or the political subdivision or subdivisions

17 involved if it is a political subdivision or subdivisions
18 which propose to make such lease. The notice shall state
19 its or their intent to lease said airport or grounds, shall
20 accurately describe what is proposed to be leased, the
21 purpose or purposes for which the same may be used
22 and the terms of said lease, shall state the time and
23 place for the public opening of proposals for such lease,
24 and shall reserve the right to reject any and all pro-
25 posals. Nothing herein contained, however, shall prevent
26 such owner or owners of any such airport or grounds
27 from granting or renting landing rights for airplanes,
28 hangar space, gasoline storage space, handling facilities,
29 ticket or general office space, or any other facilities or
30 rights in connection with such airport or grounds, cover-
31 ing or affecting less than the whole thereof, without
32 notice and upon such terms as such owner or owners
33 may deem advisable. All income received by a municipi-
34 pality or county court under the terms of any such lease
35 or grant shall be paid to the state sinking fund com-
36 mission to retire the bonded indebtedness, if any, created
37 for the acquisition, establishment, construction, equip-
38 ment, improvement, maintenance and operation of such
39 airport or grounds, and if there be no such outstanding
40 bonded indebtedness, then such income shall be paid
41 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.

1 The governing body of a municipality or the county
2 court of a county to which this article is applicable may
3 lay a levy, not to exceed five cents on each one hundred
4 dollars of valuation, for a period not exceeding three
5 years, and appropriate therefrom funds for the purpose
6 of acquiring, establishing, constructing, equipping or
7 improving an airport. Funds necessary for providing
8 maintenance and operating expenses for such airport may
9 be appropriated out of the general funds of the municipi-
10 pality or county: *Provided*, That nothing contained herein
11 shall in any way affect any rights, powers and privileges
12 of any municipality or county court under any special

13 act of the Legislature providing for the laying of levies
14 or the expenditure of funds for acquiring, establishing,
15 constructing, equipping, improving, maintaining or oper-
16 ating an airport.

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.**

1 Notwithstanding any other provision of law to the
2 contrary, a municipality organized and existing under
3 the laws of an adjoining state, the nearest corporate
4 limits thereof being not more than ten miles distant
5 from the nearest boundary of this state, may acquire or
6 lease real property situate within this state, the nearest
7 boundary of such real property being not greater than
8 ten miles from the nearest corporate limits of such
9 municipality of an adjoining state, for use in connection
10 with the acquisition, establishment, construction, lease,
11 equipment, improvement, maintenance or operation for
12 such municipality of an adjoining state of an airport
13 exclusively for nonprofit public use; and any such
14 municipality shall have the right to acquire real property
15 necessary for such airport by gift or by purchase, and
16 otherwise by condemnation, and the use of real property
17 in this state under the provisions hereof shall be deemed
18 to be a public use for which private property may be
19 taken or damaged, for just compensation. All property,
20 real and personal, acquired, held and used in this state
21 pursuant to the provisions of this section shall be public
22 property and therefore exempt from taxation in the
23 manner provided by section nine, article three, chapter
24 eleven of this code.

**ARTICLE 29. INTERGOVERNMENTAL RELATIONS — REGIONAL
AIRPORTS.**

PART I. AUTHORITIES AUTHORIZED; ORGANIZATION
OF AUTHORITIES; OPERATION OF AIR-
PORTS; 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.

- §8-29-8. Powers of authorities generally.

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
- 2 contiguous counties, or any county or two or more con-
- 3 tiguous counties and one or more municipalities located
- 4 therein or partly therein, of this state, are hereby
- 5 authorized to create and establish one or more authori-
- 6 ties for the purpose of acquiring, establishing, construct-

7 ing, equipping, improving, financing, maintaining and
8 operating a regional airport or airports, as the case may
9 be, for the use of aircraft: *Provided*, That no such
10 municipality or county shall participate in such authority
11 unless and until the governing body or county court
12 so provides. As used in this article, the terms "airport"
13 and "aircraft" shall have the meanings ascribed to them
14 in section one, article two-a, chapter twenty-nine of this
15 code, the term "contiguous counties" means two or more
16 counties which constitute a compact territorial unit
17 within an unbroken boundary wherein one county
18 touches at least one other county, but does not require
19 that each county touch all of the other counties so com-
20 bining, and the term "authority" means a regional air-
21 port authority created pursuant to the provisions of
22 this article.

§8-29-2. Authorities to be public corporations.

1 Each authority when created and established, and
2 the members thereof, shall constitute a public corporation
3 and as such, shall have perpetual succession, may con-
4 tract and be contracted with, sue and be sued, and have
5 and use a common seal.

§8-29-3. Authorities empowered and authorized to acquire, operate, etc., airports; state aeronautics commission.

1 Each authority is hereby empowered and authorized
2 to acquire, establish, construct, equip, improve, finance,
3 maintain and operate a regional airport or landing field
4 and appurtenant facilities so located to best serve the
5 region in which they are located. Each authority shall
6 be subject to the jurisdiction of the state aeronautics
7 commission to the same extent as a state or municipal
8 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.

1 The management and control of each authority, its
2 property, operations, business and affairs shall be lodged

3 in a board of not less than five nor more than twenty-
4 one individuals who shall be known as members of the
5 authority and who shall be appointed for terms of three
6 years each by the municipalities and county courts con-
7 tributing moneys or property to the authority. However,
8 the first board shall be comprised of one member
9 appointed by each participating municipality and one
10 member appointed by each participating county court,
11 and any such member shall serve a term of one year,
12 beginning as of the date the authority is created. No
13 more than three members shall serve from one county
14 on the first board.

15 Each municipality or county shall have one vote for
16 each five thousand dollars it has contributed to the
17 authority in the form of moneys or property. When
18 property is contributed, the contributing municipality or
19 county court and the authority shall agree in writing
20 at the time the contribution is made as to the fair market
21 value of such property, which valuation shall determine
22 the number of votes to be allocated to the municipality
23 or county on the basis thereof. For the fiscal year during
24 which any authority is formed, the number of votes to
25 which any municipality or county shall be entitled shall
26 be determined as of the time of formation of the author-
27 ity and shall govern until the end of that fiscal year,
28 even though additional moneys or property are con-
29 tributed during that fiscal year. Thereafter, the number
30 of votes shall be determined at the end of each fiscal
31 year and such determination shall govern for the en-
32 suing fiscal year, even though additional moneys or prop-
33 erty are contributed during that fiscal year. Subsequent
34 to its formation, any authority may permit any munici-
35 pality or county without this state to participate in the
36 affairs of the authority, to appoint members of the
37 authority in the same manner, and to have such vote
38 or votes beginning as of the next ensuing fiscal year,
39 as prescribed by law with respect to the original par-
40 ticipating municipalities or counties or any combination
41 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.**§8-29-8. Powers of authorities generally.**

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;

16 (4) To delegate any authority given to it by law
17 to any of its officers, committees, agents or employees;

18 (5) To apply for, receive and use grants-in-aid,
19 donations and contributions from any source or sources,
20 including, but not limited to, the federal government
21 and any department or agency thereof, and this state
22 subject to any constitutional and statutory limitations
23 with respect thereto, and to accept and use bequests,
24 devises, gifts and donations from any person;

25 (6) To acquire lands and hold title thereto in its
26 own name;

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

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

37 (9) To raise funds by the issuance and sale of revenue
38 bonds in the manner provided by the applicable pro-
39 visions of article sixteen of this chapter, it being hereby
40 expressly provided that for the purpose of the issuance
41 and sale of revenue bonds, each authority is a "governing
42 body" as that term is used in said article sixteen
43 only;

44 (10) To establish, charge and collect reasonable fees
45 and charges for services or for the use of any part of its
46 property or facilities, or for both services and such
47 use;

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

50 (12) To apply for, receive and use loans, grants,
51 donations, technical assistance and contributions from
52 any regional or area commissions that may be estab-
53 lished; and

54 (13) To prescribe by bylaw the manner of financial
55 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 air-
2 port or the major portion thereof is located is hereby em-
3 powered and authorized, upon request of the authority,
4 to adopt and promulgate rules and regulations to: (1)
5 Control the movement and disposition of vehicular and
6 pedestrian traffic within one-fourth mile of any building
7 or installation of any such airport, (2) regulate and con-
8 trol vehicular parking within such areas by the installa-
9 tion of parking meters or by other methods, and (3) im-
10 pose reasonable charges for the use of the parking space
11 so metered or otherwise allocated, so as to provide maxi-
12 mum opportunity for the public use thereof.

13 Violation of any such rule and regulation shall con-
14 stitute a misdemeanor and the offender, upon conviction
15 in the manner provided by law, may be fined not less
16 than two dollars nor more than ten dollars for each such
17 violation.

18 Justices of the peace shall have concurrent jurisdiction
19 with the circuit courts and with statutory courts of record
20 having criminal jurisdiction for the trial of offenses under
21 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
2 issue any obligations and give any security therefor
3 which it may deem necessary and advisable in connection
4 with carrying out its purposes as hereinbefore mentioned.

5 No indebtedness or obligation incurred by an authority
6 shall give any right against any member of the govern-
7 ing body of any of said municipalities, or the county
8 court (or other similar body in the case of an out-of-state
9 participating county) of any of said counties, or any
10 member of the board of the authority. No indebtedness

11 of any nature of an authority shall constitute an in-
12 debtedness of any municipality or county or the govern-
13 ing body of any such municipality or the county court (or
14 other similar body in the case of an out-of-state partici-
15 pating county) of any such county, or be a charge against
16 any property of any municipality or county. The rights
17 of creditors of an authority shall be solely against the
18 authority as a corporate body and shall be satisfied only
19 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-
5 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-
3 ferred, to take or acquire any lands, structures or build-
4 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-
10 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

7 and other evidences of indebtedness of the authority are
8 declared to be issued for a public purpose and to be
9 public instrumentalities, and, together with interest
10 thereon, shall be exempt from taxation.

§8-29-14. Authorities may lease facilities.

1 Each authority may lease its airport and all or any
2 part of the appurtenances and facilities therewith to any
3 available lessee, subject to all constitutional and statutory
4 limitations with respect thereto, at such rental and upon
5 such terms and conditions as the authority shall deem
6 proper. Such leases shall be for some purpose associated
7 with airport activities, and shall be subordinate to any
8 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
2 operating the airport or leasing it for operation, over and
3 above the amount required for the equipping, improve-
4 ment, maintenance and operation of the airport and for
5 meeting all required payments on its obligations, it shall
6 set aside such reserve for future equipping, improve-
7 ments, maintenance, operations and contingencies as it
8 shall deem proper and shall then apply the residue of
9 such surplus, if any, to the payment of any recognized
10 and established obligations not then due, and after all
11 such recognized and established obligations have been
12 paid off and discharged in full, the authority shall, at the
13 end of each fiscal year, set aside the reserve for future
14 equipping, improvements, maintenance, operations and
15 contingencies, as aforesaid, and then pay the residue of
16 such surplus, if any, to the municipalities and counties in
17 direct proportion to their contribution of moneys and
18 property.

§8-29-16. Contributions to authorities; funds and accounts of authorities.

1 Contributions of moneys may be made to authorities
2 from time to time by the participating municipalities and
3 counties, and persons that shall desire to do so. All such
4 moneys and all other moneys received by an authority
5 shall be deposited in such banking institution or banking
6 institutions as the authority may direct and shall be with-

7 drawn therefrom in such manner as the authority may
8 direct. Each authority shall keep strict account of all of
9 its receipts and expenditures and shall each quarter
10 make a quarterly report thereon to the municipalities and
11 counties which have made contributions of moneys or
12 property, and such report shall contain an itemized ac-
13 count of its receipts and disbursements during the pre-
14 ceding quarter. Such report shall be made within sixty
15 days after the termination of the quarter. Within sixty
16 days after the end of each fiscal year, each authority
17 shall make an annual report containing a summary of its
18 receipts and disbursements for the preceding fiscal year,
19 and publish the same as a Class II-0 legal advertisement
20 in compliance with the provisions of article three, chapter
21 fifty-nine of this code, and the publication area for such
22 publication shall be the municipalities and counties, as
23 provided in section one of this article. The books, records
24 and accounts of each authority shall be subject to audit
25 and examination by the office of the state tax commis-
26 sioner and by any other proper public official or body
27 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-
6 ing, maintaining and operating the said regional airports
7 and appurtenant facilities.

8 Any of the municipalities or counties as provided in
9 section one of this article is hereby empowered and au-
10 thorized to convey or transfer to the authorities property
11 of any kind heretofore acquired by the municipalities or
12 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-

3 participating municipalities or counties or any combination
4 thereof which have contributed at least sixty percent of
5 the total value of all moneys and property (the value
6 of which property is determined as specified in section
7 four of this article) contributed to the authority by the
8 participating municipalities and counties may by resolu-
9 tion provide for the dissolution of the authority and for
10 (1) the conveyance of the real and tangible personal
11 property contributed to it to those participating munici-
12 palities and counties which contributed the same, (2)
13 equitable distribution among the contributing munici-
14 palities and counties of any real and tangible personal
15 property purchased or condemned by the authority or
16 of the proceeds of sale thereof, or the fair value thereof,
17 and (3) the equitable distribution of all moneys on hand
18 to the participating municipalities and counties in direct
19 proportion to the contribution of moneys by them.

**§8-29-19. Employees to be covered by workmen's compensa-
 tion.**

1 All eligible employees of any authority shall be deemed
2 to be within the workmen's compensation statute of this
3 state and premiums on their compensation shall be paid
4 by the authority as required by law.

§8-29-20. Liberal construction of article.

1 The purposes of this article are to provide for the
2 acquisition, establishment, construction, equipping, im-
3 provement, financing, maintenance and operation of re-
4 gional airports in a prudent and economical manner, and
5 this article shall be liberally construed as giving to any
6 authority created and established hereunder full and com-
7 plete power reasonably required to give effect to the pur-
8 poses hereof. The provisions of this article are in addi-
9 tion to and not in derogation of any power granted to
10 or vested in municipalities and county courts under any
11 constitutional, statutory or charter provisions which may
12 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.**

1 Any municipality or county may establish, construct,
2 maintain and operate for such municipality or county a
3 flood control project, including the removal of accumu-
4 lated snags and other debris from and the clearing and
5 straightening of the channel of navigable streams and
6 tributaries thereof, and any such municipality or county
7 may accept any and all benefits, moneys, services and
8 assistance from the federal government in connection
9 with any agreement as authorized by federal statutes and
10 laws relating to flood control, and any such municipality
11 or county under such agreements as are required by
12 Section 701c, Title 33, United States Code or other federal
13 statutes is hereby empowered and authorized to give
14 assurances satisfactory to the secretary of the army or
15 other proper federal authority that such municipality or
16 county will: (a) Provide without cost to the United
17 States, all lands, easements and right-of-ways necessary
18 for the construction of the project; (b) hold and save
19 the United States free from damages due to the con-
20 struction works; and (c) maintain and operate all the
21 works after completion in accordance with regulations
22 prescribed by the secretary of the army.

23 Any such municipality or county is hereby further
24 empowered and authorized to levy, within all constitu-
25 tional and statutory limitations, for the maintenance or
26 operation of a flood control project; to purchase land
27 situate therein for the same; to institute condemnation
28 proceedings for the acquiring of any land required under
29 the flood control project; and to authorize the issuance
30 and sale of bonds within all constitutional and statutory
31 limitations, as is provided under general law for the
32 issuance and sale of bonds by municipalities and coun-
33 ties for public purposes generally. Any levy shall be
34 equal and uniform throughout the municipality or county,
35 as the case may be. Real or personal property or moneys

36 may also be acquired for such purpose by gifts to such
37 municipality or county.

38 Any municipality or county is hereby empowered and
39 authorized to adopt zoning ordinances restricting the use
40 of the lands and the construction of buildings and struc-
41 tures within the flood control area and one hundred feet
42 on each side thereof and to enforce such ordinances by
43 fine or imprisonment, or both, in the circuit court of the
44 county in which the offense occurred in the case of a
45 county ordinance, or by injunction proceedings in the
46 circuit court of the county in which the offense occurred.
47 Prosecution for violation of any such municipal ordinance
48 shall be as in any other municipal ordinance violation
49 case.

50 The power and authority granted by this section may
51 be exercised by any municipality or county in coopera-
52 tion with each other or separately where such flood con-
53 trol project is located, regardless of the sponsoring agency
54 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. COMPELLING 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.

1 Every municipality and every county court are hereby
2 empowered and authorized to grant an exclusive or
3 nonexclusive franchise to any person. No franchise, how-
4 ever, shall hereafter be granted by the governing body of
5 any municipality or by the county court of any county
6 where the application for such franchise has not been

7 filed, with the recorder of such municipality or the clerk
8 of such county court, at least thirty days prior to the time
9 when it is to be acted upon by such governing body
10 or county court, and where notice of such application,
11 stating the object of such franchise, has not been given
12 by publication thereof as a Class II legal advertisement
13 in compliance with the provisions of article three,
14 chapter fifty-nine of this code, for which publication
15 the publication area shall be the municipality or the
16 county, as the case may be, wherein such franchise is
17 to be granted. No such franchise shall be granted within
18 thirty days after the application has been filed, nor
19 until an opportunity has been given any person interested
20 in the granting or refusing of such franchise to be
21 heard. No such franchise shall hereafter be granted
22 by any municipality or county court for a longer term
23 than fifty years: *Provided*, That nothing in this section
24 shall prevent the renewal of any such franchise for a
25 term not exceeding fifty years, when the same shall
26 have expired. No such franchise hereafter granted
27 for any longer term than fifty years shall be of any
28 force or validity. Notwithstanding the provisions of
29 this article or any other provisions of this chapter, other
30 general law or any charter, the failure or inability of
31 any person to obtain from any municipality or county
32 court a franchise for the rendering of a public service
33 shall in no way whatever affect the power and authority
34 granted to, and the duties and obligations imposed upon,
35 such person under the provisions of chapter twenty-four
36 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.

1 When any person has obtained or shall hereafter obtain
2 any franchise, and the terms, conditions or manner of
3 exercising such franchise are embodied in the ordi-
4 nance of the municipality or the order of the county
5 court granting such franchise, or are otherwise either
6 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.

§8-32-2. Membership and participation in area development corporations.

PART III. OBTAINING FEDERAL GRANTS.

§8-32-3. Power to secure federal grants for certain nonprofit organizations.

PART I. MUSEUMS; CULTURAL CENTERS, ETC.

§8-32-1. Legislative findings; authority of municipalities and counties to make appropriations; limitations and restrictions.

1 (a) The Legislature hereby finds that the support
2 of nonstock, nonprofit corporations dedicated to making
3 available to the general public museums or facilities
4 for the appreciation or enjoyment of art, music, dance,
5 drama, nature or science is for the general welfare
6 of the public and is a public purpose. This section is
7 enacted in view of this finding and shall be liberally
8 construed in the light thereof.

9 (b) When a nonstock, nonprofit corporation, char-
10 tered under the laws of this state, (1) is organized for
11 the construction, maintenance or operation of museums
12 or facilities for the appreciation or enjoyment of art,
13 music, dance, drama, nature or science, and provides
14 in its charter that its buildings or facilities, or a desig-
15 nated portion thereof, shall be devoted to the use by
16 the public for all purposes set forth in such charter
17 without regard to race, religion, national origin or eco-
18 nomic circumstance, and free from charge except such
19 as is necessary to provide the means to keep the buildings,
20 facilities and grounds in proper condition and repair,
21 and to pay the cost of insurance, care, management,
22 operations, teaching and attendants, so that the general
23 public may have the benefit of such establishment for
24 the uses set forth in such corporation's charter at as
25 little expense as possible, (2) provides in its charter
26 that no member trustee, or member of the board of
27 directors (by whatever name the same may be called),
28 of the corporation shall receive any compensation, gain
29 or profit from such corporation, and (3) is operated in
30 compliance with such charter provisions as aforesaid,
31 then, notwithstanding any statutory or municipal charter
32 provisions to the contrary, the municipality in which
33 such nonstock, nonprofit corporation is operating, if
34 any, and the county court of any county in which such
35 corporation is operating, may appropriate funds subject
36 to the provisions and limitations set forth in subsections

37 (c) and (d) of this section, to such nonstock, nonprofit
38 corporation, for such public purposes: *Provided*, That
39 such funds may be expended and otherwise utilized
40 only within the municipality or county, as the case may
41 be, making the appropriation thereof. In every such
42 case, the governing body of any such municipality or
43 the county court and such corporation may agree for
44 the appointment of additional members to the board of
45 directors of such corporation by such governing body
46 or county court, either as regular members or in an ex
47 officio capacity.

48 (c) No funds appropriated by a municipality or
49 county court under the authority of this section shall
50 be disbursed by any such nonstock, nonprofit corpora-
51 tion unless and until the expenditure thereof has been
52 approved by the governing body of such municipality
53 or the county court, as the case may be, which made
54 such appropriation, and such corporation shall upon
55 demand at any time make a full and complete accounting
56 of all such funds to such governing body or county court,
57 as the case may be, and shall in every event without
58 demand make to such governing body or county court an
59 annual accounting thereof.

60 (d) Under no circumstances whatever shall any action
61 taken by any municipality or county court under the
62 authority of this section give rise to or create any
63 indebtedness on the part of the municipality, the govern-
64 ing body of such municipality, the county, such county
65 court, any member of such governing body or the county
66 court or any municipal or county official or employee.

PART II. AREA DEVELOPMENT CORPORATIONS.

§8-32-2. Membership and participation in area development corporations.

1 Every municipality is hereby empowered and autho-
2 rized to become associated with and to participate as a
3 member of any area development corporation chartered
4 as a nonstock, nonprofit corporation under the laws of
5 this state for the purposes of promoting, developing
6 and advancing the business prosperity and economic
7 welfare of the area embraced, its citizens and its indus-

8 trial complex; encouraging and assisting through loans,
9 investments or other business transactions in locating
10 new business and industry within such area and re-
11 habilitating and assisting existing businesses and in-
12 dustries therein; stimulating and promoting the expansion
13 of all kinds of business and industrial activity which
14 will tend to advance, develop and maintain economic
15 stability and provide maximum opportunities for em-
16 ployment in such area; cooperating and acting in con-
17 junction with other organizations, federal, state or local,
18 in the promotion and advancement of industrial, com-
19 mercial, agricultural and recreational developments
20 within such area; and furnishing money and credit,
21 land and industrial sites, technical assistance and such
22 other aid as may be deemed requisite for the promotion,
23 development and conduct of all types of business,
24 agricultural and recreational activities within each area:
25 *Provided*, That it is specified in the charter of such
26 corporation that no member trustee or member of the
27 board of directors (by whatever name the same may
28 be called) of the corporation shall receive any com-
29 pensation, gain or profit from such corporation, and
30 such corporation is operated in compliance with all
31 charter provisions. The Legislature hereby finds that
32 the aforesaid purposes of such nonstock, nonprofit area
33 development corporations are for the general welfare
34 of the public and are public purposes. This section is
35 enacted in view of this finding and shall be liberally
36 construed in the light thereof.

37 Every municipality is hereby empowered and autho-
38 rized to contribute to the cost of the operations and
39 projects of such area development corporation by ap-
40 propriating for such purposes money from its general
41 funds not otherwise appropriated. Every municipality
42 is hereby empowered and authorized, notwithstanding
43 any other provision of this chapter to the contrary, to
44 transfer and convey to such area development corpo-
45 ration property of any kind heretofore acquired by such
46 municipality for or adaptable to use in industrial and
47 economic development, such transfers or conveyances to
48 be without consideration or for such price and upon

49 such terms and conditions as such municipality shall deem
50 proper.

51 Every municipality shall require as a condition of
52 any such appropriation, transfer or conveyance that
53 the area development corporation receiving the same
54 shall upon demand at any time by such municipality
55 make a full and complete accounting thereto of all
56 receipts and disbursements and shall in every event
57 without demand, within thirty days after the close of
58 the quarter, make to such municipality a report con-
59 taining an itemized statement of its receipts and dis-
60 bursements during the preceding quarter, and make
61 available to audit and examination by the office of the
62 state tax commissioner and any other proper public
63 official or body its books, records and accounts.

64 Under no circumstances whatever shall any action
65 taken by any municipality under the authority of this
66 section give rise to or create any indebtedness on the
67 part of the municipality, the governing body of such
68 municipality, any member of such governing body or
69 any municipal official or employee.

PART III. OBTAINING FEDERAL GRANTS.

§8-32-3. Power to secure federal grants for certain nonprofit organizations.

1 (a) Notwithstanding any statutory or charter pro-
2 visions to the contrary, every municipality is, subject to
3 the provisions and limitations set forth in subsections
4 (b) and (c) of this section, hereby empowered and au-
5 thorized to make application for, receive and accept
6 grants from the federal government, or any agency
7 thereof, for, on behalf of and for use by a nonstock, non-
8 profit corporation chartered under the laws of this state
9 for charitable, patriotic or philanthropic or other public
10 purposes and operating within the corporate limits of
11 said municipality. The Legislature hereby finds that the
12 support of such nonstock, nonprofit corporations is for
13 the general welfare of the public and is a public purpose.
14 This section is enacted in view of this finding and shall
15 be liberally construed in the light thereof.

16 (b) No federal funds received by a municipality

17 under the authority of this section shall be disbursed by
18 any such nonstock, nonprofit corporation unless and until
19 the expenditure thereof has been approved by the gov-
20 erning body of such municipality, and such corporation
21 shall upon demand at any time make a full and complete
22 accounting of all such funds to such governing body.

23 (c) Under no circumstances whatever shall any action
24 taken by any municipality under the authority of this
25 section give rise to or create any indebtedness on the
26 part of such municipality, the governing body of such
27 municipality, any member thereof or any municipal
28 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.

§8-33-11. Workmen's compensation.

§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 municl-
2 palities and any county, or any two or more municipalities
3 within any county or counties, or any combination thereof,

4 may create and establish a municipal building commis-
5 sion, a county building commission, or a municipal-
6 county building commission, as the case may be (herein-
7 after in this article referred to as commission or com-
8 missions). Such commissions shall be formed by an
9 ordinance or order, as appropriate, by each governmental
10 body establishing the same.

§8-33-2. Commissions are public corporations.

1 Each commission, when created, shall be a public cor-
2 poration and shall have perpetual existence.

**§8-33-3. Authority vested in board; composition of board; ap-
pointment; qualifications and terms of members;
vacancies; reimbursement of expenses.**

1 All property, powers and duties and the management
2 and control of each commission shall be vested in a board
3 consisting of representatives appointed by the govern-
4 mental body or bodies creating and establishing such
5 commission. In the case of a municipal building com-
6 mission or a county building commission such board
7 shall consist of not less than three nor more than five
8 members and in the case of a municipal-county building
9 commission each participating municipality shall appoint
10 two members and each participating county shall appoint
11 three members. All members of any board shall be ap-
12 pointed for terms of five years. Prior to making the
13 initial appointments to the board, the governmental body
14 or bodies shall make such initial appointments so that
15 approximately one fifth of the total number of members
16 of the board shall be appointed for a term of one year,
17 approximately one fifth of the total number of members
18 of the board shall be appointed for a term of two years,
19 approximately one fifth of the total number of members
20 of the board shall be appointed for a term of three years,
21 approximately one fifth of the total number of members
22 of the board shall be appointed for a term of four years,
23 and approximately one fifth of the total number of mem-
24 bers of the board shall be appointed for a term of five
25 years. As the term of each such initial appointee expires
26 the successor to fill the vacancy created by such expired
27 term shall be appointed for a term of five years.

28 If any member of any board die, resign or for any rea-
29 son cease to be a member of the board, the governmental
30 body which such member represented shall appoint an-
31 other individual to fill the unexpired portion of the term
32 of such member. No more than two thirds of the total
33 number of members of the board of each commission
34 shall be from the same political party and no member
35 of any such board shall hold any office (other than the
36 office of notary public) or employment under the United
37 States of America, the state of West Virginia, any county
38 or political subdivisions thereof, or any political party.
39 All members of any board shall be residents of the
40 municipality or county for which appointed. No mem-
41 ber of any board shall receive any compensation for his
42 services as such, but each member shall be reimbursed
43 by the commission for any reasonable and necessary
44 expenses actually incurred in the discharge of his duties
45 as a member of the board.

PART II. POWERS OF COMMISSIONS.

§8-33-4. Powers.

1 Each commission shall have plenary power and au-
2 thority to:

- 3 (a) Sue and be sued;
- 4 (b) Contract and be contracted with;
- 5 (c) Adopt, use and alter a common seal;
- 6 (d) Make and adopt all necessary, appropriate and
7 lawful bylaws and rules and regulations pertaining to its
8 affairs;
- 9 (e) Elect such officers, appoint such committee and
10 agents and employ and fix the compensation of such em-
11 ployees and contractors as may be necessary for the
12 conduct of the affairs and operations of the commission;
- 13 (f) (1) Acquire, purchase, own and hold any prop-
14 erty, real or personal, and (2) acquire, construct, equip,
15 maintain and operate public buildings, structures, proj-
16 ects and appurtenant facilities, of any type or types for
17 which the governmental body or bodies creating such
18 commission are permitted by law to expend public funds
19 (all hereinafter in this article referred to as facilities);

20 (g) Apply for, receive and use grants-in-aid, donations
21 and contributions from any source or sources, including
22 but not limited to the United States of America, or any
23 department or agency thereof, and accept and use be-
24 quests, devises, gifts and donations from any source
25 whatsoever;

26 (h) Sell, encumber or dispose of any property, real or
27 personal;

28 (i) Issue negotiable bonds, notes, debentures or other
29 evidences of indebtedness and provide for the rights of
30 the holders thereof, incur any proper indebtedness and
31 issue any obligations and give any security therefor
32 which it may deem necessary or advisable in connection
33 with exercising powers as provided herein;

34 (j) Raise funds by the issuance and sale of revenue
35 bonds in the manner provided by the applicable provi-
36 sions of article sixteen of this chapter, it being hereby
37 expressly provided that for the purpose of the issuance
38 and sale of revenue bonds, each commission is a "govern-
39 ing body" as that term is used in said article sixteen only;

40 (k) Exercise the power of eminent domain in the
41 manner provided in chapter fifty-four of this code for
42 business corporations, for the purposes set forth in sub-
43 division (f) of this section, which purposes are hereby
44 declared public purposes for which private property may
45 be taken or damaged;

46 (l) Lease its property or any part thereof, for public
47 purposes, to such persons and upon such terms as the
48 commission deems proper, but when any municipality
49 or county court is a lessee under any such lease, such
50 lease must contain a provision granting to such munici-
51 pality or county court the option to terminate such lease
52 during any fiscal year covered thereby; and

53 (m) Do all things reasonable and necessary to carry
54 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
2 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

7 is conveyed or transferred as aforesaid, the conveying
8 or transferring municipality or county court and the
9 board shall agree in writing at the time the conveyance
10 or transfer is made as to the fair market value of such
11 property. The members of the board appointed by any
12 municipality or county court conveying or transferring
13 property shall not participate in connection with, other-
14 wise than to provide a quorum, or vote on, any motion
15 or resolution by which the board agrees to the fair
16 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
2 contributing funds or property to a commission shall so
3 direct in writing and if all indebtedness of said com-
4 mission has been paid in full, the commission shall sell
5 all or any part of its properties and assets so directed
6 and distribute the proceeds thereof among the govern-
7 mental bodies creating and establishing it in direct
8 proportion to their contributions of funds or property
9 to the commission.

PART IV. WORKMEN'S COMPENSATION; CONSTRUCTION.

§8-33-11. Workmen's compensation.

1 Each commission shall subscribe to the workmen's
2 compensation fund of this state and pay all necessary
3 premiums thereto, to the end that all eligible employees
4 of such commission shall be covered by workmen's
5 compensation.

§8-33-12. Liberal construction.

1 The provisions of this article are hereby declared to
2 be remedial and shall be liberally construed to effectuate
3 the purposes hereof. The provisions of this article are
4 in addition to and not in derogation of any power granted
5 to or vested in municipalities and county courts under
6 any constitutional, statutory or charter provisions which
7 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
2 mayor or police court judge or municipal court judge

3 to imprisonment or to the payment of a fine of ten
4 dollars or more (and in no case shall a fine of less than
5 ten dollars be given if the defendant, his agent or attorney
6 object thereto) shall be allowed an appeal de novo to the
7 circuit or other court of the county exercising juris-
8 diction over appeals in criminal cases from justices of
9 the peace courts in the county, upon entering into an
10 appeal bond with surety deemed sufficient in a penalty
11 double the amount of fine and costs, with condition that
12 the person appealing will perform and satisfy any judg-
13 ment which may be rendered against him by the circuit
14 or such other court on such appeal. Any such appeal
15 must be perfected within ten days from and after the
16 date upon which the sentence is imposed. When the
17 municipality is located in more than one county, the
18 appeal shall be taken to the circuit court or other court
19 as aforesaid of the county in which the major portion
20 of the territory of the municipality is located. If such
21 appeal be taken, the appeal bond and other papers in
22 the case shall be forthwith delivered by the mayor,
23 recorder or police court judge or municipal court judge
24 to the clerk of the court to which such appeal is taken,
25 and such court shall proceed to try the case as upon
26 indictment or presentment, and render such judgment,
27 without remanding the case, as the law and the evi-
28 dence may require. If the judgment be against the
29 accused, it shall include the costs incurred in the pro-
30 ceedings before the mayor or police court judge or
31 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.**

1 Any municipality heretofore incorporated or which
2 shall hereafter be incorporated and which has no sub-
3 stantial indebtedness, and which shall fail for one year
4 to exercise its corporate powers and privileges, or which
5 has not twenty qualified voters, or in which there were
6 not twenty legal votes cast at its last election, or the
7 population of which shall be reduced below one hundred
8 persons and so remain for six consecutive months, shall
9 in either event have its charter or certificate of incorpo-
10 ration and all rights, powers and privileges so conferred
11 upon such municipality forfeited.

12 The county court of the county wherein any such
13 municipality or the major portion of the territory thereof
14 is located shall have jurisdiction to hear and determine
15 all matters relating to the forfeiture of such charter or
16 certificate of incorporation, upon the petition of one or
17 more of its inhabitants, and to dissolve such municipal
18 corporation. Ten days' notice of the filing of such peti-
19 tion with the clerk of the county court of such county,
20 served upon the mayor and recorder or on the last
21 mayor or recorder thereof, shall be sufficient notice upon
22 which such county court shall so act, and upon the
23 proper proof of the allegations of such petition, any
24 such charter or certificate of incorporation shall be
25 declared forfeited and the municipal corporation dis-
26 solved and all debts of such municipality shall be ordered
27 paid and the forfeiture and dissolution shall not become
28 effective until such debts have been paid. Upon such
29 forfeiture and dissolution all interest of such municipality
30 in corporate funds, if any, in excess of the amounts
31 required to pay corporate debts shall be and the same
32 is hereby transferred to and vested in the state of West
33 Virginia to be controlled by the state auditor. If the
34 territory so incorporated, or a major part thereof, either
35 in area or in population, shall, however, within one year
36 next after such declaration of forfeiture and dissolution
37 by the county court be reincorporated under this chapter,

38 then the auditor of the state of West Virginia shall
39 convey unto such new municipality all of the rights of
40 the state of West Virginia in and to the corporate prop-
41 erty, moneys, claims, demands and taxes collected or
42 uncollected, of the former municipal corporation so
43 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.

1 Upon petition of twenty-five or more percent of the
2 legal voters of any Class III city or Class IV town or
3 village, the governing body thereof shall submit to the
4 qualified voters of such municipal corporation at the next
5 regular municipal election, or at a special municipal
6 election called for that purpose, the question of continu-
7 ing or dissolving such municipal corporation. It shall
8 be the responsibility of the governing body to verify the
9 total number of eligible petitioners and to determine
10 whether the required percentage of petitioners has been
11 obtained. The ballots, or ballot labels where voting
12 machines are used, shall have written or printed on them
13 the words:

14 ☐ For Continuance of Municipal Corporation

15 ☐ For Dissolution of Municipal Corporation

16 If a majority of the legal votes cast be for dissolution,
17 then such municipal corporation shall by operation of law
18 be dissolved upon termination of the term of the govern-
19 ing body then in office: *Provided*, That all debts or other
20 obligations outstanding against such municipal corpora-
21 tion shall be settled in full. If a majority of the legal
22 votes cast be for continuance, then such municipal cor-
23 poration shall continue in existence unless and until
24 dissolved at some later date under the provisions of
25 section one of this article or this section two: *Provided*,
26 *however*, That another election under the provisions of
27 this section two shall not be held within two years of
28 the last such election. Any election under the provisions
29 of this section two shall be held, conducted and super-

30 intended and the result thereof ascertained, certified,
31 returned and canvassed in the same manner and by the
32 same persons as an election for municipal officers of such
33 municipal corporation.

ARTICLE 36. CONSTITUTIONALITY AND SEVERABILITY.

§8-36-1. Constitutionality and severability.

1 (a) If any article, section, subsection, subdivision, pro-
2 vision, clause or phrase of this chapter or the application
3 thereof to any person or circumstance is held unconstitu-
4 tional or invalid, such unconstitutionality or invalidity
5 shall not affect other articles, sections, subsections, sub-
6 divisions, provisions, clauses or phrases or applications of
7 the chapter, and to this end each and every article, section,
8 subsection, subdivision, provision, clause and phrase of
9 this chapter is declared to be severable. The Legislature
10 hereby declares that it would have enacted the remain-
11 ing articles, sections, subsections, subdivisions, provisions,
12 clauses and phrases of this chapter even if it had known
13 that any articles, sections, subsections, subdivisions, pro-
14 visions, clauses and phrases thereof would be declared to
15 be unconstitutional or invalid, and that it would have
16 enacted this chapter even if it had known that the applica-
17 tion thereof to any person or circumstance would be held
18 to be unconstitutional or invalid.

19 (b) The provisions of subsection (a) of this section
20 shall be fully applicable to all future amendments or
21 additions to this chapter, with like effect as if the pro-
22 visions of said subsection (a) were set forth in extenso
23 in every such amendment or addition and were reenacted
24 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.**

1 Any person who sustains an injury to his person or
2 property by reason of any road or bridge under the con-
3 trol of the county court or any road, bridge, street, alley

4 or sidewalk in any incorporated city, town or village
5 being out of repair due to the negligence of the county
6 court, incorporated city, town or village may recover
7 all damages sustained by him by reason of such injury
8 in an action against the county court, city, town or
9 village in which such road, bridge, street, alley or side-
10 walk may be, except that such city, town or village shall
11 not be subject to such action unless it is required by
12 charter, general law or ordinance to keep the road, bridge,
13 street, alley or sidewalk therein, at the place where such
14 injury is sustained, in repair. If it is not so required, the
15 action and remedy shall be against the county court.
16 When judgment is obtained against the county court,
17 such court shall at the time of the laying of the next
18 annual levy, levy upon the taxable property of the district
19 in which such injury is sustained a sufficient sum to pay
20 such judgment with interest and costs, and the costs
21 of collecting the same, and when it is obtained against
22 the city, town or village the proper municipal authorities
23 thereof shall lay such levies at the time of levying the
24 next annual levy on the property subject to taxation in
25 such city, town or village. In case of a failure by either
26 so to do, or to pay the judgment as required by law, the
27 circuit court of the county for which such county court
28 acts or in which such city, town or village or the major
29 portion of the territory thereof is located shall compel
30 the laying of such levy, or the payment of such judgment,
31 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 re-
- 2 quires a different meaning:
- 3 "Agency" means any branch, department or unit of
- 4 the state government, however designated or constituted.
- 5 "Alien" means any person not a citizen of the United
- 6 States.
- 7 "Bag limit" or "creel limit" means the maximum
- 8 number of wildlife which may be taken, caught, killed
- 9 or possessed by any licensee.
- 10 "Board" means the water resources board of the de-
- 11 partment of natural resources.
- 12 "Citizen" means any native born citizen of the United
- 13 States, and foreign born persons who have procured their
- 14 final naturalization papers.
- 15 "Closed season" means the time or period during which
- 16 it shall be unlawful to take any wildlife as specified and
- 17 limited by the provisions of this chapter.
- 18 "Commission" means the natural resources commission.
- 19 "Commissioner" means a member of the advisory com-
- 20 mission of the natural resources commission.

21 "Director" means the director of the department of
22 natural resources.

23 "Fishing" or "to fish" means the taking, by any means,
24 of fish, minnows, frogs, or other amphibians, aquatic
25 turtles, and other forms of aquatic life used as fish bait.

26 "Fur-bearing animals" shall include (a) the mink,
27 (b) the weasel, (c) the muskrat, (d) the beaver, (e) the
28 opossum, (f) the skunk, and civet cat, commonly called
29 polecat, (g) the otter, (h) the red fox, (i) the gray fox,
30 (j) the wildcat, bobcat or bay lynx, (k) the raccoon
31 and (l) the fisher.

32 "Game" means game animals, game birds and game
33 fish as herein defined.

34 "Game animals" shall include (a) the elk, (b) the deer,
35 (c) the cottontail rabbits and hares, (d) the fox squirrels,
36 commonly called red squirrels, and gray squirrels, and
37 all their color phases—red, gray, black or albino, (e) the
38 raccoon, and (f) the black bear.

39 "Game birds" shall include (a) the Anatidae, commonly
40 known as swan, geese, brants and river and sea ducks,
41 (b) the Rallidae, commonly known as rails, sora, coots,
42 mudhens, and gallinales, (c) the Limicolae, commonly
43 known as shorebirds, plover, snipe, woodcock, sand-
44 pipers, yellowlegs, and curlews, (d) the Galli, commonly
45 known as wild turkey, grouse, pheasants, quails and
46 partridges (both native and foreign species), and (e)
47 the Columbidae, commonly known as doves and the
48 Icteridae, commonly known as blackbirds, redwings and
49 grackle.

50 "Game fish" shall include (a) brook trout, (b) brown
51 trout, (c) rainbow trout, (d) golden rainbow trout,
52 (e) Kokanee salmon, (f) largemouth bass, (g) small-
53 mouth bass, (h) Kentucky or spotted bass, (i) striped bass,
54 (j) pickerel, (k) muskellunge, (l) walleye pike, or pike
55 perch, (m) northern pike, (n) rock bass, (o) white
56 bass, (p) white and black crappie, (q) all sunfish and
57 (r) channel and flathead catfish.

58 "Hunt" means to pursue, chase, catch or take any wild
59 birds or wild animals.

60 "Lands" means land, waters, and all other appurte-
61 nances connected therewith.

62 "Migratory birds" means any migratory game or non-
63 game birds included in the terms of conventions between
64 the United States and Great Britain and between the
65 United States and United Mexican States, known as the
66 "Migratory Bird Treaty Act," for the protection of migra-
67 tory birds and game mammals concluded, respectively,
68 August sixteen, one thousand nine hundred sixteen, and
69 February seven, one thousand nine hundred thirty-six.

70 "Nonresident" means any person who is a citizen of
71 the United States and who has not resided continuously
72 in the state of West Virginia for a period of six months
73 immediately prior to the date of his application for a
74 license or permit except any full-time student of any
75 college or university of this state, even though he be
76 paying a nonresident tuition.

77 "Open season" means the time during which the
78 various species of wildlife may be legally caught, taken,
79 killed or chased in a specified manner, and shall include
80 both the first and the last day of the season or period
81 designated by the director.

82 "Person," except as otherwise defined elsewhere in
83 this chapter, means the plural "persons," and shall in-
84 clude individuals, partnerships, corporations, or other
85 legal entity.

86 "Preserve" means all duly licensed private game farm
87 lands, or private plants, ponds or areas, where hunting
88 or fishing is permitted under special licenses or seasons
89 other than the regular public hunting or fishing seasons.

90 "Protected birds" means all wild birds not included
91 within the definition of "game birds" and "unprotected
92 birds."

93 "Resident" means any person who is a citizen of the
94 United States and who has resided continuously in the
95 state of West Virginia for a period of six months or more
96 immediately prior to the date of his application for a
97 license or permit: *Provided*, That a member of the armed
98 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.

1 Each person killing a deer or wild turkey found in a
2 wild state shall immediately after removing the entrails,
3 but in any event, within one hour, and before trans-
4 porting or removing the carcass in any manner from
5 where it was killed, complete and attach thereto the
6 game tag supplied with his or her hunting license. The
7 game tag shall remain on the carcass until it is dressed
8 for consumption.

9 If such game bird or game animal has been lawfully
10 killed by a person not required to secure a license, or
11 by a person who has previously killed another species
12 of game bird or game animal for which a game tag is
13 required, or by a person who has lost the tag supplied
14 with his or her license, such person shall make and
15 attach a tag to the carcass within the time specified
16 after such killing. The tag shall bear in plain English,
17 the name and address of the hunter, and the date of
18 killing, or, if holding a license, the license number and
19 the date and county where the game was killed.

20 The carcass of such game bird or game animal shall
21 be delivered to a conservation officer or an official check-
22 ing station for checking and retagging before it is either
23 skinned or transported beyond the boundaries of the
24 county adjacent to that in which the kill was made.

25 Every failure to have said tag or tags attached, or
26 removing or transporting such animal in any manner,
27 or failure to deliver the carcass to a conservation officer
28 or an official checking station for checking, as herein
29 provided, shall subject the person so neglecting to the
30 penalties provided in this article.

31 Any deer or wild turkey found and not tagged as
32 herein provided shall be forfeited to the state of West

33 Virginia to be disposed of as hereinafter provided and
34 may be seized by any officer whose duty it is to enforce
35 the game laws.

**§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, cap-
2 ture, or kill any black bear, or have in his possession
3 any black bear, or any part thereof, including fresh pelt,
4 except during the open season or as authorized by the
5 director, or as hereinafter provided. A person on killing
6 a bear shall within twenty-four hours after killing,
7 deliver the bear or fresh skin to a conservation officer
8 or checking station for tagging. The bear shall have
9 affixed thereto an appropriate tag provided by the depart-
10 ment before any part of the bear may be transported
11 more than seventy-five miles from the point of kill. Any
12 bear not properly tagged, or any part of such bear, shall
13 be forfeited to the state for disposal to a charitable
14 institution, or school, or as otherwise designated by the
15 department of natural resources.

16 It shall be unlawful:

17 (1) To hunt a bear with (a) a shotgun using am-
18 munition loaded with more than one solid ball, or (b)
19 a rifle of less than twenty-five caliber using rimfire
20 ammunition or (c) a crossbow;

21 (2) To kill or attempt to kill any bear through the
22 use of poison, or explosives, or through the use of
23 snares, steel traps or deadfalls other than as authorized
24 herein;

25 (3) To shoot at or kill a cub bear weighing less than
26 one hundred pounds;

27 (4) To have in possession any part of a bear not
28 tagged in accordance with the provisions of this sec-
29 tion;

30 (5) To enter a state game refuge with firearms for
31 the purpose of pursuing or killing a bear except under
32 the direct supervision of department personnel: *Pro-*
33 *vided*, That the following shall apply to bear destroying
34 property:

35 (a) Nothing in this article shall be construed to
36 prevent any person, as hereinafter defined, from kill-
37 ing in any legal manner provided by this article, any
38 black bear which such person may find actually engaged
39 in the material destruction of livestock on the prop-
40 erty under the control of such person. Notwithstanding
41 the definition of "person" contained in section two,
42 article one of this chapter, the word "person" as used
43 in this section shall mean any person residing on any
44 lands as either the owner or lessee of such lands
45 or as a member of the family of such owner or lessee
46 or as an agent or employee regularly assisting in the
47 care and maintenance of such lands.

48 Any person suffering damage to livestock may organize
49 a hunt and summon aid from other residents of
50 the state, or nonresidents with prior approval of a
51 representative of the department, for the purpose of
52 destroying the black bear causing said livestock dam-
53 age: *Provided*, That a notice of intention to carry out
54 such hunt, containing the names and addresses of all
55 participants, has been given to a representative of the
56 department prior to the beginning of such hunt or
57 within twenty-four hours of the experiencing of
58 said damage. Any such person shall, upon demand of
59 any representative of the department, produce satis-
60 factory evidence that material damage to livestock was
61 caused by a black bear. If such person makes a bona
62 fide attempt to give such notice to a representative of
63 the department without success, he may then proceed
64 with the hunt.

65 During the progress of a legally organized hunt, the
66 authorized participants may, if necessary, pursue said
67 black bear into any game refuge area, including state
68 forests and state wildlife areas. Said black bear when
69 killed shall be reported within twenty-four hours of
70 killing to a conservation officer or an official state check-
71 ing station, and the report shall state the weight, sex,
72 date and location of kill of the animal. Any black bear
73 killed and reported in accordance with the provisions
74 of this section may be retained for food by the person
75 organizing the hunt.

76 (b) Any person who kills a bear in violation of
77 the provisions of this section shall be guilty of a mis-
78 demeanor, and, upon conviction, shall be fined not less
79 than one hundred nor more than three hundred dol-
80 lars, or confinement in the county jail for not less than
81 thirty nor more than one hundred days, or both fined
82 and imprisoned within the limitations aforesaid. Any
83 person who violates any other provisions of this section
84 shall be guilty of a misdemeanor, and, upon conviction,
85 shall be fined not less than twenty nor more than one
86 hundred dollars. The unlawful killing or capturing of
87 each bear shall be deemed a separate offense: *Provided,*
88 *however,* That any person who kills a bear illegally dur-
89 ing the open season therefor, and voluntarily reports
90 same to a conservation officer or other officer shall be
91 fined not less than fifty dollars nor more than one hun-
92 dred 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
2 West Virginia that the wildlife resources of this state
3 shall be protected for the use and enjoyment of all the
4 citizens of this state. All species of wildlife shall be main-
5 tained for values which may be either intrinsic or eco-
6 logical or of benefit to man. Such benefits shall include
7 (1) hunting, fishing and other diversified recreational
8 uses; (2) economic contributions in the best interests
9 of the people of this state; and (3) scientific and edu-
10 cational uses.

§20-2-1a. Wildlife resources division; organization and administration.

1 The chief of the division of wildlife resources shall
2 be primarily responsible for the execution and admin-
3 istration of the provisions of this article as an integral
4 part of the natural resources program of the state as
5 defined and constituted in this chapter. He shall organize
6 the division and select competent and qualified per-
7 sonnel therefor so as to effect an orderly, efficient and
8 economical division organization.

C

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 un-
2 lawful at any time for any person to:

3 (1) Shoot at or to shoot any wild bird or animal un-
4 less it is plainly visible to him;

5 (2) Dig out, cut out, or smoke out, or in any manner
6 take or attempt to take any live wild animal or wild
7 bird out of its den or place of refuge, except as may be
8 authorized by regulations promulgated by the director
9 or by law;

10 (3) (a) Make use of, or take advantage of, any arti-
11 ficial light in hunting for, locating, taking, trapping,
12 or killing any wild bird or wild animal; or (b) make
13 use of, or take advantage of, any artificial light in hunt-
14 ing for, taking, attracting, trapping, or killing any wild
15 bird or wild animal, or to attempt to do so, while having
16 in his possession or subject to his control any firearm,
17 whether cased or uncased, or other implement or de-
18 vice suitable for taking, killing, trapping, skinning, or
19 dressing such wild bird or animal. Any person violat-
20 ing the provisions of division (b) of this subdivision
21 3 shall be guilty of a misdemeanor, and, upon con-
22 viction thereof, shall for each offense be fined not less
23 than one hundred dollars nor more than five hun-
24 dred dollars and shall be imprisoned for not less than
25 ten days nor more than one hundred days: *Provided,*
26 That it shall not be unlawful to hunt or take raccoon,
27 opossum or skunk by the use of artificial lights;

28 (4) Hunt for, take, kill, wound or shoot at wild animals
29 or wild birds from an airplane, or other airborne convey-
30 ance, an automobile, or other land conveyance, or from
31 a motor-driven water conveyance, except as may be
32 authorized by regulations promulgated by the director;

33 (5) Take any beaver or muskrat by any means other
34 than by trap;

35 (6) Catch, capture, take or kill by seine, net, bait, trap
36 or snare or like device of any kind, any wild turkey,
37 ruffed grouse, pheasant or quail;

38 (7) Destroy or attempt to destroy needlessly or wil-
39 fully the nest or eggs of any wild bird or have in his
40 possession such nest or eggs unless authorized to do so
41 under regulations or under a permit by the director;

42 (8) Except as provided in section six of this article,
43 carry an uncased or loaded gun in any of the woods of
44 this state except during the open firearms hunting season
45 for game animals and nonmigratory game birds within
46 any county of the state, unless he has in his possession
47 a permit in writing issued to him by the director: *Pro-*
48 *vided*, That this section shall not prohibit hunting or
49 taking of unprotected species of wild animals and wild
50 birds and migratory game birds, during the open sea-
51 son, in the open fields, open water and open marshes of
52 the state;

53 (9) Except as provided in section six of this article,
54 carry an uncased or loaded gun after the hour of five
55 o'clock antemeridian on Sunday in any woods or on any
56 highway, railroad right-of-way, public road, field or
57 stream of this state, except at a regularly used rifle, pistol,
58 skeet, target or trap shooting ground or range and nothing
59 contained in section eighteen, article eight, chapter sixty-
60 one of this code shall prohibit the use of a gun by a licens-
61 ed hunter before the hour of five o'clock antemeridian on
62 Sunday;

63 (10) To have in his possession a loaded firearm or a
64 firearm from the magazine of which all shells and cart-
65 ridges have not been removed, in or on any vehicle or
66 conveyance, or its attachments, within the state, except
67 as may otherwise be provided by law or regulation. Ex-
68 cept as hereinafter provided, between five o'clock post-
69 meridian of one day and seven o'clock antemeridian,
70 eastern standard time of the day following, any unloaded
71 firearm, being lawfully carried in accordance with the
72 foregoing provisions, shall be so carried only when in a
73 case or taken apart and securely wrapped. During the
74 period from July first to September thirtieth, inclusive, of
75 each year, the foregoing requirements relative to carrying
76 certain unloaded firearms shall be permissible only from
77 eight-thirty o'clock postmeridian to five o'clock antemeri-
78 dian, eastern standard time;

- 79 (11) Hunt, catch, take, kill, trap, injure or pursue with
80 firearms or other implement by which wildlife may be
81 taken after the hour of five o'clock antemeridian on
82 Sunday any wild animals or wild birds: *Provided*, That
83 traps previously and legally set may be tended after the
84 hour of five o'clock antemeridian on Sunday, if the per-
85 son so doing shall not have firearms or long bow of any
86 description in his possession;
- 87 (12) Hunt with firearms or long bow while under the
88 influence of intoxicating liquor;
- 89 (13) Possess a ferret;
- 90 (14) Buy raw furs, pelts or skins of fur-bearing animals
91 unless licensed to do so;
- 92 (15) Have in his possession or about his premises,
93 without the written permission of the director, any hunt-
94 ing or fishing paraphernalia which cannot be used law-
95 fully in this state for hunting or fishing, and any conserva-
96 tion officer shall remove and destroy such hunting and
97 fishing paraphernalia, whenever found in this state, and
98 the person or persons claiming ownership shall have no
99 recourse at law against such confiscation and destruc-
100 tion;
- 101 (16) Catch, take, kill, or attempt to catch, take or kill
102 any fish at any time by any means other than by rod, line,
103 and hooks with natural or artificial lures unless otherwise
104 authorized by law or regulation issued by the director:
105 *Provided*, That snaring of any species of suckers, carp,
106 fallfish and creek chubs shall at all times be lawful;
- 107 (17) Employ or hire, or induce or persuade, by the
108 use of money or other things of value, or by any means,
109 any person to hunt, take, catch or kill, any wild animal
110 or wild bird except those species on which there is no
111 closed season, or to fish for, catch, take or kill any fish,
112 amphibian or aquatic life which is protected by the pro-
113 visions of this chapter or regulations of the director, or
114 the sale of which is prohibited;
- 115 (18) Hunt, catch, take, kill, capture, pursue, transport,
116 possess or use any migratory game or nongame birds in-
117 cluded in the terms of conventions between the United

118 States and Great Britain and between the United States
119 and United Mexican States for the protection of migra-
120 tory birds and game mammals concluded, respectively,
121 August sixteen, one thousand nine hundred sixteen, and
122 February seven, one thousand nine hundred thirty-six,
123 except during the time and in the manner and numbers
124 prescribed by the Federal Migratory Bird Treaty Act and
125 regulations made thereunder;

126 (19) Kill, take, catch, or have in his possession living
127 or dead, any wild bird, other than a game bird; or expose
128 for sale, or transport within or without the state any
129 such bird, except as aforesaid. No part of the plumage,
130 skin or body of any protected bird shall be sold or had in
131 possession for sale, except mounted or stuffed plumage,
132 skin, bodies or heads of such birds legally taken and
133 stuffed or mounted, irrespective of whether such bird
134 was captured within or without this state, except the
135 English or European sparrow (*Passer domesticus*), star-
136 ling (*Sturnus vulgaris*), sharp-shinned hawk (*Accipiter*
137 *striatus*), Cooper's hawk (*Accipiter cooperii*), goshawk
138 (*Accipiter gentilis*), crow (*Corvus brachyrhynchos*) and
139 cowbird (*Molothrus ater*), which shall not be protected
140 and the killing thereof at any time is lawful;

141 (20) Use dynamite or any like explosives or poisonous
142 mixture placed in any waters of the state for the purpose
143 of killing or taking fish. Any person violating the provi-
144 sions of this subdivision shall be guilty of a felony, and,
145 upon conviction thereof, shall be fined not more than
146 five hundred dollars or imprisoned for not less than six
147 months nor more than three years, or both fined and
148 imprisoned;

149 (21) Have both a bow and a gun in the fields or woods
150 at the same time;

151 (22) Have a crossbow in the woods or fields or use
152 a crossbow to hunt for, take or attempt to take any
153 wildlife;

154 (23) Take or attempt to take turkey, bear, elk or deer
155 with any arrow unless the same is equipped with a

156 point having at least two sharp cutting edges measuring
157 in excess of three fourths of an inch wide;

158 (24) Take or attempt to take any wildlife with an
159 arrow having an explosive head or shaft, a poisoned ar-
160 row, or an arrow which would affect wildlife by any
161 chemical action;

162 (25) Shoot an arrow across any public highway or
163 from aircraft, motor-driven watercraft, motor vehicle or
164 other land conveyance;

165 (26) Permit any dog owned by him or under his con-
166 trol to chase, pursue or follow upon the track of any game
167 animal or game bird, either day or night, between the
168 first day of May and the fifteenth day of August next
169 following: *Provided*, That dogs may be trained on game
170 animals and game birds, except deer and wild turkeys,
171 and field trials may be held or conducted on the grounds
172 or lands of the owner or by his bona fide tenant or tenants
173 or upon the grounds or lands of another person with his
174 written permission or on public lands, at any time: *Pro-*
175 *vided, however*, That the person training said dogs does
176 not have firearms or other implements in his possession
177 during the closed season on such game animals and game
178 birds, whereby game animals or game birds could be
179 taken or killed;

180 (27) Conduct or participate in a field trial, water race
181 or wild hunt hereafter referred to as trial: *Provided*, That
182 any person, group of persons, club or organization may
183 hold such trial at any time of the year upon obtaining
184 such permit as is provided for in section fifty-six of this
185 article. The person responsible for obtaining said permit
186 shall prepare and keep an accurate record of the names
187 and addresses of all persons participating in said trial,
189 and make same readily available for inspection by any
190 conservation officer upon request; and

191 (28) Except as provided in section four of this article
192 no person shall hunt, catch, take, kill or attempt to hunt,
193 catch, take or kill any wild animal, wild bird or wild fowl
194 except during the open season established by regulation
195 of the director as authorized by subdivision six, section
196 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
2 or trap upon the fenced, enclosed or posted grounds or
3 lands of another person or to peel trees or timber, build
4 fires or do any other act or thing thereon in connection
5 with or auxiliary to shooting, hunting, fishing or trapping
6 on such lands without permission in writing from the
7 owner, tenant or agent of such owner, and every person
8 hunting, fishing, shooting or fowling upon such lands
9 shall have in his possession such written permission when
10 so doing.

11 Any person who, for the purpose of, or while hunting,
12 trapping or fishing, shall, without the permission of the
13 owner, tenant or agent of the owner, enter upon the
14 land of another and while thereon shall kill or injure
15 any domestic animal or fowl, or shall cut, destroy or dam-
16 age any bars, gates or fence, or any part thereof, or shall
17 leave open any bars or gates thereon resulting in damage
18 to the owner or occupant thereof, shall be guilty of a
19 misdemeanor, and in addition shall be liable to the owner

20 or person suffering such damage for all costs and dam-
21 ages resulting therefrom.

22 It shall be lawful for the owner, lessee, or the person
23 entitled to the possession of such lands, or the agent
24 thereof, to arrest any such person found violating this
25 section and immediately take him before a justice of
26 the peace for trial, and such owner, lessee, person or
27 agent is hereby vested with all the powers and rights of
28 a game protector for such purposes. The officers charged
29 with the enforcement of the provisions of this chapter
30 shall have the duty to enforce the provisions of this
31 section if requested to do so by such owner, lessee, person
32 or agent, but not otherwise.

C

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.

§20-2-27. Necessity for license.

1 Except as otherwise provided by law, no resident who
2 has reached his fifteenth birthday and who has not reached
3 his sixty-fifth birthday, and no nonresident shall at any
4 time take, hunt, pursue, trap for, kill or chase any wild
5 animals, wild birds, or fish for, take, kill or catch any
6 fish, amphibians or aquatic life of any kind whatsoever in

7 this state without first having secured a license or permit,
8 and then only during the respective open seasons, except
9 that a nonresident who has not reached his fifteenth birth-
10 day may fish for, take, kill or catch any fish, amphibians
11 or aquatic life of any kind whatsoever in this state with-
12 out first having secured a license or permit. No person
13 under the age of fifteen years shall hunt or chase any
14 wild animals or wild birds upon lands of another unless
15 accompanied by a licensed adult.

16 A resident or nonresident member of any club, or-
17 ganization or association, or persons owning or leasing
18 a game preserve, or fish preserve, plant or pond in this
19 state shall not hunt or fish therein without first securing
20 a license or permit as required by law: *Provided, how-*
21 *ever,* That resident landowners or their resident children,
22 or bona fide resident tenants of such land may, without
23 a permit or license, hunt and fish on their own land
24 during open seasons in accordance with laws and regu-
25 lations applying to such hunting and fishing unless such
26 lands have been designated as a wildlife refuge or pre-
27 serve.

28 Licenses and permits shall be of the kinds and classes
29 set forth in this article, and shall be conditioned upon the
30 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
2 to any person or revoke a license or permit which had
3 been granted.

4 In case the director desires to refuse a license to any
5 person, he shall notify personnel authorized to issue
6 licenses, in counties where it is expected such license
7 may be sought, of the name and address of such person
8 and such other information in relation thereto as he
9 may desire to give, and such issuing authority shall not
10 issue a license to such person thereafter, and shall report
11 to the director any application made therefor. In case
12 any issuing authority shall, after receiving such notice
13 knowingly issue such license, he shall be guilty of a
14 misdemeanor. The director may revoke any such license
15 so wrongfully issued. The violation of any of the pro-
16 visions of this chapter by any person holding a license
17 shall be sufficient cause for the director to refuse or
18 revoke a license.

19 All licenses and permits authorized by this chapter
20 to be granted shall be deemed to have been granted by
21 the director, and the power and authority to revoke such
22 licenses is vested in the director. Upon the revocation
23 of any license, the one to whom the same was issued
24 shall, upon having knowledge of such revocation, forth-

25 with deliver the license and tag so issued to him to the
26 director, his agent, or the clerk of any county court. A
27 clerk shall transmit the same to the director.

28 The hunting license of any person convicted under
29 section fifty-seven, article two, chapter twenty of the
30 code of West Virginia, one thousand nine hundred thirty-
31 one, as amended, shall be revoked, and such person shall
32 not be issued any other hunting license for a period of
33 five years: *Provided*, That any person heretofore or
34 hereafter convicted of any offense under section eleven,
35 article seven, chapter sixty-one, or under section fifty-
36 seven, article two, chapter twenty, other than a negligent
37 shooting which has resulted in the killing of a human
38 being, after the expiration of two years may petition
39 the director for reinstatement of all hunting license
40 privileges and if the director upon a hearing and full
41 investigation finds that the applicant has paid and sat-
42 isfied all claims against him, if any, and the circumstances
43 at the time and the nature of the offense indicate that
44 he is not likely again to commit a like or similar offense
45 and that the public good does not require that the ap-
46 plicant's hunting privileges remain revoked or suspended,
47 the director may enter an order restoring full hunting
48 privileges to the applicant.

**§20-2-57. Negligent shooting, wounding or killing of human
being or livestock while hunting; penalty.**

1 It shall be unlawful for any person, while engaged in
2 hunting or pursuing wild animals, wild birds or wild fowl,
3 carelessly or negligently to shoot, wound or kill any hu-
4 man being, or any livestock, or destroy or injure any other
5 chattels or property.

6 Any person who, in the act of hunting, pursuing, taking
7 or killing of wild animals or wild birds, in any manner
8 injures any person or property shall file with the director
9 a full description of the accident or other casualty, in-
10 cluding such information as the director may require.
11 Such report must be filed during a period not to exceed
12 seventy-two hours following such incident.

13 Any person violating this section shall be deemed
14 guilty of a misdemeanor, and, upon conviction thereof,

15 shall be fined not exceeding one thousand dollars, and, in
16 the discretion of the court trying the case, may in addi-
17 tion thereto be confined in the county jail for a period not
18 exceeding one year.

**§20-2-58. Shooting across road or near building or crowd;
penalty.**

1 It shall be unlawful for any person to shoot or discharge
2 any firearms across or in any public road in this state, at
3 any time, or within four hundred feet of any schoolhouse
4 or church, or within five hundred feet of any dwelling
5 house, or on or near any park or other place where per-
6 sons gather for purposes of pleasure, and any person vio-
7 lating this section shall be deemed guilty of a misde-
8 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.**

1 The director may issue a permit to any person, group
2 of persons, club or organization to hold or conduct a field
3 trial, water race or wild hunt, hereinafter referred to
4 as a trial, upon receipt of a written application setting

5 forth: (1) The name of the person, group of persons, club
6 or organization, (2) the type or kind of trial, (3) the
7 place and county in which the trial is to be held, and (4)
8 the period or date on which the trial is to be held. The
9 fee for the permit shall be five dollars.

10 No person participating in a field trial, water race or
11 wild hunt being held under a permit authorized by this
12 section shall be required to possess a state hunting
13 license.

CHAPTER 94

(House Bill No. 695—By Mr. Hawse and Mr. Bowman)

[Passed February 19, 1960; 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
2 West Virginia or Ohio to take fish or mussels for com-
3 mercial purposes from any portion or all of the main
4 stem of the Ohio river bordering West Virginia. Said
5 license shall be required of every person engaged at
6 any time in taking fish or mussels for commercial
7 purposes.

8 All nets, traps or other devices used to take fish or
9 mussels according to the provisions of this section shall
10 be plainly marked with a durable plate or tag bearing
11 the name and address of the owner of said nets, traps or
12 other devices and an accurate report of any fish or mus-
13 sels caught therein shall be submitted to the director by
14 the license holder. Species of fish which may be taken,
15 seasons for taking, type of gear, catch limitations, and
16 the frequency and content of said report and other
17 necessary requirements shall be determined by the
18 director in his rules and regulations.

19 The fee for such license shall be twenty-five dollars for
20 West Virginia residents and one hundred dollars for
21 Ohio residents and the license shall expire on the first
22 day of January following the date of issue.

CHAPTER 95

(House Bill No. 747—By Mr. Hawse and Mr. Edgar)

[Passed March 5, 1969; 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.

1 The periods of each year between March first and May
2 thirty-first, inclusive, and October first and December
3 thirty-first, inclusive, are hereby designated as forest fire
4 seasons. No person shall during any such fire season, ex-
5 cept between the hours of five o'clock P.M. eastern stand-
6 ard time and five o'clock A.M. eastern standard time, set on
7 fire or cause to be set on fire any forest land, or any
8 grass, grain, stubble, slash, debris, or other inflammable
9 materials. Such prohibition of fires between five o'clock
10 A.M. eastern standard time and five o'clock P.M. eastern
11 standard time shall not be construed to include (1) small
12 fires set for the purpose of food preparation, or pro-
13 viding light or warmth around which all grass, brush,
14 stubble, or other debris has been removed for a distance
15 of ten feet, and (2) burning which may be conducted at
16 any time when the ground surrounding the burning site is
17 covered by one inch or more of snow. Any person who
18 sets or causes to be set any fire permitted by this section
19 shall not leave such fire unattended for any period of time.

20 The director or his designated appointees or employees
21 may issue permits authorizing fires prohibited by the
22 preceding paragraph. Such permits may be granted on
23 such conditions and for such periods of time as the di-
24 rector deems necessary to prevent danger from fire to
25 life or property, and noncompliance with any term of the
26 permit shall be a violation of this section. Any permit
27 which was obtained through wilful misrepresentation
28 shall be invalid. All permit holders shall take all neces-
29 sary and adequate precautions to confine and control any
30 fire permitted by the authorization; failure to take such
31 action shall be a violation of this section and shall be
32 justification for the director's obtaining a court order
33 requiring the permit holder to extinguish and cease using
34 fires during the forest fire season.

35 When the director considers it necessary to prevent
36 danger from fire to life or property, he may, with the prior
37 approval of the governor, prohibit the starting of and
38 require the extinguishment of any fire in any forest area

39 designated by the director, and such action may include
40 any fire for which a permit has been issued under the
41 preceding paragraph. In addition, if so deemed necessary,
42 the director may, with the prior approval of the gov-
43 ernor, designate any forest area as a danger area and
44 prohibit entry thereon or use thereof except for the
45 purposes and on the conditions he designates. The di-
46 rector by proclamation shall establish such areas and
47 designate which fires are prohibited therein; and if a
48 danger area is established, he shall announce the pur-
49 poses for which and conditions under which entry thereon
50 or use thereof may be made. Action hereunder may be
51 taken by the director at any time during the year. Notice
52 of any proclamation hereunder shall be posted on each
53 primary road at the entrance to the designated areas and
54 copies of the proclamation shall be furnished at the time
55 of posting to newspapers, radio stations and television
56 stations which serve the area designated. The proclama-
57 tion shall not be effective until twenty-four hours after
58 it is posted as herein provided. Any proclamation here-
59 under shall remain in force until the director, with the
60 approval of the governor, by order terminates it. The
61 order shall designate the time of termination, and notice
62 of any such order shall be furnished to each newspaper,
63 radio station and television station which received a copy
64 of the proclamation. The posted notices shall be re-
65 moved as soon as possible after termination of any such
66 proclamation. Any person who starts or fails to extin-
67 guish a fire so prohibited or enters or uses a danger area
68 otherwise than permitted shall be guilty of a violation of
69 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
2 or guides, or as a servant, agent or guide of any other
3 person, shall at any time build or use any fire in any
4 field, in any public or private road, or in any area adja-

5 cent to or in any forest land in this state, shall, before
6 leaving such fire for any period of time, totally extin-
7 guish the same.

8 Any person or his agent or employee who shall set or
9 cause to be set any fire at any time in the use and occupa-
10 tion of any land on which the burning was being done,
11 or who shall permit any such fire to escape to the lands
12 of another, shall be in violation of the provisions of this
13 section.

14 A person shall not at any time throw or place any
15 lighted match, cigar, cigarette, firecracker or lighted ma-
16 terial on any forest land, private road, public highway or
17 railroad right-of-way within this state.

18 Any person who violates any provision of this section
19 shall be guilty of a misdemeanor.

**§20-3-10. Spark arresters for sawmills, etc.; risk and hazard
reduction to protect against fires.**

1 No person, firm or corporation shall use or operate in
2 forest land, or within one eighth of a mile therefrom, a
3 sawmill, a power shovel, or an engine or machine cap-
4 able of throwing sparks, unless the equipment is pro-
5 vided with an adequate spark arrester. Escape of fire from
6 such equipment shall be prima facie evidence that such
7 appliance was not maintained properly in compliance
8 with this section.

9 Any person, firm, or corporation owning any land and
10 knowing of inflammable waste disposal on said land,
11 and any person, firm, or corporation using any land for
12 the purpose of inflammable waste disposal, shall remove
13 annually all grass, brush, debris and other inflammable
14 material adjacent to such disposal areas to provide ade-
15 quate protection to prevent the escape of fire to adjacent
16 lands. Escape of fire from any such disposal area shall
17 be prima facie evidence that this section had not been
18 complied with.

19 Any person, firm or corporation violating this section
20 shall be guilty of a misdemeanor.

CHAPTER 96

(Senate Bill No. 23—By Mr. Jackson, Mr. President,
and Mr. Gainer)

[Passed March 3, 1969; in effect July 1, 1969. Approved by the Governor.]

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-2. Definitions.
- §20-5A-3. General powers and duties of chief of division and board with respect to pollution.
- §20-5A-3a. Standards of water quality.
- §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-11. Compliance with orders of chief.
- §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-12a. Emergency orders.
- §20-5A-13. Time extensions.
- §20-5A-14. Control by state as to pollution; continuing jurisdiction.
- §20-5A-15. Appeal to water resources board.
- §20-5A-16. Judicial review.
- §20-5A-17. Injunctive relief.
- §20-5A-19. Violations; criminal penalties.
- §20-5A-22. Existing rights and remedies preserved; article for benefit of state only.

§20-5A-2. Definitions.

- 1 Unless the context in which used clearly requires a
- 2 different meaning, as used in this article:
- 3 (a) "Director" shall mean the director of the depart-
- 4 ment of natural resources;
- 5 (b) "Board" shall mean the state water resources board;

6 (c) "Chief" shall mean the chief of the division of
7 water resources of the department of natural resources;

8 (d) "Person," "persons" or "applicant" shall mean any
9 public or private corporation, institution, association, firm
10 or company organized or existing under the laws of this
11 or any other state or country; state of West Virginia;
12 governmental agency; political subdivision; county court;
13 municipal corporation; industry; sanitary district; public
14 service district; drainage district; soil conservation dis-
15 trict; watershed improvement district; partnership; trust;
16 estate; person or individual; group of persons or in-
17 dividuals acting individually or as a group; or any other
18 legal entity whatever;

19 (e) "Water resources," "water" or "waters" shall mean
20 any and all water on or beneath the surface of the
21 ground, whether percolating, standing, diffused or flow-
22 ing, wholly or partially within this state, or bordering
23 this state and within its jurisdiction, and shall include,
24 without limiting the generality of the foregoing, natural
25 or artificial lakes, rivers, streams, creeks, branches, brooks,
26 ponds (except farm ponds, industrial settling basins and
27 ponds and water treatment facilities), impounding reser-
28 voirs, springs, wells and watercourses;

29 (f) "Pollution" shall mean (1) the discharge, release, es-
30 cape, deposit or disposition, directly or indirectly, of treat-
31 ed or untreated sewage, industrial wastes, or other wastes,
32 of whatever kind or character, in or near any waters of the
33 state, in such condition, manner or quantity, as does, will,
34 or is likely to (A) contaminate or substantially contribute
35 to the contamination of any of such waters, or (B) alter or
36 substantially contribute to the alteration of the physical,
37 chemical or biological properties of any of such waters, if
38 such contamination or alteration, or the resulting contami-
39 nation or alteration where a person only contributes there-
40 to, is to such an extent as to make any of such waters (i)
41 directly or indirectly harmful, detrimental or injurious to
42 the public health, safety and welfare, or (ii) directly or in-
43 directly detrimental to existing animal, bird, fish, aquatic
44 or plant life, or (iii) unsuitable for present or future do-
45 mestic, commerical, industrial, agricultural, recreational,
46 scenic or other legitimate uses; and shall also mean (2) the

47 discharge, release, escape, deposit, or disposition, directly
48 or indirectly of treated or untreated sewage, industrial
49 wastes or other wastes, of whatever kind or character, in
50 or near any waters of the state in such condition, manner
51 or quantity, as does, will, or is likely to reduce the quality
52 of the waters of the state below the standards established
53 therefor in the rules and regulations of the board;

54 (g) "Sewage" shall mean water-carried human or
55 animal wastes from residences, buildings, industrial
56 establishments or other places, together with such ground
57 water infiltration and surface waters as may be present;

58 (h) "Industrial wastes" shall mean any liquid, gaseous,
59 solid or other waste substance, or a combination thereof,
60 resulting from or incidental to any process of industry,
61 manufacturing, trade or business, or from or incidental to
62 the development, processing or recovery of any natural
63 resources; and the admixture with such industrial wastes
64 of sewage or other wastes, as hereinafter defined, shall
65 also be considered "industrial wastes" within the meaning
66 of this article;

67 (i) "Other wastes" shall mean garbage, refuse, de-
68 cayed wood, sawdust, shavings, bark and other wood
69 debris and residues, sand, lime, cinders, ashes, offal, night
70 soil, silt, oil, tar, dyestuffs, acids, chemicals, and all other
71 materials and substances not sewage or industrial wastes
72 which may cause or might reasonably be expected to
73 cause or to contribute to the pollution of any of the
74 waters of the state;

75 (j) "Establishment" shall mean an industrial establish-
76 ment, mill, factory, tannery, paper or pulp mill, mine, col-
77 liery, breaker or mineral processing operation, quarry, re-
78 finery, well, and each and every industry or plant or
79 works or activity in the operation or process of which
80 industrial wastes, or other wastes are produced;

81 (k) "Sewer system" shall mean pipelines or conduits,
82 pumping stations, force mains and all other constructions,
83 facilities, devices and appliances appurtenant thereto,
84 used for collecting or conducting sewage, industrial
85 wastes or other wastes to a point of disposal or treat-
86 ment;

87 (l) "Treatment works" shall mean any plant, facility,
88 means, system, disposal field, lagoon, pumping station,
89 constructed drainage ditch or surface water intercepting
90 ditch, diversion ditch above or below the surface of the
91 ground, settling tank or pond, earthen pit, incinerator,
92 area devoted to sanitary landfills, or other works not
93 specifically mentioned herein, installed for the purpose
94 of treating, neutralizing, stabilizing, holding or disposing
95 of sewage, industrial wastes or other wastes or for the
96 purpose of regulating or controlling the quality and rate
97 of flow thereof;

98 (m) "Disposal system" shall mean a system for treat-
99 ing or disposing of sewage, industrial wastes, or other
100 wastes, or the effluent therefrom, either by surface or
101 underground methods, and shall be construed to include
102 sewer systems, the use of subterranean spaces, treatment
103 works, disposal wells and other systems;

104 (n) "Outlet" shall mean the terminus of a sewer system
105 or the point of emergence of any water-carried sewage,
106 industrial wastes, or other wastes, or the effluent there-
107 from, into any of the waters of this state;

108 (o) "Activity" or "activities" shall mean any activity or
109 activities for which a permit is required by the provisions
110 of section five of this article;

111 (p) "Disposal well" shall mean any well drilled or used
112 for the injection or disposal of treated or untreated sew-
113 age, industrial wastes or other wastes into underground
114 strata;

115 (q) "Well" shall mean any shaft or hole sunk, drilled,
116 bored or dug into the earth or into underground strata
117 for the extraction or injection or placement of any liquid
118 or gas, or any shaft or hole sunk or used in conjunction
119 with such extraction or injection or placement. The term
120 "well" shall not have included within its meaning any
121 shaft or hole sunk, drilled, bored or dug into the earth
122 for the sole purpose of core drilling or pumping or ex-
123 tracting therefrom potable, fresh or usable water for
124 household, domestic, industrial, agricultural or public use;
125 and

126 (r) "Code" shall mean the code of West Virginia, one
127 thousand nine hundred thirty-one, as amended.

**§20-5A-3. General powers and duties of chief of division and
board with respect to pollution.**

1 (a) In addition to all other powers and duties of the
2 chief of the department's division of water resources, as
3 prescribed in this article or elsewhere by law, the chief,
4 under the supervision of the director, shall have and may
5 exercise the following powers and authority and shall
6 perform the following duties:

7 (1) To encourage voluntary cooperation by all per-
8 sons in controlling and reducing the pollution of the
9 waters of this state, and to advise, consult and cooperate
10 with all persons, all agencies of this state, the federal
11 government or other states, and with interstate agencies
12 in the furtherance of the purposes of this article, and
13 to this end and for the purpose of studies, scientific or
14 other investigations, research, experiments and demon-
15 strations pertaining thereto, the department may receive
16 moneys from such agencies, officers and persons on behalf
17 of the state. The department shall pay all moneys so
18 received into a special fund hereby created in the state
19 treasury, which fund shall be expended under the direc-
20 tion of the chief solely for the purpose or purposes for
21 which the grant, gift or contribution shall have been
22 made;

23 (2) To encourage the formulation and execution of
24 plans by cooperative groups or associations of municipal
25 corporations, industries, and other users of waters of
26 the state, who, jointly or severally, are or may be the
27 source of pollution of such waters, for the control and
28 reduction of pollution;

29 (3) To encourage, participate in, or conduct or cause
30 to be conducted studies, scientific or other investigations,
31 research, experiments and demonstrations relating to
32 water pollution, and the causes, control and reduction
33 thereof, and to collect data with respect thereto, all as
34 may be deemed advisable and necessary to carry out
35 the purposes of this article;

36 (4) To study and investigate all problems concerning
37 water flow, water pollution and the control and re-
38 duction of pollution of the waters of the state, and to
39 make reports and recommendations with respect thereto;

40 (5) To collect and disseminate information relating
41 to water pollution and the control and reduction thereof;

42 (6) To develop a public education and promotion
43 program to aid and assist in publicizing the need of
44 and securing support for pollution control and abate-
45 ment;

46 (7) To sample ground and surface water with suffi-
47 cient frequency to ascertain the standards of purity or
48 quality from time to time of the waters of the state;

49 (8) To develop programs for the control and re-
50 duction of the pollution of the waters of the state;

51 (9) To exercise general supervision over the admin-
52 istration and enforcement of the provisions of this article,
53 and all rules, regulations, permits and orders issued
54 pursuant to the provisions of this article;

55 (10) In cooperation with the college of engineering
56 at West Virginia University, to conduct studies, scien-
57 tific or other investigations, research, experiments and
58 demonstrations in an effort to discover economical and
59 practical methods for the elimination, disposal, control and
60 treatment of sewage, industrial wastes, and other wastes,
61 and the control and reduction of water pollution, and
62 to this end, the chief may cooperate with any public or
63 private agency and receive therefrom, on behalf of the
64 state, and for deposit in the state treasury, any moneys
65 which such agency may contribute as its part of the
66 expenses thereof, and all gifts, donations or contribu-
67 tions received as aforesaid shall be expended by the
68 chief according to the requirements or directions of the
69 donor or contributor without the necessity of an appro-
70 priation therefor, except that an accounting thereof shall
71 be made in the fiscal reports of the department;

72 (11) To require the prior submission of plans, speci-
73 fications, and other data relative to, and to inspect the
74 construction and operation of, any activity or activities
75 in connection with the issuance and revocation of such

76 permits as are required by this article, or as he deems
77 necessary to carry out the provisions of this article or
78 to carry out the rules and regulations adopted pursuant
79 to the provisions of this article; and

80 (12) To require any and all persons directly or in-
81 directly discharging, depositing or disposing of treated
82 or untreated sewage, industrial wastes, or other wastes,
83 or the effluent therefrom, into or near any waters of
84 the state or into any underground strata, and any and
85 all persons operating an establishment which produces
86 or which may produce or from which escapes, releases
87 or emanates or may escape, release or emanate treated
88 or untreated sewage, industrial wastes or other wastes
89 or the effluent therefrom, into or near any waters of
90 the state or into any underground strata, to file with
91 the division of water resources such information as the
92 chief may require in a form or manner prescribed by
93 him for such purpose, including, but not limited to,
94 data as to the kind, characteristics, amount and rate
95 of flow of any such discharge, deposit, escape, release
96 or disposition.

97 (b) In addition to all other powers and duties of
98 the water resources board, as prescribed in this article
99 or elsewhere by law, the board shall have and may
100 exercise the following powers and authority and shall
101 perform the following duties:

102 (1) To cooperate with any interstate agencies for
103 the purpose of formulating, for submission to the Legis-
104 lature, interstate compacts and agreements relating to
105 the control and reduction of water pollution; and

106 (2) To adopt, modify, repeal and enforce rules and
107 regulations, in accordance with the provisions of chapter
108 twenty-nine-a of this code, (A) implementing and mak-
109 ing effective the declaration of policy contained in section
110 one of this article and the powers, duties and responsi-
111 bilities vested in the board and the chief by the provisions
112 of this article and otherwise by law; (B) preventing,
113 controlling and abating pollution; and (C) establishing
114 standards of quality for the waters of the state under

115 such conditions as the board may prescribe for the pre-
116 vention, control and abatement of pollution.

117 (c) The board is hereby authorized to hire one or
118 more individuals to serve as hearing examiners on a
119 full or part-time basis. Such individuals may be at-
120 torneys at law admitted to practice before any circuit
121 court of this state. All such hearing examiners shall be
122 individuals authorized to take depositions under the
123 laws of this state.

124 (d) The board, or any member thereof, and the chief,
125 and their duly authorized representatives, shall have
126 the power and authority to make investigations, inspec-
127 tions and inquiries concerning compliance with the pro-
128 visions of this article, or any order made and entered
129 in accordance with the provisions of this article, or any
130 rule or regulation promulgated by the board, or with
131 the terms and conditions of any permit issued in accord-
132 ance with the provisions of section seven of this article.
133 In order to make such investigations, inspections and
134 inquiries, the board, or any member thereof, and the
135 chief, and their duly authorized representatives, shall
136 have the power and authority to enter at all reasonable
137 times upon any private or public property, subject to
138 responsibility for their own safety and for any damage
139 to the property entered. All persons shall cooperate
140 fully with the person entering such property for such
141 purposes. Upon refusal of the person owning or con-
142 trolling such property to permit such entrance or the
143 making of such inspections, investigations and inquiries,
144 the board or any member thereof or the chief may apply
145 to the circuit court of the county in which such prop-
146 erty is located, or to the judge thereof in vacation, for
147 an order authorizing such entrance and the making of
148 such inspections, investigations and inquiries; and juris-
149 diction is hereby conferred upon such court or judge to
150 enter such order upon a showing that the relief asked
151 is necessary for the proper enforcement of this article.
152 A dwelling occupied for residential purposes shall not
153 be entered without a search warrant.

154 (e) The board is hereby authorized and empowered
155 to investigate and ascertain the need and factual bases for

156 the establishment of public service districts as a means
157 of controlling and reducing pollution from unincorporated
158 communities and areas of the state, and to present re-
159 ports and recommendations thereon to the county courts
160 of the areas concerned, together with a request that such
161 county courts create a public service district or dis-
162 tricts, as therein shown to be needed and required and
163 as provided in article thirteen-a, chapter sixteen of this
164 code. In the event a county court shall fail to act to
165 establish a county-wide public service district, the board
166 shall act jointly with the state director of health, the
167 director of the department of natural resources and the
168 chief of the division of water resources to order the
169 county court to take action to establish such public ser-
170 vice district or districts as may be necessary to control, re-
171 duce or abate the pollution, and when so ordered the
172 county court members must act to establish such a county-
173 wide public service district.

§20-5A-3a. Standards of water quality.

1 (a) In order to carry out the purposes of this article,
2 the board may promulgate rules and regulations setting
3 standards of water quality to be applicable to the waters
4 of this state, which standards of quality shall be such
5 as to protect the public health and welfare, wildlife, fish
6 and aquatic life, and the present and prospective future
7 uses of such waters for domestic, agricultural, industrial,
8 recreational, scenic and other legitimate beneficial uses
9 thereof.

10 (b) In establishing, amending, revising or repealing
11 rules and regulations relating to water quality standards,
12 the board shall follow all relevant procedures provided
13 by article three, chapter twenty-nine-a of the code.

14 (c) All persons affected by rules and regulations
15 establishing water quality standards shall promptly com-
16 ply therewith: *Provided*, That where necessary and
17 proper, the chief may specify a reasonable time for per-
18 sons not complying with such standards to comply with
19 such standards, and upon the expiration of any such
20 period of time, the chief shall revoke or modify any per-
21 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
40 give the approval or recommendation required by the
41 federal law, unless the federal law specifically requires
42 the approval or recommendation of some other state
43 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-

31 mentioned activities cause, may cause or might reason-
32 ably be expected to cause a discharge into or pollution of
33 waters of the state; or

34 (7) Operate any disposal well for the injection or
35 reinjection underground of any industrial wastes, in-
36 cluding, but not limited to, liquids or gases, or convert
37 any well into such a disposal well or plug or abandon any
38 such disposal well.

39 (b) Where a person has a number of outlets emerging
40 into the waters of this state in close proximity to one
41 another, such outlets may be treated as a unit for the
42 purposes of this section, and only one permit issued for
43 all such outlets.

**§20-5A-6. Form of application for permit; information re-
quired; fees.**

1 The chief shall prescribe a form of application for all
2 permits for any activity specified in section five of this
3 article relating other than solely to sewage. The director
4 of the division of sanitary engineering of the state de-
5 partment of health, in cooperation with the chief, shall
6 prescribe a form of application for all permits for any
7 activity relating solely to sewage. All applications for
8 permits for any activity relating other than solely to
9 sewage shall be submitted to the chief of the division
10 of water resources, and those applications for permits for
11 any activity relating solely to sewage shall be submitted
12 to the division of sanitary engineering of the state de-
13 partment of health. All applications must be submitted on
14 a form as prescribed above. An applicant shall furnish
15 all information reasonably required by any such form,
16 including without limiting the generality of the fore-
17 going, a plan of maintenance and proposed method of
18 operation of the activity or activities. Notwithstanding
19 anything in this article to the contrary, where the activity
20 is an integral part of a secret operating process, the re-
21 quired information shall be limited solely to data which
22 will show the kind, characteristics, amount and rate of
23 flow of sewage, industrial wastes, or other wastes, or the
24 effluent therefrom, into the waters of the state. Until all

25 such required information is furnished, an application
26 shall not be considered a complete application.

27 A filing fee of ten dollars shall accompany the applica-
28 tion when filed with the division of water resources.
29 The filing fee shall be deposited in the state treasury to
30 the credit of the state general fund. The filing fee shall not
31 be returned to the applicant.

**§20-5A-7. Procedure concerning permits required under
article; transfer of permits.**

1 (a) The director of the division of sanitary engineering
2 shall promptly make his determination concerning the
3 health aspects of any proposed activity relating solely to
4 sewage. If the plans and specifications of the proposed
5 activity are in accord with all reasonable requirements
6 of the department of health, the director of the division
7 of sanitary engineering shall approve the application and
8 issue the department of health's certificate or permit
9 therefor. If the application is approved, the director of
10 the division of sanitary engineering shall promptly for-
11 ward his department's certificate or permit, together with
12 the application and the information and data submitted
13 therewith, to the division of water resources for the
14 action of the chief thereof. Any denial of the application
15 by the director of the division of sanitary engineering
16 shall be governed by the provisions of chapter sixteen
17 of this code and not by the provisions of this article.

18 (b) The chief or his duly authorized representatives
19 shall conduct such investigation as is deemed necessary
20 and proper in order to determine whether any such ap-
21 plication should be granted or denied. In making such in-
22 vestigation and determination as to any application per-
23 taining to any activity specified in subdivision (7) of
24 subsection (a) of section five of this article, the chief
25 shall consult with the director of the state geological and
26 economic survey and appropriate officials of the state de-
27 partment of health, and all such persons shall cooperate
28 with the chief and assist him in carrying out the duties
29 and responsibilities imposed upon him under the provi-
30 sions of this article and the rules and regulations of
31 the board; such cooperation shall include, but not be

32 limited to, a written recommendation approving or dis-
33 approving the granting of the permit and the reason or
34 reasons for such recommendation.

35 (c) The department's permit shall be issued upon such
36 reasonable terms and conditions as the chief may direct
37 if (1) the certificate or permit of the department of
38 health was issued (in those cases where the director of
39 the division of sanitary engineering was required to act
40 as required in subsection (a) hereof); and (2) the appli-
41 cation, together with all supporting information and data
42 and other evidence, establishes that any and all dis-
43 charges, or releases, escapes, deposits, disposition of
44 treated or untreated sewage, industrial wastes, or other
45 wastes, or the effluent therefrom, resulting from the ac-
46 tivity or activities for which the application for a permit
47 was made will not cause pollution of the waters of this
48 state or violate any rules and regulations of the board:
49 *Provided*, That the chief may issue a permit wherever in
50 his judgment the water quality standards of the state may
51 be best protected by the institution of a program of phased
52 pollution abatement which under the terms of the permit
53 may temporarily allow a limited degree of pollution of the
54 waters of the state; and (3) in cases wherein it is re-
55 quired such applicant shall include the name and address
56 of the responsible agent as set forth in section eight-b
57 of this article.

58 (d) An application for a permit incident to remedial
59 action in accordance with the provisions of section eleven
60 of this article shall be processed and decided as any other
61 application for a permit required under the provisions of
62 section five of this article.

63 (e) An application for any permit shall be acted upon
64 by the chief, and the department's permit delivered or
65 mailed, or a copy of any order of the chief denying any
66 such application delivered or mailed to the applicant by
67 the chief within forty-five days after the date upon which
68 such application was received from the applicant by the
69 division of sanitary engineering where the application
70 relates solely to sewage or within thirty days after the
71 date upon which such application was received from the

72 applicant by the division of water resources in all other
73 cases.

74 (f) When it is established that an application for a per-
75 mit should be denied, the chief shall make and enter
76 an order to that effect, which order shall specify the
77 reasons for such denial, and shall cause a copy of such
78 order to be served on the applicant by registered or certi-
79 fied mail. The chief shall also cause a notice to be served
80 with the copy of such order, which notice shall advise
81 the applicant of his right to appeal to the board by filing
82 a notice of appeal, on the form prescribed by the board
83 for such purpose, with the board, in accordance with the
84 provisions of section fifteen of this article, within thirty
85 days after the date upon which the applicant received
86 the copy of such order. However, an applicant may alter
87 the plans and specifications for the proposed activity and
88 submit a new application for any such permit, in which
89 event the procedure hereinbefore outlined with respect
90 to an original application shall apply.

91 (g) Upon the sale of property which includes an
92 activity for which the department's permit was granted,
93 the permit shall be transferable to the new owner, but
94 the transfer shall not become effective until the provi-
95 sions of section eight-b of this article are fully complied
96 with, and until such transfer is made in the records of
97 the division of water resources.

**§20-5A-8. Inspections; orders to compel compliance with per-
mits; service of orders; prior permits.**

1 After issuance of the department's permit for any
2 activity, the chief or his duly authorized representatives
3 may make field inspections of the work on the activity,
4 and, after completion thereof, may inspect the completed
5 activity, and, from time to time, may inspect the main-
6 tenance and operation of the activity.

7 To compel compliance with the terms and conditions
8 of the department's permit for any activity, the chief is
9 hereby authorized, after at least twenty days' notice, to
10 make and enter an order revoking or suspending such
11 permit.

12 The chief shall cause a copy of any such order to be
13 served by registered or certified mail or by a conservation
14 officer or other law-enforcement officer upon the person
15 to whom any such permit was issued. The chief shall
16 also cause a notice to be served with the copy of such
17 order, which notice shall advise such person of his right
18 to appeal to the board by filing a notice of appeal on
19 the form prescribed by the board for such purpose, with
20 the board, in accordance with the provisions of section
21 fifteen of this article, within thirty days after the date
22 upon which such person received the copy of such order.

23 All permits for the discharge of sewage, industrial
24 wastes or other wastes into any waters of the state issued
25 by the water resources board prior to July one, one thou-
26 sand nine hundred sixty-four and which have not been
27 revoked prior to the effective date of this article shall
28 be enforced under the terms and provisions of this
29 article, and shall remain valid unless and until revoked
30 or suspended in accordance with the terms and provisions
31 of this article or in accordance with the terms and pro-
32 visions of any rules or regulations promulgated there-
33 under.

§20-5A-8b. Responsible agent; duties, notification of change.

1 It shall be the duty of every operator of a well, from
2 and after the effective date of this article, in cases wherein
3 such well operator is the holder of a permit issued pur-
4 suant to the provisions of this article to designate an
5 individual who is a resident of this state as a responsible
6 agent for such well. The responsible agent shall be the
7 attorney in fact for and in behalf of the operator, and
8 upon whom notices, orders or other communications
9 issued pursuant to this article may be served, and upon
10 whom process may be served. In cases wherein there
11 is a responsible agent designated under the provisions
12 of section one-k, article four, chapter twenty-two of this
13 code, such responsible agent shall be deemed to be the
14 responsible agent required by this section, and shall be
15 so appointed by the operator. Every well operator so
16 appointing an agent, shall within five days after the
17 termination of such appointment, notify the department

18 of such termination, and designate a new responsible
19 agent.

§20-5A-9. Information to be filed by certain persons with division of water resources; tests.

1 Any and all persons directly or indirectly discharging
2 or depositing treated or untreated sewage, industrial
3 wastes, or other wastes, or the effluent therefrom, into or
4 near any waters of the state shall file with the division
5 of water resources such information as the chief thereof
6 may reasonably require on forms prescribed by him for
7 such purpose, including but not limited to, data as to the
8 kind, characteristics, amount and rate of flow of such
9 discharge or deposit. If the chief has reasonable cause
10 to believe that any establishment is, or may be, polluting
11 the waters of the state, he may require any person
12 owning, operating or maintaining such establishment to
13 furnish such information as may reasonably be required
14 to ascertain whether such establishment is, or may be
15 causing such pollution, and he may conduct any test or
16 tests that he may deem necessary or useful in making
17 his investigation and determination.

§20-5A-10. Orders of chief to stop or prevent discharges or deposits or take remedial action; service of orders.

1 If the chief, on the basis of investigations, inspections
2 and inquiries, determines that any person who does not
3 have a valid permit issued pursuant to the provisions of
4 this article is causing the pollution of any of the waters
5 of the state, or does on occasions cause pollution or is
6 violating any rule or regulation of the board, he shall,
7 with the consent of the director, either make and enter
8 an order directing such person to stop such pollution or
9 the violation of the rule or regulation of the board, or
10 make and enter an order directing such person to take
11 corrective or remedial action. Such order shall also direct
12 such person to apply forthwith for a permit in accordance
13 with the provisions of sections five, six and seven of this
14 article. The chief shall fix a time limit for the completion
15 of such action. Whether the chief shall make and enter

16 an order to stop such pollution or shall make and enter an
17 order to take remedial action, in either case the person
18 so ordered may elect to cease operations of the establish-
19 ment deemed to be the source of such discharge or de-
20 posits causing pollution, if the pollution referred to in
21 the chief's order shall be stopped thereby.

22 In the sole discretion of the chief, he may postpone
23 issuing any such order if he feels such pollution can best
24 be controlled or reduced by cooperative efforts with the
25 person or persons responsible therefor.

26 The chief shall cause a copy of any such order to be
27 served by registered or certified mail or by a conservation
28 officer or other law-enforcement officer upon such person.
29 The chief shall also cause a notice to be served with the
30 copy of such order, which notice shall advise such person
31 of his right to appeal to the board by filing a notice of
32 appeal, on the form prescribed by the board for such
33 purpose, with the board, in accordance with the provi-
34 sions of section fifteen of this article.

§20-5A-11. Compliance with orders of chief.

1 Any person upon whom any order of the chief or any
2 order of the board in accordance with the provisions of
3 sections ten and fifteen of this article, has been served
4 shall fully comply therewith.

5 When such person is ordered to take remedial action
6 and does not elect to cease operation of the establishment
7 deemed to be the source of such pollution, or when such
8 ceasing does not stop the pollution, he shall forthwith
9 apply for a permit under and in accordance with the
10 provisions of sections five, six and seven of this article.
11 No such remedial action shall be taken until a permit
12 therefor has been issued; however, receipt of a permit
13 shall not in and of itself constitute remedial action.

§20-5A-11a. Power of eminent domain; procedures; legislative finding.

1 (a) When any person who is owner of an establish-
2 ment is ordered by the chief to stop or prevent pollution
3 or the violation of the rules and regulations of the board
4 or to take corrective or remedial action, compliance with

5 which order will require the acquisition, construction
6 or installation of a new treatment works or the extension
7 or modification of or an addition to an existing treatment
8 works, (which acquisition, construction, installation, ex-
9 tension, modification or addition of or to a treatment
10 works pursuant to such order is referred to in this section
11 as "such compliance") such person may exercise the
12 power of eminent domain in the manner provided in
13 chapter fifty-four of this code, to acquire such real
14 property or interests in real property as may be deter-
15 mined by the chief to be reasonably necessary for such
16 compliance.

17 (b) Upon application by such person and after twenty
18 days' written notice to all persons whose property may
19 be affected, the chief shall make and enter an order
20 determining the specific real property or interests in
21 real property, if any, which are reasonably necessary
22 for such compliance. In any proceeding under this sec-
23 tion, the person seeking to exercise the right of eminent
24 domain herein conferred shall establish the need for the
25 amount of land sought to be condemned and that such
26 land is reasonably necessary for the most practical method
27 for such compliance.

28 (c) The right of eminent domain herein conferred shall
29 not apply to the taking of any dwelling house or for the
30 taking of any land within five hundred feet of any such
31 dwelling house.

32 (d) The Legislature hereby declares and finds that
33 the taking and use of real property and interests in real
34 property determined to be reasonably necessary for such
35 compliance promotes the health, safety and general wel-
36 fare of the citizens of this state by reducing and abating
37 pollution in the waters of this state in which the public
38 at large has an interest and otherwise; that such taking
39 and use are necessary to provide and protect a safe, pure
40 and adequate water supply to the municipalities and
41 citizens of the state; that because of topography, pat-
42 terns of land development and ownership and other
43 factors it is impossible in many cases to effect such com-
44 pliance without the exercise of the power of eminent
45 domain and that the use of real property or interests in

46 real property to effect such compliance is a public use
47 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 re-
quired; finances and funds.**

1 When such person is ordered to take remedial action
2 and does not elect to cease operation of the establish-
3 ment deemed to be the source of such pollution or when
4 ceasing does not stop the pollution, such person shall
5 immediately take or begin appropriate steps or pro-
6 ceedings to carry out such remedial action. In any such
7 case it shall be the duty of each individual offender, each
8 member of a partnership, each member of the governing
9 body of a municipal corporation and each member of
10 the board of directors or other governing body of a pri-
11 vate corporation, association or other legal entity what-
12 ever, to see that appropriate steps or proceedings to
13 comply with such order are taken or begun immediately.
14 The chief may require progress reports, at such time in-
15 tervals as he deems necessary, setting forth the steps
16 taken, the proceedings started and the progress made to-
17 ward completion of such remedial action. All such re-
18 medial action shall be diligently prosecuted to comple-
19 tion.

20 Failure of the governing body of a municipal corpora-
21 tion, or the board of directors or other governing body
22 of any private corporation, association or other legal en-
23 tity whatever, to provide immediately for the financing
24 and carrying out of such remedial action, as may be
25 necessary to comply with said order, shall constitute
26 failure to take or begin appropriate steps or proceedings
27 to comply with such order. If such person be a municipal
28 corporation, the cost of all such remedial action as may
29 be necessary to comply with said order shall be paid out
30 of funds on hand available for such purpose, or out of the
31 general funds of such municipal corporation, not other-
32 wise appropriated, and if there be not sufficient funds on
33 hand or unappropriated, then the necessary funds shall be
34 raised by the issuance of bonds, any direct general obliga-
35 tion bond issue to be subject to the approval of the state

36 sinking fund commission and the attorney general of the
37 state of West Virginia.

38 If the estimated cost of the remedial action to be taken
39 by a municipal corporation to comply with such order is
40 such that any bond issue necessary to finance such action
41 would not raise the total outstanding bonded indebted-
42 ness of such municipal corporation in excess of the con-
43 stitutional limit imposed upon such indebtedness by the
44 constitution of this state, then and in that event the
45 necessary bonds may be issued as a direct obligation of
46 such municipal corporation, and retired by a general
47 tax levy to be levied against all property within the limit
48 of such municipal corporation listed and assessed for
49 taxation. If the amount of such bonds necessary to be
50 issued would raise the total outstanding bonded indebted-
51 ness of such municipal corporation above said constitu-
52 tional limitation on such indebtedness, or if such munic-
53 ipal corporation by its governing body shall decide
54 against the issuance of direct obligation bonds, then such
55 municipal corporation shall issue revenue bonds and pro-
56 vide for the retirement thereof in the same manner and
57 subject to the same conditions as provided for the issuance
58 and retirement of bonds in chapter twenty-five, acts of
59 the Legislature, first extraordinary session, one thousand
60 nine hundred thirty-three, and any amendment thereof:
61 *Provided*, That the provisions of section six of the above-
62 mentioned act, allowing objections to be filed with the
63 governing body, and providing that a written protest of
64 thirty percent or more of the owners of real estate shall
65 require a four-fifths vote of the governing body for the
66 issuance of said revenue bonds, shall not apply to bond
67 issues proposed by any municipal corporation to comply
68 with an order made and entered under the authority of
69 this article, and such objections and submission of written
70 protest shall not be authorized, nor shall the same, if
71 made or had, operate to justify or excuse failure to com-
72 ply with such order.

73 The funds made available by the issuance of either
74 direct obligation bonds or revenue bonds, as herein pro-
75 vided, shall constitute a "sanitary fund," and shall be
76 used for no other purpose than for carrying out such

77 order; no public money so raised shall be expended by
78 any municipal corporation for any purpose enumerated
79 in this article, unless such expenditure and the amount
80 thereof have been approved by the chief. The acquisition,
81 construction or installation, use and operation, repair,
82 modification, alteration, extension, equipment, custody
83 and maintenance of any disposal system by any municipi-
84 pal corporation, as herein provided, and the rights,
85 powers and duties with respect thereto, of such municipal
86 corporation and the respective officers and departments
87 thereof, whether the same shall be financed by the is-
88 suance of revenue or direct obligation bonds, shall be
89 governed by the provisions of said chapter twenty-five,
90 acts of the Legislature, first extraordinary session, one
91 thousand nine hundred thirty-three, and any amend-
92 ments thereof.

§20-5A-12a. Emergency orders.

1 Whenever the chief finds that any discharge, release,
2 escape, deposit or disposition of treated or untreated sew-
3 age, industrial wastes or other wastes into any waters
4 within this state, when considered alone or in conjunction
5 with other discharges, releases, escapes, deposits or dispo-
6 sitions, constitutes a clear, present and immediate danger
7 to the health of the public, or to the fitness of a private
8 or public water supply for drinking purposes, the chief
9 may, with the concurrence in writing of the director of the
10 department of natural resources and the director of the de-
11 partment of health, without notice or hearing, issue an
12 order or orders requiring the immediate cessation or
13 abatement of any such discharge, release, escape, deposit
14 or disposition, and the cessation of any drilling, redrilling,
15 deepening, casing, fracturing, pressuring, operating, plug-
16 ging, abandoning, converting or combining of any well,
17 or requiring such other action to be taken as the chief,
18 with the concurrences aforesaid, deems necessary to abate
19 such danger.

20 Notwithstanding the provisions of any other section of
21 this article, any order issued under the provisions of this
22 section shall be effective immediately and may be served
23 in the same manner as a notice may be served under the

24 provisions of section two, article seven, chapter twenty-
25 nine-a of the code. Any person to whom such order is
26 directed shall comply therewith immediately, but on
27 notice of appeal to the board shall be afforded a hearing
28 as promptly as possible, and not later than ten days after
29 the board receives such notice of appeal. On the basis of
30 such hearing, and within five days thereafter, the board
31 shall make and enter an order continuing the order of the
32 chief in effect, revoking it, or modifying it. For the pur-
33 pose of such appeal and judicial review of the order
34 entered following an appeal hearing, all pertinent pro-
35 visions of sections fifteen and sixteen of this article shall
36 govern.

§20-5A-13. Time extensions.

1 The chief shall have the authority, in his sole discretion,
2 to extend the time fixed in any order made and entered
3 by him, or the board in accordance with the provisions
4 of section fifteen of this article, within which any person
5 ordered to take remedial action who does not elect to
6 cease the operation of the establishment deemed to be
7 the source of said pollution, must complete such action.
8 upon written petition filed with him prior to the time
9 fixed in such order, when it shall appear that a good
10 faith effort to comply with said order is being made, and
11 that it shall be impossible for such person to complete
12 such remedial action within the time so fixed. When it
13 shall appear from such petition that due to wartime or
14 other governmental restrictions with respect to labor
15 or material, or both, such compliance with any such order
16 would be impossible or would place an undue burden
17 upon such person, the chief shall stay execution of any
18 such order until such time as it may satisfactorily appear
19 that such wartime or other restrictions no longer exist.
20 The chief may grant as many such extensions as he finds
21 to be warranted by the facts and circumstances involved
22 in any particular case.

**§20-5A-14. Control by state as to pollution; continuing juris-
diction.**

1 No right to violate the rules and regulations of the
2 board or to continue existing pollution of any of the

3 waters of the state shall exist nor shall such right be or
4 be deemed to have been acquired by virtue of past or
5 future pollution by any person. The right and control of
6 the state in and over the quality of all waters of the state
7 are hereby expressly reserved and reaffirmed. It is recog-
8 nized that with the passage of time, additional efforts
9 may have to be made by all persons toward control and
10 reduction of the pollution of the waters of the state,
11 irrespective of the fact that such persons may have pre-
12 viously complied with all orders of the chief or board. It
13 is also recognized that there should be continuity and
14 stability respecting pollution control measures taken in
15 cooperation with, and with the approval of, the chief, or
16 pursuant to orders of the chief or board. When a person
17 is complying with the terms and conditions of a permit
18 granted pursuant to the provisions of section seven of
19 this article or when a person has completed remedial
20 action pursuant to an order of the chief or board, addi-
21 tional efforts may be required wherever and whenever
22 the rules and regulations of the board are violated or the
23 waters of the state are polluted by such person.

§20-5A-15. Appeal to water resources board.

1 (a) Any person adversely affected by an order made
2 and entered by the chief in accordance with the provi-
3 sions of this article, or aggrieved by failure or refusal of
4 the chief to act within the time required by section seven
5 of this article on an application for a permit or aggrieved
6 by the terms and conditions of a permit granted under the
7 provisions of this article, may appeal to the water re-
8 sources board for an order vacating or modifying such
9 order, or for such order, action or terms and conditions
10 as the chief should have entered, taken or imposed.
11 The person so appealing shall be known as the appellant
12 and the chief shall be known as the appellee. If the chief
13 denies a permit because of any disapproval of a permit
14 application by one or more of the public officers re-
15 quired to review such application under the provisions of
16 subsection (b), section seven of this article, such public
17 officers shall be joined as coappellee or coappellees with
18 the chief in such appeal.

19 (b) Such appeal shall be perfected by filing a notice
20 of appeal, on the form prescribed by the board for such
21 purpose, with the board within thirty days after date
22 upon which the appellant received the copy of such order
23 or received such permit, as the case may be. The filing of
24 the notice of appeal shall not stay or suspend the execu-
25 tion of the order appealed from. If it appears to the direc-
26 tor or the board that an unjust hardship to the appellant
27 will result from the execution of the chief's order pending
28 determination of the appeal, the director or the board may
29 grant a suspension of such order and fix its terms. The
30 notice of appeal shall set forth the order or terms and
31 conditions complained of and the grounds upon which
32 the appeal is based. A copy of the notice of appeal shall
33 be filed by the board with the chief within three days
34 after the notice of appeal is filed with the board.

35 (c) Within seven days after receipt of his copy of
36 the notice of appeal, the chief shall prepare and certify
37 to the board a complete record of the proceedings out of
38 which the appeal arises including all documents and
39 correspondence in the chief's file relating to the matter
40 in question. With the consent of the board and upon such
41 terms and conditions as the board may prescribe, any
42 persons affected by any such activity or by such alleged
43 pollution may by petition intervene as a party appellant
44 or appellee. The board shall hear the appeal de novo, and
45 evidence may be offered on behalf of the appellant and
46 appellee, and, with the consent of the board, by any in-
47 tervenors.

48 (d) All of the pertinent provisions of article five, chap-
49 ter twenty-nine-a of this code shall apply to and govern
50 the hearing on appeal authorized by this section and the
51 administrative procedures in connection with and follow-
52 ing such hearing, with like effect as if the provisions of
53 said article five were set forth in extenso in this section,
54 with the following modifications or exceptions:

55 (1) Unless the board directs otherwise, the appeal hear-
56 ing shall be held in the city of Charleston, Kanawha
57 county, West Virginia; and

58 (2) In accordance with the provisions of section one,
59 article five of said chapter twenty-nine-a, all of the testi-

60 mony at any such hearing shall be recorded by steno-
61 graphic notes and characters or by mechanical means.
62 Such reported testimony shall in every appeal hearing
63 under this article be transcribed.

64 (e) Any such appeal hearing shall be conducted by a
65 quorum of the board, but the parties may by stipula-
66 tion agree to take evidence before a hearing examiner
67 employed by the board. For the purpose of conducting
68 such appeal hearing, any member of the board and the
69 secretary thereof shall have the power and authority
70 to issue subpoenas and subpoenas duces tecum in the
71 name of the board, in accordance with the provisions of
72 section one, article five, chapter twenty-nine-a of this
73 code. All subpoenas and subpoenas duces tecum shall be
74 issued and served within the time and for the fees and
75 shall be enforced, as specified in section one, article five
76 of said chapter twenty-nine-a, and all of the said section
77 one provisions dealing with subpoenas and subpoenas
78 duces tecum shall apply to subpoenas and subpoenas
79 duces tecum issued for the purpose of an appeal hearing
80 hereunder.

81 (f) Any such hearing shall be held within twenty days
82 after the date upon which the board received the timely
83 notice of appeal, unless there is a postponement or con-
84 tinuance. The board may postpone or continue any hear-
85 ing upon its own motion, or upon application of the ap-
86 pellant, the appellee or any intervenors for good cause
87 shown. The chief shall be represented at any such hear-
88 ing by the attorney general or his assistants. At any such
89 hearing the appellant and any intervenor may represent
90 himself or be represented by an attorney at law admitted
91 to practice before any circuit court of this state.

92 (g) After such hearing and consideration of all of the
93 testimony, evidence and record in the case, the board
94 shall make and enter an order affirming, modifying or
95 vacating the order of the chief, or shall make and enter
96 such order as the chief should have entered, or shall make
97 and enter an order approving or modifying the terms and
98 conditions of any permit issued. In determining its
99 course of action, the board shall take into consideration
100 not only the factors which the chief was authorized to

101 consider in making his order and in fixing the terms and
102 conditions of any permit, but also the economic feasi-
103 bility of treating and/or controlling the sewage, in-
104 dustrial wastes or other wastes involved.

105 (h) Such order shall be accompanied by findings of
106 fact and conclusions of law as specified in section three,
107 article five, chapter twenty-nine-a of this code, and a
108 copy of such order and accompanying findings and con-
109 clusions shall be served upon the appellant, and any inter-
110 venors, and their attorneys of record, if any, and upon
111 the appellee in person or by registered or certified mail.

112 (i) The board shall also cause a notice to be served
113 with the copy of such order, which notice shall advise
114 the appellant, the appellee and any intervenors of their
115 right to judicial review, in accordance with the provi-
116 sions of section sixteen of this article. The order of the
117 board shall be final unless vacated or modified upon
118 judicial review thereof in accordance with the provisions
119 of section sixteen of this article.

§20-5A-16. Judicial review.

1 (a) Any person or the chief adversely affected by
2 an order made and entered by the board after such
3 appeal hearing, held in accordance with the provisions
4 of section fifteen of this article, is entitled to judicial
5 review thereof. All of the pertinent provisions of section
6 four, article five, chapter twenty-nine-a of this code shall
7 apply to and govern such review with like effect as if
8 the provisions of said section four were set forth in
9 extenso in this section, with the following modifications
10 or exceptions:

11 (1) As to cases involving an order denying an appli-
12 cation for a permit, or approving or modifying the terms
13 and conditions of a permit, the petition shall be filed,
14 within the time specified in said section four, in the
15 circuit court of Kanawha county;

16 (2) As to cases involving an order revoking or sus-
17 pending a permit, the petition shall be filed, within the
18 time specified in said section four, in the circuit court
19 of Kanawha county; and

20 (3) As to cases involving an order directing that any
21 and all discharges or deposits of sewage, industrial wastes,
22 or other wastes, or the effluent therefrom, determined
23 to be causing pollution be stopped or prevented or else
24 that remedial action be taken, the petition shall be filed,
25 within the time specified in said section four, in the
26 circuit court of the county in which the establishment is
27 located or in which the pollution occurs.

28 (b) The judgment of the circuit court shall be final un-
29 less reversed, vacated or modified on appeal to the su-
30 preme court of appeals, in accordance with the provisions
31 of section one, article six, chapter twenty-nine-a of
32 this code, except that notwithstanding the provisions of
33 said section one the petition seeking such review must be
34 filed with said supreme court of appeals within ninety
35 days from the date of entry of the judgment of the circuit
36 court.

37 (c) Legal counsel and services for the chief in all appeal
38 proceedings in the circuit court and in the supreme court
39 of appeals of this state shall be provided by the attorney
40 general or his assistants and in appeal proceedings in the
41 circuit court by the prosecuting attorney of the county
42 in which the appeal is taken, all without additional com-
43 pensation.

§20-5A-17. Injunctive relief.

1 Upon application by the chief, the circuit courts of this
2 state or the judges thereof in vacation may by injunction
3 compel compliance with and enjoin violations of the pro-
4 visions of this article, the rules and regulations of the
5 board, the terms and conditions of any permit granted
6 under the provisions of this article, or any order of the
7 chief or board, and the venue of any such action shall
8 be the county in which the violation or noncompliance
9 exists or is taking place or in any county in which the
10 waters thereof are polluted as the result of such violation
11 or noncompliance. The court or the judge thereof in
12 vacation may issue a preliminary injunction in any case
13 pending a decision on the merits of any application filed.
14 Any other section of this code to the contrary notwith-
15 standing, the state shall not be required to furnish bond as

16 a prerequisite to obtaining injunctive relief under this
17 article.

18 An application for an injunction under the provisions
19 of this section may be filed and injunctive relief granted
20 notwithstanding that all of the administrative remedies
21 provided for in this article have not been pursued or in-
22 voked against the person or persons against whom such
23 relief is sought and notwithstanding that the person or
24 persons against whom such relief is sought have not been
25 prosecuted or convicted under the provisions of this
26 article.

27 The judgment of the circuit court upon any application
28 filed under the provisions of this article shall be final
29 unless reversed, vacated or modified on appeal to the
30 supreme court of appeals. Any such appeal shall be
31 sought in the manner provided by law for appeals from
32 circuit courts in other civil cases, except that the petition
33 seeking such review must be filed with said supreme
34 court of appeals within ninety days from the date of
35 entry of the judgment of the circuit court.

36 Legal counsel and services for the chief or the board
37 in all injunction proceedings in the circuit courts and in
38 the supreme court of appeals of this state shall be pro-
39 vided by the attorney general or his assistants and by the
40 prosecuting attorneys of the several counties as well, all
41 without additional compensation, or the chief or the
42 board, with the written approval of the attorney general,
43 may employ counsel to represent him or it in a particular
44 proceeding.

§20-5A-19. Violations; criminal penalties.

1 Any person who causes pollution or who fails or refuses
2 to discharge any duty imposed upon him by this article
3 or by any rule or regulation of the board, promulgated
4 pursuant to the provisions and intent of this article, or
5 by any order of the chief or board, or who fails or refuses
6 to apply for and obtain a permit as required by the pro-
7 visions of this article, or who fails or refuses to comply
8 with any term or condition of such permit, shall be
9 guilty of a misdemeanor, and, upon conviction thereof,
10 shall be punished by a fine of not less than one hundred

11 dollars nor more than one thousand dollars, or by im-
12 prisonment for a period not exceeding six months, or by
13 both such fine and imprisonment. Any person who wilfully
14 violates any provision of this article, or any rule or regu-
15 lation of the board, or any order of the chief or board,
16 or any term or condition of a permit, shall be guilty
17 of a misdemeanor, and, upon conviction thereof, shall be
18 punished by a fine of not less than one thousand nor more
19 than ten thousand dollars or by imprisonment not exceed-
20 ing six months or by both such fine and imprisonment.
21 Each day upon which such failure continues shall consti-
22 tute a separate offense.

23 Any person who fails or refuses to discharge any duty
24 imposed upon him by this article, or by any rule or
25 regulation of the board, or by an order of the chief or
26 board, or who fails or refuses to apply for and obtain a
27 permit as required by the provisions of this article, or by
28 any rule or regulation of the board or who fails or
29 refuses to comply with any term or condition of such
30 permit, may be prosecuted and convicted under the pro-
31 visions of this section notwithstanding that none of the
32 administrative remedies provided for in this article have
33 been pursued or invoked against said person and not-
34 withstanding that an application for an injunction under
35 the provisions of this article has not been filed against
36 such person.

37 Where a person holding a permit is carrying out a pro-
38 gram of pollution abatement or remedial action in com-
39 pliance with the conditions and terms of such permit, he
40 shall not be subject to criminal prosecution for pollution
41 recognized and authorized by such permit.

**§20-5A-22. Existing rights and remedies preserved; article for
benefit of state only.**

1 It is the purpose of this article to provide additional
2 and cumulative remedies to abate the pollution of the
3 waters of the state and nothing herein contained shall
4 abridge or alter rights of action or remedies now or here-
5 after existing, nor shall any provisions in this article, or
6 any act done by virtue of this article, be construed as
7 estopping the state, municipalities, public health offi-

8 cers, or persons as riparian owners or otherwise, in
9 the exercise of their rights to suppress nuisances or to
10 abate any pollution now or hereafter existing, or to re-
11 cover damages.

12 The provisions of this article inure solely to and are
13 for the benefit of the people generally of the state of West
14 Virginia, and this article is not intended to in any way
15 create new, or enlarge existing rights of riparian owners
16 or others. An order of the chief or of the board, the
17 effect of which is to find that pollution exists, or that
18 any person is causing pollution, or any other order, or
19 any violation of any of the provisions of this article
20 shall give rise to no presumptions of law or findings of
21 fact inuring to or for the benefit of persons other than
22 the state of West Virginia.

CHAPTER 97

(Senate Bill No. 149—By Mr. Bowling)

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

AN ACT to amend chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article 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-3. Establishment of natural stream preservation system.
- §20-5B-4. Designation of protected streams.
- §20-5B-5. General powers and duties of chief of division of water resources and water resources board with respect to protected streams.
- §20-5B-6. When permits required; when permits not to be issued.
- §20-5B-7. Application for permit; form of application; information required; fees.
- §20-5B-8. Procedure for issuance or denial of permit; transfer of permits.
- §20-5B-9. Inspections; orders to compel compliance with permits; service of order.
- §20-5B-10. Appeal to water resources board.
- §20-5B-11. Judicial review.
- §20-5B-12. Actions to abate nuisances; injunctive relief.
- §20-5B-13. Priority of actions.
- §20-5B-14. Violations; criminal penalties.
- §20-5B-15. Exceptions as to criminal liabilities.
- §20-5B-16. Short title.
- §20-5B-17. Severability of provisions.

§20-5B-1. Declaration of public policy.

1 In order to assure that an increasing population, accom-
2 panied by expanding settlement and growing mechaniza-
3 tion, does not impound, flood or divert all streams within
4 the state of West Virginia, leaving no streams designated
5 for preservation and protection in their natural condition,
6 it is hereby declared to be the public policy of this state
7 to secure for the citizens of West Virginia of present and
8 future generations the benefits of an enduring resource
9 of free-flowing streams possessing outstanding scenic,
10 recreational, geological, fish and wildlife, botanical, his-
11 torical, archeological, or other scientific or cultural values.

§20-5B-2. Definitions.

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

3 (a) "Board" shall mean the state water resources
4 board;

5 (b) "Chief" shall mean the chief of the division of water
6 resources of the department of natural resources;

7 (c) "Director" shall mean the director of the depart-
8 ment of natural resources;

9 (d) "Free-flowing" shall mean existing or flowing in
10 natural condition without impoundment, by diversion,
11 or flooding of the waterway;

12 (e) "Modification" shall mean the impounding, divert-
13 ing or flooding of a stream within the natural stream
14 preservation system;

15 (f) "Modify" shall mean to impound, divert or flood
16 a stream within the natural stream preservation system;

17 (g) "Permit" shall mean a permit required by section
18 six of this article;

19 (h) "Person", "persons" or "applicants" shall mean
20 any public or private corporation, institution, association,
21 firm or company organized or existing under the laws of
22 this or any other state or country; state of West Vir-
23 ginia; governmental agencies; political subdivision; coun-
24 ty court; municipal corporations; industries; sanitary
25 district; public service district; drainage district; soil
26 conservation district; watershed improvement district;
27 partnership; trust; estate; person or individual; group of
28 persons or individuals acting individually or as a group;
29 or any other legal entity whatever;

30 (i) "Protected stream" shall mean any stream desig-
31 nated as such in section four of this article, but shall not
32 include tributaries or branches unless specifically desig-
33 nated or described in section four of this article;

34 (j) "Stream" shall mean a flowing body of water or a
35 section or portion thereof, including rivers, streams,
36 creeks, branches or small lakes.

**§20-5B-3. Establishment of natural stream preservation sys-
tem.**

1 For the purpose of implementing the public policy de-
2 clared in section one of this article, there is hereby estab-
3 lished a natural stream preservation system to be com-
4 posed of streams designated by the Legislature as "pro-
5 tected streams", and these shall be administered for the
6 use and enjoyment of the citizens of West Virginia in
7 such manner as will leave them unimpaired for future
8 use and enjoyment as free-flowing streams, and so as to
9 provide for the protection and the preservation of these
10 streams in their natural character.

§20-5B-4. Designation of protected streams.

1 The following streams are hereby designated as pro-
2 tected streams within the natural streams preservation
3 system, namely:

4 (a) Greenbrier River from its confluence with Knapps
5 Creek to its confluence with the New River.

6 (b) Anthony Creek from its headwaters to its con-
7 fluence with the Greenbrier River.

8 (c) Cranberry River from its headwaters to its con-
9 fluence 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.

1 (a) In addition to all other powers and duties of the
2 chief of the department's division of water resources, as
3 prescribed in this article or elsewhere by law, the chief,
4 under the supervision of the director, shall exercise gen-
5 eral supervision over the administration and enforcement
6 of the provisions of this article, and all orders and permits
7 issued pursuant to the provisions of this article.

8 (b) In addition to all other powers and duties of the
9 water resources board, as prescribed in this article or
10 elsewhere by law, the board shall have authority to
11 promulgate rules and regulations, in accordance with
12 the provisions of chapter twenty-nine-a of this code, to
13 implement and make effective the powers, duties and
14 responsibilities vested in the board and the chief by the
15 provisions of this article and otherwise by law: *Provided*,
16 That all such rules and regulations shall be consistent
17 with the declaration of public policy set forth in section
18 one of this article.

19 (c) The board is hereby authorized to hire one or more
20 individuals to serve as hearing examiners on a full or
21 part-time basis. Such individuals may be attorneys at law
22 admitted to practice before any circuit court of this state.
23 All such hearing examiners shall be individuals autho-
24 rized to take depositions under the laws of this state.

25 (d) The board, any member thereof and the chief, and
26 their duly authorized representatives, shall have the

27 power and authority to make investigations, inspections
28 and inquiries concerning compliance with the provisions
29 of this article, any order made and entered in accordance
30 with the provisions of this article, any rules or regula-
31 tions promulgated by the board, and with the terms and
32 conditions of any permit issued in accordance with the
33 provisions of section eight of this article. In order to
34 make such investigations, inspections and inquiries, the
35 board, any member thereof and the chief, and their duly
36 authorized representatives, shall have the power and
37 authority to enter at all reasonable times upon any
38 private or public property, subject to responsibility for
39 any damage to the property entered. Upon entering, and
40 before making any investigation, inspection and inquiry,
41 such person shall immediately present himself to the
42 occupant of the property. Upon entering property used
43 in any manufacturing, mining or other commercial enter-
44 prise, or by any municipality or governmental agency
45 or a subdivision, and before making any investigation,
46 inspection and inquiry, such person shall immediately
47 present himself to the person in charge of the operation,
48 and if he is not available, to a managerial employee. All
49 persons shall cooperate fully with the person entering
50 such property for such purposes. Upon a refusal of the
51 person owning or controlling such property to permit
52 such entrance or the making of such inspections, investi-
53 gations and inquiries, the board or the chief may apply
54 to the circuit court of the county in which such property
55 is located, or to the judge thereof in vacation, for an order
56 permitting such entrance and the making of such inspec-
57 tions, investigations, and inquiries; and jurisdiction is
58 hereby conferred upon such court to enter such order
59 upon a showing that the relief asked is necessary for the
60 proper enforcement of this article: *Provided, however,*
61 That a dwelling occupied for residential purposes shall
62 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 depart-
- 2 ment's permit therefor has been granted, to modify any

3 protected stream or any part thereof. No permit shall be
4 issued unless the work proposed to be done under such
5 permit: (a) Will not materially alter or affect the free-
6 flowing characteristics of a substantial part of a protected
7 stream or streams; (b) is necessary to prevent an undue
8 hardship; and (c) meets with the approval of the chief.

§20-5B-7. Application for permit; form of application; information required; fees.

1 The chief shall prescribe a form of application for all
2 permits. All applications for permits shall be submitted
3 to the division of water resources and shall be on the
4 prescribed form.

5 A permit fee of ten dollars shall accompany the application when filed with the division of water resources.
6 The permit fee shall be deposited in the state treasury
7 to the credit of the state general fund.

§20-5B-8. Procedure for issuance or denial of permit; transfer of permits.

1 (a) Before issuing a permit, a public hearing shall
2 be held. The chief shall consider the application and
3 shall fix a time and place for hearing on such application.
4 The hearing shall be held in a county in which
5 the proposed modification is to be made and, if the
6 proposed modification is to be made in more than one
7 county, then a separate hearing shall be held in each
8 county in which the proposed modification is to be made.
9 The applicant shall cause a notice of the time and place
10 of such hearing and the purpose thereof to be published
11 as a Class III-0 legal advertisement in compliance
12 with the provisions of article three, chapter fifty-nine
13 of this code, and the publication area for such publication
14 shall be the county or counties in which the proposed
15 modification is to be made. Publication of the notice
16 shall be completed at least fifteen days before such
17 hearing. The applicant shall also cause to be served,
18 at least fifteen days before such hearings, in the manner
19 provided by law for the service of notice and process,
20 a notice showing the time, place and purpose of such
21 hearing, upon every owner of property, and every per-

22 son holding a lien thereon, abutting on that portion of
23 the stream on which the modification is to be made,
24 or abutting on any portion of such stream within two
25 miles above or below the proposed modification. The
26 affidavit of publication of such notice shall be filed
27 with the chief or his duly designated hearing examiner
28 at or before the hearing as a part of the record in the
29 proceedings.

30 (b) At the time and place fixed for the hearings, the
31 chief or his duly designated hearing examiner shall hear
32 any evidence relating to the proposed modification, the
33 necessity therefor, the effect of such modification on the
34 stream and any and all other matters relevant to the
35 application and the proposed modification. If the chief
36 concludes and finds upon the record and evidence in
37 the proceedings that the proposed modification should
38 be permitted, he shall proceed to issue the permit: *Pro-*
39 *vided, however,* That the director may attach such con-
40 ditions, qualifications or limitations to such permit as
41 he finds appropriate.

42 (c) An application for any such permit shall be acted
43 upon by the chief and the department's permit delivered
44 or mailed, or a copy of any order of the chief denying
45 any such application mailed as hereinafter specified, as
46 the case may be, to the applicant by the chief within
47 forty-five days after the hearings have been completed.

48 (d) When it is established that an application for
49 a permit should be denied, the chief shall make and
50 enter an order to that effect, which order shall specify
51 the reasons for such denial, and shall cause a copy of
52 such order to be served on the applicant by registered
53 or certified mail. The chief shall also cause a notice
54 to be served with the copy of such order, which notice
55 shall advise the applicant of his right to appeal to the
56 board by filing a notice of appeal, on a form prescribed
57 by the board for such purpose, with the board, in
58 accordance with the provisions of section ten of this
59 article, within thirty days after the date upon which
60 the applicant received the copy of such order. However,
61 an applicant may offer the plans and specifications for
62 the proposed modification and submit a new application

63 for any such permit, in which event the procedure herein-
64 before outlined with respect to an original application
65 shall apply.

66 (e) Upon the sale of property which includes an
67 activity for which the department's permit was granted,
68 the permit shall be transferable to the new owner, but
69 the transfer shall not become effective until it is made
70 in the records of the division of water resources.

§20-5B-9. Inspections; orders to compel compliance with permits; service of order.

1 After issuance of the department's permit for any such
2 modification, the chief and his duly authorized representa-
3 tives may make field inspections of the work on the
4 modification, and, after completion thereof, may inspect
5 the completed modification, and, from time to time, may
6 inspect the maintenance and operation of such modifica-
7 tion.

8 To compel compliance with the terms and conditions
9 of the department's permit for any such modification and
10 with the plans and specifications therefor and the plan of
11 maintenance and method of operation thereof, the chief
12 is hereby authorized after reasonable notice to make and
13 enter an order revoking or suspending such permit and
14 directing the person to whom such permit was issued to
15 stop or suspend any and all work on such activity or, to
16 take affirmative action to correct the deficiencies specified
17 in such order so there will be full compliance with the
18 terms and conditions of such permit and with the plans
19 and specifications therefor, and the plan of maintenance
20 and method of operation thereof.

21 The chief shall cause a copy of any such order to be
22 served by registered or certified mail or by a conserva-
23 tion officer or other law-enforcement officer upon the
24 person to whom any such permit was issued. The chief
25 shall also cause a notice to be served with the copy of
26 such order, which notice shall advise such person of his
27 right to appeal to the board by filing a notice of appeal
28 on the form prescribed by the board for such purpose,
29 with the board, in accordance with the provisions of sec-

tion ten of this article, within thirty days after the date upon which such person received the copy of such order.

§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

38 of notice of such appeal on all persons shown by the
39 record to be interested in the matter.

40 (d) All of the pertinent provisions of article five, chap-
41 ter twenty-nine-a of this code shall apply to and govern
42 the hearing on appeal authorized by this section and the
43 administrative procedures in connection with and follow-
44 ing such hearing, with like effect as if the provisions of
45 said article five were set forth in extenso in this section,
46 with the following modifications or exceptions:

47 (1) Unless the board directs otherwise, the appeal
48 hearing shall be held in the city of Charleston, Kanawha
49 county, West Virginia; and

50 (2) In accordance with the provisions of section one,
51 article five of said chapter twenty-nine-a, all of the testi-
52 mony at any such hearing shall be recorded by steno-
53 graphic notes and characters or by mechanical means.
54 Such reported testimony shall in every appeal hearing
55 under this article be transcribed.

56 (e) Any such appeal hearing shall be conducted by a
57 quorum of the board, but the parties may by stipulation
58 agree to take evidence before a hearing examiner em-
59 ployed by the board. Upon request of any party to the
60 appeal, the evidence taken before a hearing examiner
61 shall be taken in the county in which the modification is
62 proposed to take place, or, if the modification is to take
63 place in more than one county, the hearing shall be held
64 in the county most extensively affected by the modifica-
65 tion. For the purpose of conducting such appeal hearing,
66 any member of the board and the secretary thereof shall
67 have the power and authority to issue subpoenas duces
68 tecum in the name of the board, in accordance with the
69 provisions of section one, article five, chapter twenty-
70 nine-a of this code. All subpoenas and subpoenas duces
71 tecum shall be issued and served within the time and for
72 the fees and shall be enforced, as specified in section one,
73 article five of said chapter twenty-nine-a, and all of the
74 said section one provisions dealing with subpoenas and
75 subpoenas duces tecum shall apply to subpoenas and sub-
76 poenas duces tecum issued for the purpose of an appeal
77 hearing hereunder.

78 (f) Any such hearing shall be held within twenty days
79 after the date upon which the board received the timely
80 notice of appeal, unless there is a postponement or con-
81 tinuance. The board may postpone or continue any hear-
82 ing upon its own motion, or upon application of the
83 appellant, the appellee or any intervenors for good cause
84 shown. The chief shall be represented at any such hear-
85 ing by the attorney general or his assistant. At any such
86 hearing the appellant and any intervenor may represent
87 himself or be represented by an attorney at law admitted
88 to practice before any circuit court of this state.

89 (g) After such hearing and consideration of all the
90 testimony, evidence and record in the case, the board
91 shall make and enter an order affirming, modifying or
92 vacating the order of the chief, or shall make and enter
93 such order as the chief should have entered, or shall make
94 and enter an order approving or modifying the terms and
95 conditions of any permit issued. In determining its course
96 of action, the board shall take into consideration the
97 factors which the chief had to consider in making his
98 order, and fixing the terms and conditions of such permit,
99 as set forth in section eight or nine of this article, as the
100 case may be.

101 (h) Such order shall be accompanied by findings of
102 fact and conclusions of law as specified in section three,
103 article five, chapter twenty-nine-a of this code, and a
104 copy of such order and accompanying findings and con-
105 clusions shall be served upon the appellant, and any in-
106 tervenors, and their attorneys of record, if any, and upon
107 the appellee in person or by registered or certified mail.

108 (i) The board shall also cause a notice to be served
109 with the copy of such order, which notice shall advise the
110 appellant, the appellee and any intervenors of their right
111 to judicial review, in accordance with the provisions of
112 section eleven of this article. The order of the board shall
113 be final unless vacated or modified upon judicial review
114 thereof in accordance with the provisions of section
115 eleven of this article.

§20-5B-11. Judicial review.

1 (a) Any person or the chief adversely affected by a
2 final order made and entered by the board after such
3 appeal hearing, held in accordance with the provisions
4 of section ten of this article, is entitled to judicial review
5 thereof. All of the pertinent provisions of section four,
6 article five, chapter twenty-nine-a of this code shall apply
7 to and govern such review with like effect as if the pro-
8 visions of said section four were set forth in extenso in this
9 section, with the following modifications or exceptions:

10 (1) As to cases involving an order denying an applica-
11 tion for a permit, or approving or modifying the terms
12 and conditions of a permit, the petition shall be filed, with-
13 in the time specified in said section four, in the circuit
14 court of any county in which such modification is pro-
15 posed to be made.

16 (2) As to cases involving an order revoking or suspend-
17 ing a permit and directing any and all work on such
18 modification to stop, or directing that affirmative action
19 be taken to correct alleged and specified deficiencies con-
20 cerning any such modification, the petition shall be filed,
21 within the time specified in said section four, in the cir-
22 cuit court of any county in which any part of such modi-
23 fication is proposed to be made.

24 (b) The judgment of the circuit court shall be final
25 unless reversed, vacated or modified on appeal to the
26 supreme court of appeals in accordance with the provi-
27 sions of section one, article six, chapter twenty-nine-a of
28 this code, except that notwithstanding the provisions of
29 said section one, the petition seeking such review must
30 be filed with said supreme court of appeals within ninety
31 days of the date of entry of the judgment of the circuit
32 court.

33 (c) Legal counsel and services for the chief in all ap-
34 peal proceedings in the circuit court and in the supreme
35 court of appeals of this state shall be provided by the
36 attorney general or his assistant and in appeal proceed-
37 ings in the circuit courts by the prosecuting attorneys of
38 the several counties as well, all without additional
39 compensation, or the board or chief, with the written ap-

40 proval of the attorney general may employ special coun-
41 sel to represent the board or chief in a particular pro-
42 ceeding.

§20-5B-12. Actions to abate nuisances; injunctive relief.

1 Whether any violation of the provisions of this article
2 or any final order of the chief or the board shall result
3 in prosecution or conviction or not, any such violation
4 shall be deemed a nuisance which may be abated upon
5 application by the chief to the circuit court of the county
6 in which such nuisance or any part thereof shall exist, or
7 to the judge thereof in vacation. Upon application by the
8 chief, the circuit courts of this state may by mandatory
9 or prohibitive injunction compel compliance with all final
10 orders of the chief or board. Any application for an in-
11 junction to compel compliance with any final order of the
12 chief or board shall be made to the circuit court of any
13 county in which the modification to which the order re-
14 lates is proposed to be made, or in which the modification
15 to which the order relates is situate or would be situate
16 upon completion thereof. Upon application by the chief
17 to the circuit court of the county in which a municipal
18 corporation is located, or in which any person resides or
19 does business, or to the judge thereof in vacation, such
20 court may by injunction require the performance of any
21 duty imposed upon such municipal corporation or person
22 by the provisions of this article. The court may issue a
23 temporary injunction in any case pending a decision on
24 the merits of any application filed. In cases of modifica-
25 tions where irreparable damage will result from any
26 delay incident to the administrative procedures set forth
27 in this article, the chief, with the consent of the director,
28 may forthwith apply to the circuit court of any county
29 in which the modification is taking place for a temporary
30 injunction. Such court may issue a temporary injunction
31 pending final disposition of the case by the chief or the
32 board, in the event an appeal is taken to the board.

33 The judgment of the circuit court upon any application
34 permitted by the provisions of this section shall be final
35 unless reversed, vacated or modified on appeal to the su-
36 preme court of appeals. Any such appeal shall be sought

37 in a manner provided by law for appeals for circuit courts
38 in other civil cases, except that the petition seeking such
39 review must be filed with said supreme court of appeals
40 within ninety days from the date of entry of the judgment
41 of the circuit court.

42 The chief shall be represented in all such proceedings
43 by the attorney general or his assistant and in such pro-
44 ceedings in the circuit court by the prosecuting attorneys
45 of the several counties as well, all without additional
46 compensation.

§20-5B-13. Priority of actions.

1 All applications under section twelve of this article
2 and all proceedings for judicial review under section
3 eleven of this article shall take priority on the docket
4 of the circuit court in which pending, and shall take
5 precedence over all other civil cases. Where such appli-
6 cations and proceedings for judicial review are pending
7 at the same time, such applications shall take priority
8 on the docket and shall take precedence over proceed-
9 ings for judicial review.

§20-5B-14. Violations; criminal penalties.

1 Any person who fails or refuses to discharge any duty
2 imposed upon him by this article or by any final order
3 of the chief or board, or who fails or refuses to apply
4 for and obtain a permit as required by the provisions
5 of this article, shall be guilty of a misdemeanor, and,
6 upon conviction thereof, shall be punished for a first
7 offense by a fine of not less than twenty-five dollars nor
8 more than one hundred dollars, and for a second offense
9 by a fine of not less than two hundred dollars nor more
10 than five hundred dollars, and for a third offense and
11 each subsequent offense by a fine of not less than five
12 hundred dollars nor more than one thousand dollars
13 or by imprisonment for a period not to exceed six
14 months, or in the discretion of the court by both such
15 fine and imprisonment.

§20-5B-15. Exceptions as to criminal liabilities.

1 The criminal liabilities imposed by section fourteen
2 of this article shall not be construed to include any vio-

3 lation resulting from accident or caused by an act of
4 God, war, strike, riot or other catastrophe as to which
5 negligence or wilful conduct on the part of such person
6 was not the approximate cause.

§20-5B-16. Short title.

1 This article may be known and cited as the "Natural
2 Streams Preservation Act."

§20-5B-17. Severability of provisions.

1 If any provision of this article or the application thereof
2 to any person or circumstance is held invalid, such in-
3 validity shall not affect other provisions or applications
4 of the article which can be given effect without the invalid
5 provision or its application, and to this end the provisions
6 of this article are declared to be severable.

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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

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.

31 (c) The term "board" shall mean the West Virginia
32 nursing home licensing board as herein created.

33 (d) The term "aged" relates to any individual who
34 has attained the age of sixty-five years.

§16-5C-4. Powers, duties and rights of board.

1 In the administration of this article, the board shall
2 have the following powers, duties and rights:

3 (a) To adopt, promulgate, amend, modify and enforce
4 regulations and standards for nursing homes.

5 (b) To exercise as sole authority all powers relating
6 to the issuance, suspension and revocation of licenses of
7 nursing homes.

8 (c) To adopt, promulgate, amend and modify rules
9 and regulations governing the qualifications of ap-
10 plicants for nursing home licenses including but not
11 limited to educational requirements, financial re-
12 quirements, moral, personal and ethical require-
13 ments.

14 (d) To adopt, promulgate, amend and modify such
15 other reasonable rules and regulations to carry out the
16 intent and purpose of this article.

17 (e) To receive and disburse funds from appropria-
18 tions made by the Congress of the United States and
19 to take whatever action not contrary to law as may be
20 proper and necessary to comply with the requirements
21 and conditions for the receipt of such federal funds.

22 (f) To receive and disburse for authorized purposes
23 any moneys appropriated to it by the Legislature.

24 (g) To receive and disburse for purposes authorized
25 by this article, any funds that may come into its hands
26 by gift, grant, donation, bequest or devise, according to
27 the terms thereof, as well as funds derived from its own
28 operation, or otherwise.

29 (h) To make contracts, and to execute all instru-
30 ments necessary or convenient in carrying out its func-
31 tions and duties; and all such contracts, agreements and
32 instruments shall be executed by the chairman of the
33 board on and in behalf of the board.

34 (i) To appoint officers, agents, employees and other
35 personnel and fix their compensation.

36 (j) To offer and sponsor educational and training pro-
37 grams for nursing home administrative, management
38 and operational personnel.

39 (k) To undertake survey, research and planning proj-
40 ects and programs relating to administration and oper-
41 ation of nursing homes, and to the health, care, treat-
42 ment and service in general of patients of such homes.

43 In addition, the board may classify nursing homes into
44 care categories such as homes for the aged, convalescent
45 homes, and extended care facilities not operated by hos-
46 pitals, and other comparable categories under the terms
47 of this article, if, in the opinion of the board, the best
48 interest of the public is served by so doing. Such classi-
49 fication shall be by rules and regulations duly promul-
50 gated and adopted in accordance with the requirements
51 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-9. Procedures for hearing.

§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 pro-
visions; powers and duties.

§16-5D-12. Severability.

§16-5D-1. Definitions.

1 As used in this article, unless a different meaning ap-
2 pears from the context:

3 (1) The term "nursing home" means a nursing home
4 (as that term is defined in subdivision (a), section two,
5 article five-c of this chapter) which offers professional
6 or a skilled nursing care, but shall not include personal
7 care homes, rest homes and homes for the aged.

8 (2) The term "nursing home administrator" means an
9 individual responsible for planning, organizing, directing
10 and controlling a nursing home, or who in fact performs
11 such functions, whether or not such individual has an
12 ownership interest in the nursing home and whether or
13 not such functions are shared with one or more other
14 persons.

15 (3) The word "board" shall mean the West Virginia
16 nursing home licensing board created by section three,
17 article five-c of this chapter.

18 (4) The word "person" shall mean any individual,
19 firm, partnership, corporation or association.

20 (5) The word "council" shall mean the state nursing
21 home advisory council created by section eleven of this
22 article.

§16-5D-2. Administrator's license required.

1 On and after July one, one thousand nine hundred
2 sixty-nine, no person shall be or act as a nursing home
3 administrator, except as provided in section nine hereof,
4 unless he is a holder of a currently valid license or pro-
5 visional license issued pursuant to this article.

§16-5D-3. Qualifications for license; exceptions; application; fees.

1 (a) To be eligible for a license as a nursing home
2 administrator a person must

3 (1) Be of good moral character;

4 (2) Possess such qualifications and meet such reason-
5 able standards as the board may prescribe pursuant to
6 subsection (a), section seven of this article;

7 (3) Pass the examination prescribed by the board in
8 the subject of nursing home administration; and

9 (4) Have sufficient knowledge and soundness of judg-
10 ment to be able to adequately discharge the functions of
11 a nursing home administrator.

12 (b) Any person who holds a license or certificate as a
13 nursing home administrator issued by any other state,
14 the requirements for which license or certificate are

15 found by the board to be at least as great as those pro-
16 vided in this article may be granted a license without ex-
17 amination if he meets all of the other requirements for
18 licensing in this state.

19 (c) Any applicant for any such license shall submit
20 an application therefor at such time, in such manner,
21 on such forms and containing such information as the
22 board may from time to time by reasonable rule and
23 regulation prescribe, and pay to the board a license fee of
24 one hundred dollars, which fee shall be returned to the
25 applicant if he is denied a license.

**§16-5D-4. Issuance of license; renewal of license; renewal fee;
display of license.**

1 Whenever the board finds that an applicant meets all
2 of the requirements of this article for a license as a
3 nursing home administrator, it shall forthwith issue to
4 him such license; and otherwise the board shall deny the
5 same. The license shall be valid for a period ending on
6 June thirty next ensuing and may be renewed without
7 examination upon application for renewal on a form
8 prescribed by the board and payment to the board of a
9 renewal fee of fifty dollars: *Provided*, That the board may
10 deny an application for renewal for any reason which
11 would justify the denial of an original application for a
12 license. The board shall prescribe the form of licenses and
13 each such license shall be conspicuously displayed by the
14 licensee at the nursing home which he administers.

§16-5D-5. Provisional license.

1 Persons actively engaged as nursing home administra-
2 tors prior to June thirty, one thousand nine hundred
3 sixty-nine, and who fail to meet any of the requirements
4 of subdivision (2) or (3), subsection (a), section three
5 of this article may nevertheless be issued a provisional
6 license as a nursing home administrator if application
7 is made therefor prior to July one, one thousand nine
8 hundred sixty-nine. No provisional license shall be re-
9 newed after July one, one thousand nine hundred seven-
10 ty-two.

§16-5D-6. Emergency permit.

1 If a licensed nursing home administrator dies or is
2 unable to continue as such for an unexpected cause, the
3 owner, governing body or other appropriate authority
4 in charge of the nursing home involved may designate
5 an acting administrator to whom the board may im-
6 mediately issue an emergency permit if it finds such
7 appointment will not endanger the safety of the occu-
8 pants of such nursing home. Such emergency permit
9 shall be valid for a period determined by the board not
10 to exceed six months and shall not be renewed. The
11 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
3 eligibility for a license or emergency permit as a nursing
4 home administrator;

5 (2) Prepare, conduct and grade an apt and
6 proper examination of applicants for a license and deter-
7 mine the satisfactory passing score thereon;

8 (3) Promulgate reasonable rules and regula-
9 tions implementing the provisions of this article and the
10 powers and duties conferred upon the board hereby, all
11 of which reasonable rules and regulations shall be
12 promulgated in accordance with the provisions of article
13 three, chapter twenty-nine-a of this code;

14 (4) Issue, renew, deny, suspend or revoke
15 licenses and emergency permits in accordance with the
16 provisions of this article and, in accordance with the
17 administrative procedures hereinafter provided, may re-
18 view, affirm, reverse, vacate or modify its order with
19 respect to any such denial, suspension or revocation;

20 (5) Develop, impose and enforce standards
21 which must be met by individuals in order to receive
22 a license as a nursing home administrator, which stan-
23 dards shall be designed to insure that nursing home
24 administrators will be individuals who are of good char-
25 acter and are otherwise suitable, and who, by training or

26 experience in the field of institutional administration,
27 are qualified to serve as nursing home administrators;

28 (6) Employ, direct, discharge and define the
29 duties of personnel necessary to effectuate the provisions
30 of this article;

31 (7) Keep accurate and complete records of its
32 proceedings, certify the same as may be appropriate,
33 and prepare, from time to time, a list showing the names
34 and addresses of all licensees;

35 (8) Approve courses of study or training in the
36 field of nursing home administration as sufficient to meet
37 education and training requirements for nursing home
38 administrators established by this article;

39 (9) Conduct a course of study or training of
40 the type referred to in subdivision (8) of this subsection
41 if such courses are not otherwise reasonably available
42 to residents of this state; and

43 (10) Take such other action as may be reason-
44 ably necessary or appropriate to effectuate the provisions
45 of this article.

46 (b) All moneys paid to the board shall be accepted
47 by a person designated by the board and deposited by
48 him with the treasurer of the state and credited to an
49 account to be known as the "West Virginia nursing
50 home licensing board fund". All of the reimbursement
51 of all reasonable and necessary expenses actually incurred
52 by members and all other costs and expenses incurred
53 by the board in the administration of this article shall
54 be paid from such fund.

§16-5D-8. Suspension or revocation of license or emergency permit.

1 (a) The board may at any time upon its own motion
2 and shall upon the verified written complaint of any
3 person, conduct an investigation to determine whether
4 there are any grounds for the suspension or revocation
5 of a license or emergency permit issued under the pro-
6 visions of this article.

- 7 (b) The board shall suspend or revoke any license
8 or emergency permit when it finds the holder thereof has:
- 9 (1) Obtained a license or emergency permit by
10 means of fraud or deceit; or
- 11 (2) Failed or refused to comply with the pro-
12 visions of this article, article five-c of this chapter, or
13 any reasonable rule and regulation promulgated by the
14 board or any order or final decision of the board.
- 15 (c) The board shall also suspend or revoke any license
16 or emergency permit if it finds the existence of any
17 ground which would justify the denial of an application
18 for such license or permit if application were then being
19 made for it.

§16-5D-9. Procedure for hearings.

- 1 (a) Whenever the board shall deny an application for
2 any original or renewal license or deny an application for
3 an emergency permit or shall suspend or revoke any
4 license or emergency permit, it shall make and enter an
5 order to that effect and serve a copy thereof on the ap-
6 plicant or licensee, as the case may be, by certified mail,
7 return receipt requested. Such order shall state the
8 grounds for the action taken and shall require that any
9 license or emergency permit suspended or revoked there-
10 by shall be returned to the board by the holder within
11 twenty days after receipt of said order.
- 12 (b) Any person adversely affected by any such order
13 shall be entitled to a hearing thereon (as to all issues
14 not excluded from the definition of a "contested case"
15 set forth in article one, chapter twenty-nine-a of this
16 code) if, within twenty days after receipt of a copy
17 thereof, he files with the board a written demand for such
18 hearing. A demand for hearing shall operate automati-
19 cally to stay or suspend the execution of any order sus-
20 pending or revoking a license or emergency permit or
21 denying an application for a renewal license. The board
22 may require the person demanding such hearing to give
23 reasonable security for the costs thereof and if such per-
24 son does not substantially prevail at such hearing such
25 costs shall be assessed against him and may be collected
26 by an action at law or other proper remedy.

27 (c) Upon receipt of a written demand for such hearing,
28 the board shall set a time and place therefor not less than
29 ten and not more than thirty days thereafter. Any
30 scheduled hearing may be continued by the board upon
31 its own motion or for good cause shown by the person
32 demanding the hearing.

33 (d) All of the pertinent provisions of article five,
34 chapter twenty-nine-a of this code shall apply to and
35 govern the hearing and the administrative procedures in
36 connection with and following such hearing, with like
37 effect as if the provisions of said article five were set
38 forth in this subsection.

39 (e) Any such hearing shall be conducted by a quorum
40 of the board. For the purpose of conducting any such
41 hearing any member of the board shall have the power
42 and authority to issue subpoenas and subpoenas duces
43 tecum which shall be issued and served within the time,
44 for the fees and shall be enforced, as specified in section
45 one, article five of said chapter twenty-nine-a.

46 (f) At any such hearing the person who demanded the
47 same may represent himself or be represented by an
48 attorney at law admitted to practice before any circuit
49 court of this state. Upon request by the board, it shall
50 be represented at any such hearing by the attorney gen-
51 eral or his assistants without additional compensation.

52 (g) After any such hearing and consideration of all of
53 the testimony, evidence and record in the case, the board
54 shall render its decision in writing. The written decision
55 of the board shall be accompanied by findings of fact and
56 conclusions of law as specified in section three, article
57 five, chapter twenty-nine-a of this code, and a copy of
58 such decision and accompanying findings and conclusions
59 shall be served by certified mail, return receipt requested,
60 upon the person demanding such hearing, and his attorney
61 of record, if any.

62 (h) The decision of the board shall be final unless
63 reversed, vacated or modified upon judicial review thereof
64 in accordance with the provisions of section ten of this
65 article.

§16-5D-10. Judicial review; appeal to supreme court of appeals; legal representation for board.

1 Any person adversely affected by a decision of the
2 board rendered after a hearing held in accordance with
3 the provisions of section nine of this article shall be
4 entitled to judicial review thereof. All of the pertinent
5 provisions of section four, article five, chapter twenty-
6 nine-a of this code shall apply to and govern such judicial
7 review with like effect as if the provisions of said section
8 four were set forth in this section.

9 The judgment of the circuit court shall be final unless
10 reversed, vacated or modified on appeal to the supreme
11 court of appeals in accordance with the provisions of
12 section one, article six, chapter twenty-nine-a of this
13 code.

14 Legal counsel and services for the board in all appeal
15 proceedings in any circuit court and the supreme court
16 of appeals shall be provided by the attorney general
17 or his assistants and in any circuit court by the prose-
18 cuting attorney of the county as well, all without addi-
19 tional compensation.

**§16-5D-11. Creation of state nursing home administrators ad-
visory council; members, terms, meetings, offi-
cers; general provisions; powers and duties.**

1 (a) There is hereby created the state nursing home
2 administrators advisory council which shall be composed
3 of five members appointed by the governor of which
4 members, three shall be nursing home administrators,
5 one shall be a hospital administrator and one shall be
6 the chairman of the board.

7 (b) The members of the council, other than the
8 chairman of the board (who shall serve for the term
9 of his office) shall be appointed for overlapping terms
10 of four years each and until their respective successors
11 have been appointed and qualified, except that the
12 original appointments shall be for terms of four, three,
13 two and one year respectively. Vacancies shall be filled
14 by appointment by the governor for the unexpired term
15 of the member whose office shall be vacant and such

16 appointment shall be made within sixty days of the
17 occurrence of such vacancy.

18 (c) The council shall elect annually from its mem-
19 bers, a chairman and vice chairman. Meetings may be
20 held as frequently as its business may require, at the
21 call of the chairman upon the request of a majority of
22 members of the council, or as requested by the chairman
23 of the board. A quorum of the council shall consist
24 of not less than three members.

25 (d) Members of the council shall receive no compen-
26 sation, but each shall be entitled to receive his reasonable
27 and necessary expenses actually incurred in the perform-
28 ance of his duties, such expenses to be paid from the
29 special fund provided for in subsection (b), section seven
30 of this article.

31 (e) The board may request the council, and upon
32 such request, the council shall, or upon its own initiative
33 the council may:

34 (1) Consider any matters relating to the practice
35 of nursing home administration including any matter
36 pertaining to the administration and enforcement of this
37 article and advise the board thereon;

38 (2) Recommend the enactment or amendment
39 of laws as may be deemed necessary in respect to the
40 practice of nursing home administration;

41 (3) Recommend to the board the promulgation
42 of rules and regulations, not inconsistent with law, as
43 may be deemed necessary, and the amendment or repeal
44 thereof; and

45 (4) Recommend to the board the commencement
46 of an investigation into improper practices of licensees.

§16-5D-12. Severability.

1 If any provision of this article or the application
2 thereof to any person or circumstance is held unconsti-
3 tutional or invalid, such unconstitutionality or invalidity
4 shall not affect other provisions or applications of the
5 article, and to this end the provisions of this article are
6 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.

1 Persons owning adjoining lands, both of which are
2 used for agricultural, horticultural, grazing or livestock
3 purposes, shall bear a just proportion of the cost of the
4 constructing, repairing and maintaining a partition fence
5 between such lands.

§19-17-6. Sharing cost of constructed fences.

1 Where a person has chosen to let his land lie open, if
2 he shall afterwards enclose or use such land, or portion
3 thereof, for agricultural, horticultural, grazing or livestock
4 purposes, he shall refund to the adjoining owner a just

5 proportion of the value of the partition fence adjoining
6 such lands, or portion thereof, enclosed or so used that
7 shall have been made by such adjoining owner, regard-
8 less of whether or not such fence at the time is a lawful
9 fence.

**§19-17-7. Notice of intention to build or repair partition fence;
answer.**

1 Any person desiring to build or to repair a partition
2 fence may give notice in writing to the owner of any
3 adjoining lands, or to his agent, of his intention to build
4 or repair such fence and requiring him to build or repair
5 his just portion thereof, which notice shall state the
6 description and kind of the fence proposed to be built
7 or such repairs as are proposed to be made. The person
8 so served with such notice shall, within ten days there-
9 after make answer in writing and serve the same upon
10 the person desiring to build or repair such fence, which
11 answer shall state any objections to such notice, and
12 upon failure to do so he shall be liable to the person
13 building or repairing such partition fence for his just
14 proportion of the cost thereof if he shall fail to build
15 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.

1 Article sixteen, chapter twenty-nine of the code of West
2 Virginia, one thousand nine hundred thirty-one, as
3 amended, is hereby repealed.

CHAPTER 101

(Senate Bill No. 31—By Mr. Martin)

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

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
- 2 contrary, no civil action shall lie or be maintained in
- 3 this state for breach of promise to marry or for aliena-
- 4 tion of affections, unless such civil action was instituted
- 5 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.]

AN ACT to amend and reenact section fourteen, article twelve, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to license fees for bowling lanes, billiard, pool or bagatelle tables;

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.

1 The annual license fee to keep or maintain a bowling
2 lane, a billiard, pool or bagatelle table, or table of like
3 kind, for public use, where any charge is made for the
4 use of the same, shall be twenty-five dollars; but, if more
5 than one of such lanes or tables be kept or maintained
6 in the same building by the same person, the fee shall
7 be twenty-five dollars for the first one and fifteen dollars
8 for each additional one.

9 The licensee, his agents or employees shall not permit
10 any person in any manner to bet or wager anything of
11 value upon any game played upon such lanes or tables.
12 Such licensee, his agents or employees shall not permit
13 anyone to bring any intoxicating liquors of any kind
14 into such building or other place where such lanes or
15 tables are located.

16 Persons keeping or maintaining billiard, pool or baga-
17 telle tables, or other tables of like kind in an establish-
18 ment where intoxicating liquor or nonintoxicating beer
19 is sold shall not permit persons under the age of eighteen
20 years to play at such tables or to remain or loiter in the
21 room where such tables are located.

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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, chapter 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 mem-
2 bers a president and a secretary who shall hold their
3 offices for one year and until their successors are elected:
4 *Provided*, That the state board of law examiners, the
5 state board of examiners for nurses and the state board
6 of dental examiners may each elect a secretary from
7 outside its membership. The secretary shall execute a
8 surety bond conditioned as required by law, which bond
9 shall be approved by the attorney general as to form and
10 by the auditor as to sufficiency, and, when so approved,
11 shall be filed and recorded in the office of the secretary
12 of state. The premium on said bond shall be regarded
13 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,
2 known as the "West Virginia board of dental examiners,"
3 which shall consist of five practicing dentists, who shall
4 be appointed by the governor, by and with the advice
5 and consent of the Senate. Each member of the board
6 at the time of his appointment, and during his term as
7 such member, shall be both a resident and licensed den-
8 tist of this state, and shall have been both such resident
9 and licensed dentist for a period of not less than five
10 years immediately preceding his appointment: *Pro-*
11 *vided, however,* That no person shall be eligible for
12 appointment to said board who is in any way connected
13 with or interested in any dental college or dental de-
14 partment of any institution of learning or in a dental
15 supply business.

16 The members of the board in office on the date this
17 section takes effect (July 1, 1969) shall, unless sooner re-
18 moved, continue to serve until their respective terms ex-
19 pire and until their successors have been appointed and
20 have qualified. On or before the first day of July, after this
21 section takes effect, and on or before the first day of
22 July in each year thereafter, the governor shall appoint
23 one member to serve a term of five years commencing
24 on the said first day of July: *Provided,* That during the
25 five-year period immediately following the effective date
26 of this section, the governor shall make appointments to
27 the board at such times as shall be necessary to replace
28 members whose terms expire during such period: *And*
29 *provided further,* That during such five-year period, the
30 governor shall appoint members to the board for terms
31 of such respective lengths as shall thereafter permit the
32 term of one member to expire at midnight on the thirtieth

33 day of June of each year. Any member shall be eligible
34 for reappointment for one additional consecutive term.

35 Each appointment under this section, whether for a
36 full term or to fill a vacancy, shall be made by the
37 governor from among three nominees therefor selected
38 by the West Virginia dental society. In the case of an
39 appointment for a full term such nominations shall be
40 submitted to the governor not later than eight months
41 prior to the date on which the appointment shall become
42 effective. In the case of an appointment to fill a vacancy,
43 such nominations shall be submitted to the governor
44 within thirty days after a request for such nominations
45 shall have been made by the governor to the president
46 of such society. In the event of the failure of the society
47 to submit to the governor nominations for an appoint-
48 ment in accordance with the requirements of this section,
49 the governor may make the appointment without such
50 nominations.

51 Each member of the board shall receive forty dollars
52 for each day actually spent in attending meetings of the
53 board, or of its committees, and shall also be reimbursed
54 for all reasonable and necessary expenses actually in-
55 curred in the discharge of his duties under the provisions
56 of this article.

§30-4-4a. Powers and duties of board.

1 The West Virginia board of dental examiners shall
2 examine all qualified applicants for license to practice
3 dentistry or dental hygiene, and it shall license all such
4 applicants who are qualified under applicable statutes
5 and who pass the examinations that may be required by
6 statute or by any legally adopted rule or regulation. The
7 board shall examine all applications filed in accordance
8 with the provisions of section four-b of this article and
9 shall issue certificates of authorization to all applicants
10 legally entitled to receive the same, such certificates to
11 be signed by the chairman and secretary of the board.

12 The said board shall have the power to make such ex-
13 amination of all applicants appearing before it for any
14 type of license as may be necessary to determine that the

15 applicant is qualified. The board shall also have authority
16 to license dental corporations authorized under the pro-
17 visions of and subject to the limitations of this article, to
18 practice dentistry through duly licensed dentists. The
19 said board shall also have the power to revoke or suspend
20 any license issued by it, for cause, after having given the
21 person whose license is sought to be revoked or sus-
22 pended, an opportunity to be heard in the manner pro-
23 vided by section eight, article one, chapter thirty of this
24 code. It shall have the power to reinstate any license
25 revoked or suspended by it.

26 The said board is authorized and empowered to hold
27 and conduct hearings and investigations on the issuance,
28 suspension, revocation, or reinstatement of licenses and
29 on charges of unauthorized practice of dentistry or dental
30 hygiene.

31 The board, acting by and through its members, em-
32 ployees, and agents, is further authorized and empowered,
33 at any time during customary office hours, to enter into
34 the office or place of business of any dental laboratory,
35 licensed dentist, dental corporation or other dental prac-
36 titioner of this state, and to obtain access to, make inspec-
37 tion of, and request information regarding any work
38 authorization which such dental laboratory, licensed
39 dentist, dental corporation or other dental practitioner
40 is required under the provisions of section two-a of this
41 article, to retain therein, and is further authorized and
42 empowered to inspect any items of dental technological
43 work then in the course of performance by such dental
44 laboratory or person employed by it, and to inspect any
45 dental prothesis then in the place of business of, or upon
46 the premises occupied by, such dental laboratory for
47 making, production, reproduction, construction, repair,
48 alteration, or restoration, and to request any information
49 which it, its members, employees, or agents deem to be
50 pertinent relating to any such dental technological work
51 and any such dental prothesis. For the purpose of this
52 paragraph the definition of terms contained in subsection
53 A of section two-a of this article is made expressly ap-
54 plicable.

55 The said board shall have the power to hire, fix the
56 compensation of, and discharge such employees as are
57 necessary for the performance of the powers and duties
58 vested in the said board by law and to expend such sums
59 as said board may deem necessary to maintain an office
60 and to carry out and enforce the provisions of this article.

61 All fees and other moneys collected by the board pur-
62 suant to the provisions of this article shall be kept in a
63 separate fund and expended solely for the purpose of
64 carrying out the provisions of this article. The compen-
65 sation provided for in this article and all expenses in-
66 curred under this article shall be paid from this special
67 fund. No compensation or expense incurred under this
68 article shall be a charge against or payable out of the
69 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
2 character, a citizen of the United States or an individual
3 who has declared his intention to become and who shows
4 progress toward becoming a citizen of the United States,
5 at least twenty-one years of age at the time of making
6 application, and be a graduate of, and possess an accept-
7 able dental diploma from the faculty of a dental school
8 approved by the board. The board may require the ap-
9 plication to be accompanied by sufficient evidence of
10 these qualifications.

11 The applicant shall transmit with his application an
12 examination fee of thirty-five dollars, which sum the
13 board is authorized to expend in an investigation of the
14 applicant's qualifications.

15 An applicant whose application has been accepted by
16 the board shall be given an examination on subjects
17 selected by the board from among those currently being
18 taught in approved dental schools which shall test the
19 qualifications of the applicant to practice dentistry. Such
20 examinations shall be given by the board under rules and
21 regulations promulgated by it.

22 The board may recognize a certificate granted by the
23 national board of dental examiners in lieu of the written
24 portion of the required examination.

25 An applicant obtaining a satisfactory grade on such
26 examination and otherwise fulfilling the requirements of
27 the board shall be granted a license by the board to prac-
28 tice dentistry, which license shall bear a serial number,
29 the full name of the licensee, the date of issuance of the
30 license, the seal of the board and the signatures of a
31 majority of the members of the board.

32 The board shall not issue a license to any person found
33 guilty of cheating, deception or fraud in the examination
34 or on any part of the application. All manuscripts used
35 in any examination and all applications for licensure
36 shall be filed for a period of two years by the secretary
37 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
2 issue a license to practice dentistry or dental hygiene
3 in this state, or after issuance may suspend or revoke
4 the same, for any of the following causes:

5 (1) The presentation to the board of any diploma,
6 license or certificate illegally or fraudulently obtained,
7 or one obtained from an institution which is not reputable,
8 or one obtained from an unrecognized or irregular in-
9 stitution or state board.

10 (2) Be guilty of gross ignorance or gross inefficiency
11 in his profession.

12 (3) Conviction of a felony; and a certified copy of the
13 record of the court of conviction shall be sufficient proof
14 of such conviction.

15 (4) Announcing or otherwise holding himself out to
16 the public as a specialist or as being specially qualified in
17 any particular branch of dentistry or as giving special
18 attention to any branch of dentistry or as limiting his
19 practice to any branch of dentistry without first comply-
20 ing with the requirements established by the board of
21 dental examiners for such specialty and having been is-

22 sued a certificate of qualification in such specialty by the
23 board.

24 (5) Be guilty of unprofessional conduct. The following
25 acts or any of them shall be conclusively presumed to be
26 unprofessional conduct:

27 (a) Be guilty of any fraud or deception.

28 (b) The commission of a criminal operation or convic-
29 tion of a crime involving moral turpitude.

30 (c) Chronic or persistent inebriety or addiction to nar-
31 cotics or drugs.

32 (d) Be guilty of the violation of any professional con-
33 fidence or be guilty of disclosing any professional secret.

34 (e) Be grossly immoral.

35 (f) Be guilty of employing what are known as "cap-
36 pers" or "steerers" to obtain business.

37 (g) The obtaining of any fee by fraud or misrepresen-
38 tation.

39 (h) Employ directly or indirectly, or direct or permit
40 any suspended or unlicensed person so employed, to per-
41 form operations of any kind or to treat lesions of the
42 human teeth or jaws or correct malimposed formations
43 thereof.

44 (i) Practice, or offer or undertake to practice, dentistry
45 under any firm name or trade name or under any name
46 other than his own true name: *Provided*, That any licensee
47 may practice under a firm name or partnership name con-
48 taining nothing but the surname of every member of
49 such firm or partnership.

50 (j) Professional connection or association with, or lend-
51 ing his name to another, for the illegal practice of dentist-
52 ry, or professional connection or association with any
53 person, firm, or corporation holding himself, themselves,
54 or itself out in any manner contrary to this article.

55 (k) Make use of any advertising relating to the use of
56 any drug or medicine of unknown formula.

57 (l) Advertise to practice dentistry or perform any op-
58 eration thereunder without causing pain.

59 (m) Advertise professional superiority or the perform-
60 ance of professional services in a superior manner.

61 (n) Advertise prices charged for professional service.

62 (o) Advertise by means of large display, flickering, or
63 glaring light signs, or contain as a part thereof the repre-
64 sentation of a tooth, teeth, or bridgework, or any portion
65 of the human head.

66 (p) Employ or make use of advertising solicitors or
67 free publicity press agents.

68 (q) Advertise to guarantee any dental service.

69 (r) Advertise in any manner calculated to, or tending
70 to, deceive or mislead the public: *Provided*, That such
71 licensee may announce, by way of a professional card
72 containing not more than his name, title, degree, office
73 location, office hours, business telephone number, and
74 residence address and telephone number, if desired, and
75 if he limits his practice to a specialty he may announce it,
76 but such card shall not be greater in any case than five
77 inches by six inches in size and such information may be
78 inserted in public print when not more than two news-
79 paper columns in width and two inches in depth; and he
80 may announce his change of place of business, absence
81 from, or return to, business in the same manner, and is-
82 sue appointment cards to his patients, when the informa-
83 tion thereon is limited to matter pertaining to the time
84 and place of appointment and that permitted on the pro-
85 fessional card, and he may display his name, title, and
86 degree upon the windows or doors of his office and by a
87 doorplate or nameplate or office directory when the in-
88 formation is limited to not more than that contained on
89 the professional card, but the name, title and degree of
90 the licensee shall not be displayed on said doors, windows,
91 doorplates, and nameplates or office directory in letter-
92 ing greater in height than seven inches.

93 (s) To solicit subscriptions from individuals within or
94 without the state for, or advertise or offer to individuals
95 within or without the state, a course or instruction or
96 course materials in any phase, part or branch of dentistry
97 or dental hygiene in any journal, newspaper, magazine
98 or dental publication, or by means of radio, television,
99 or United States mail, or in or by any other means of
100 contacting individuals: *Provided*, That the foregoing

101 provisions of this subparagraph (s) shall not be con-
102 strued so as to prohibit (i) an individual dentist or dental
103 hygienist from presenting articles pertaining to pro-
104 cedures or technique to state or national journals or
105 accepted dental publications, or (ii) educational insti-
106 tutions approved by the board from offering courses
107 or instruction or course materials to individual den-
108 tists and dental hygienists from within or without the
109 state.

110 The term advertising, as used in this section, shall be
111 construed to include the use of radio or any loud-speaking
112 device or any other similar method or agency.

113 This entire section is passed in the interest of the public
114 health, safety and welfare, and its provisions shall be liber-
115 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.**

1 The board of dental examiners may, at its discretion,
2 without the examination herein provided, issue a license
3 to practice dental hygiene to any applicant therefor, who
4 shall furnish proof satisfactory to the board that he has
5 been duly licensed to practice as a dental hygienist in an-
6 other state after full compliance with the requirements
7 of its dental laws: *Provided, however,* That his profession-
8 al and preliminary education shall not be less than that
9 required in this state, and that he shall have been in
10 active practice at least two years previous to his applica-
11 tion for a license. The fee for issuing a license to a legal
12 practitioner of dental hygiene from another state shall
13 be twenty-five dollars, which shall be paid before the
14 license is issued.

**§30-4-17a. Specialties; qualifications; application for certifi-
cate; fee; limitation of practice.**

1 No licensee shall announce or otherwise hold himself
2 out to the public as a specialist or as being specially quali-
3 fied in any particular branch of dentistry, or as giving
4 special attention to any branch of dentistry, or as limiting
5 his practice to any branch of dentistry, unless he has
6 first complied with the requirements established by the

7 board of dental examiners for such specialty and has been
8 issued a certificate of qualification authorizing him so to
9 do.

10 The board of dental examiners may establish higher
11 standards and additional requirements for any licensee
12 who desires to announce or otherwise hold himself out
13 to the public as being specially qualified in a branch or
14 specialty of dentistry recognized by the board. The board
15 may give such examinations and secure such assistance
16 as it may deem necessary in determining the qualifica-
17 tions of applicants.

18 The state board of dental examiners may appoint not
19 more than three specialists to examine the credentials of
20 applicants, and each specialist so appointed shall receive
21 ten dollars for each day actually spent in examining the
22 credentials of applicants and shall be entitled to be reim-
23 bursed for all reasonable and necessary expenses actually
24 incurred in discharging such duties. The state board of
25 dental examiners may appoint not more than three
26 specialists to administer and grade the specialty examina-
27 tion given to applicants, and each specialist so appointed
28 shall receive forty dollars for each day actually spent in
29 administering and grading such examinations.

30 Application to the board for a certificate of qualification
31 in a specialty of dentistry shall be upon such form and
32 contain such information as the board may require and
33 shall be accompanied by a fee of seventy-five dollars. A
34 licensee found by the board to be qualified under the
35 standards and other requirements promulgated by the
36 board in the specialty indicated in his application shall be
37 issued a certificate of qualification authorizing the licensee
38 to announce or otherwise hold himself out to the public as
39 specially qualified in the indicated specialty under such
40 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.**

1 On or before the first day of February of each year,
2 every dentist licensed to practice dentistry in this state,
3 and every dental hygienist licensed to practice dental

4 hygiene in this state, shall transmit to the secretary of
5 the board upon a form prescribed by the board, his sig-
6 nature, post-office address, office address, the serial num-
7 ber of his license certificate, whether he has been engaged
8 during the preceding year in the active and continuous
9 practice of dentistry or dental hygiene, as the case may
10 be, whether within or without this state, and such other
11 information as may be required by the board, together
12 with an information and renewal fee herein provided for.

13 The annual information and renewal fee for a dentist
14 shall be twenty dollars and for a dental hygienist shall
15 be ten dollars.

16 Upon receipt of the required information and the pay-
17 ment of the proper renewal fee, the licensee shall be issued
18 a renewal certificate authorizing him to continue the
19 practice of dentistry or the practice of dental hygiene in
20 this state for a period of one year from the first day of
21 February.

22 A license to practice dentistry or dental hygiene granted
23 under the authority of this article shall be cancelled on
24 the first day of May if the holder thereof fails to secure
25 a current renewal certificate by that date. Any licensee
26 whose license is thus cancelled by reason of the failure,
27 neglect or refusal to secure the proper renewal certificate
28 may be reinstated by the board at any time within six
29 months from the date of the cancellation of said license
30 upon the payment of the proper renewal fee and an ad-
31 ditional fee of fifteen dollars. If the licensee shall not
32 apply for renewal of his license as herein required within
33 the said six months, that person shall, at the discretion
34 of said board, be required to file an application for and
35 take the examination provided in this article should he
36 desire to practice dentistry or dental hygiene in this state.

37 Upon failure of any licensee to submit the required
38 information and pay the annual renewal fee as herein
39 required by the statutory date, the board shall attempt
40 to notify such licensee in writing by mailing to his last
41 registered address a notice of the requirements of this
42 section apprising him of the fact that his license to
43 practice will be cancelled on the statutory date: *Provided,*

44 *however*, That failure to mail or receive such notice shall
45 not affect the cancellation of his license.

46 The board may waive the annual payment of the re-
47 newal fee herein required, and issue a renewal certificate
48 to any West Virginia licensee who has held a West Vir-
49 ginia license for at least twenty-five years and is presently
50 retired from active practice, or to any West Virginia
51 licensee who has retired for reasons of physical disability,
52 so long as such retirement continues: *Provided*, That
53 the licensee provides the board with the information re-
54 quired by this section.

55 Every licensed dentist within thirty days of changing
56 his place of practice or establishing additional offices shall
57 furnish the secretary of the board with his new profes-
58 sional address.

59 Every licensed dental hygienist within thirty days of
60 changing his place of employment shall furnish the secre-
61 tary of the board with his new professional address and
62 the name of his employer.

§30-4-19. Severability.

1 If any provision of this article or the application thereof
2 to any person or circumstance shall be held invalid,
3 the remainder of the article and the application of such
4 provision to other persons or circumstances shall not be
5 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 amended, 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
2 permitted to practice medicine and surgery in this state:
3 (a) All such persons as shall be legally entitled to prac-
4 tice medicine and surgery in this state including those
5 persons holding temporary permits to practice in pre-
6 scribed areas as of the effective date of this act; (b) all
7 such persons as shall be graduates of Class A medi-
8 cal schools, as classified by the council on medical
9 education and hospitals of the American Medical Asso-
10 ciation, and then only from such schools, when so classi-
11 fied, as require, as a condition to entrance upon the
12 study of medicine, at least two years of academic work
13 of collegiate grade in a standard college of arts and
14 sciences of equal rank with the college of arts and sciences
15 of West Virginia University, and who shall pass an
16 examination before the medical licensing board and shall
17 receive a certificate therefrom as hereinafter provided;
18 and (c) all such persons as shall be graduates of foreign
19 medical schools whose diplomas have been authenticated
20 by the medical licensing board, and whose premedical

21 education shall meet the requirements of subdivision
22 (b) above, and who have become citizens of the United
23 States or who have presented evidence of their declara-
24 tion of intention and show progress toward becoming
25 citizens of the United States, and who shall pass an
26 examination before the medical licensing board and
27 shall receive a certificate therefrom as hereinafter pro-
28 vided: *Provided, however,* That the said board, or a
29 majority of them, may accept in lieu of an examination
30 of applicants under subdivision (b) above, the certificate
31 of the national board of medical examiners, or the cer-
32 tificate of license to practice medicine and surgery legally
33 granted by the state board of registration or examination
34 or licensing board of another state or territory, whose
35 standard of qualification for the practice of medicine and
36 surgery is equivalent to that of this state, and grant to
37 such applicant a certificate of license to practice medi-
38 cine and surgery in this state, provided such state or
39 territory accords like privileges to licentiates of this
40 state: *Provided further,* That whenever in the judgment
41 of the medical licensing board a condition exists in which
42 medical service may be required, the said board is au-
43 thorized to grant permits for the practice of medicine
44 to qualified physicians in prescribed areas, and such per-
45 mits shall be subject to revocation when the agreement,
46 under which they were issued, has been violated. A
47 fee of one hundred dollars shall accompany each appli-
48 cation for licensure by examination or reciprocity, twenty-
49 five dollars of which shall be retained by the board in
50 the event an application is withdrawn or rejected. A
51 fee of twenty-five dollars shall accompany each appli-
52 cation for temporary licensure and a fee of ten dollars
53 shall accompany each application for an extension thereof.

§30-3-4a. Biennial registration of physicians and surgeons.

1 Every person who, on or before the thirty-first day
2 of August, one thousand nine hundred forty-nine, is
3 licensed as a physician or surgeon to practice medicine
4 and surgery in this state, shall, on or before the said
5 thirty-first day of August, one thousand nine hundred
6 forty-nine, make application to the medical licensing

7 board for registration, and shall be registered by the said
8 board, as the holder of such license, which registration
9 shall be for the period ending on the thirtieth day of
10 June, one thousand nine hundred fifty-one. On or before
11 the said thirtieth day of June, one thousand nine hun-
12 dred fifty-one, and biennially thereafter, on or before
13 the thirtieth day of June of each biennial period, every
14 person licensed as a physician or surgeon in this state
15 shall apply to the said board for registration, or a re-
16 newal of registration, as such license holder: *Provided,*
17 That no registration shall be required of any holder of a
18 certificate of licensure for the biennial period, or any
19 portion thereof, during which such certificate is issued.

20 Each applicant for registration or renewal thereof shall
21 remit to the board, with his application, a fee of ten
22 dollars.

23 The failure of any person to comply with the pro-
24 visions of this section shall operate automatically, and
25 without further proceedings, to cancel the certificate of
26 such person, and the license issued thereunder. Con-
27 tinued practice by any such person after such cancella-
28 tion of his certificate and license shall constitute prac-
29 ticing without a license, and any person so practicing shall
30 be subject to all of the penalties provided by law for prac-
31 ticing without a license.

32 Any certificate and license cancelled pursuant to the
33 provisions of this section, and not for any other reason,
34 shall be reinstated by the said board upon submission
35 to it of an application for registration by the person
36 whose certificate has been cancelled, together with cur-
37 rent and delinquent fees, and ten dollars reinstatement
38 fee.

**§30-3-5. Examinations; certificates; adherents of particular
schools or theories of medicine.**

1 The medical licensing board shall, at such times as
2 a majority of them deem proper, hold examinations for
3 the licensing of applicants for license to practice medi-
4 cine and surgery in this state. No fewer than two exami-
5 nations shall be held during the year, at such place in
6 the state as may be determined by the medical licensing

7 board. At such examination written questions shall be
8 submitted to the applicants, covering all the essential
9 branches of the sciences of medicine and surgery, and
10 the examination shall be a thorough and decisive test
11 of the knowledge and ability of the applicant. The
12 chairman and secretary of the board shall issue cer-
13 tificates to all who successfully pass the said examina-
14 tion and to all whose certificates said board, or a majority
15 of them, shall accept in lieu of an examination, as here-
16 inbefore provided. Such certificates shall be deemed
17 licenses to practice medicine and surgery in all their
18 branches in this state. The medical licensing board shall
19 give reasonable notice of the time and place of holding
20 such examinations, and all such persons wishing to present
21 themselves for examination shall notify the secretary and
22 comply with the rules of the board. No applicant for
23 license to practice medicine and surgery in this state
24 shall be rejected because of his adherence to any par-
25 ticular school or theory of medicine.

§30-3-7. Fees for reciprocal endorsement.

- 1 The medical licensing board shall be entitled to charge
- 2 and collect the following fee, in addition to those pro-
- 3 vided in article one and this article three of this chapter:
- 4 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
2 meaning of this article, a person shall be a citizen of the
3 United States, not less than twenty-one years of age,
4 shall present to the board of pharmacy satisfactory evi-
5 dence that he is a graduate of a recognized school of
6 pharmacy as defined by the board of pharmacy, and in
7 addition thereto he shall have had at least one year of
8 practical experience in a pharmacy or drugstore under
9 the instruction and supervision of a registered pharmacist
10 and shall pass satisfactorily an examination by or under
11 the direction of the board of pharmacy. Each application
12 for examination must be accompanied by a fee of fifty
13 dollars and the same forwarded to the secretary accord-
14 ing to law.

15 Every applicant for registration as a pharmacist shall
16 present to the board of pharmacy satisfactory evidence
17 that he is a person of good moral character and not ad-
18 dicted to drunkenness or the use of narcotic drugs. The
19 board shall issue certificates of registration to all persons
20 who successfully pass the required examination and are
21 otherwise qualified, and to all those whose certificates

22 or licenses the board shall accept in lieu of an examination
23 as provided in the next succeeding section.

§30-5-9. Fees.

1 The board of pharmacy shall be entitled to charge and
2 collect the following fees, in addition to those provided
3 in article one of this chapter and in section fourteen and
4 section sixteen of this article: For renewing the registra-
5 tion of a pharmacist, fifteen dollars; for renewing the reg-
6 istration of an assistant pharmacist, fifteen dollars; for
7 issuing a permit to an assistant pharmacist to conduct a
8 pharmacy or drugstore in a village of not more than five
9 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
2 the annual registration of every pharmacy or drugstore,
3 as defined, doing business in this state. Any person, firm,
4 corporation or copartnership desiring to operate, main-
5 tain, open or establish a pharmacy or drugstore, as de-
6 fined, in this state, shall apply to the board of pharmacy
7 for a permit to do so. The application for such permit
8 or license shall be made on a form prescribed and fur-
9 nished by the board of pharmacy, which when properly
10 executed, shall indicate the owner, manager, trustee,
11 lessee, receiver, or other person or persons desiring such
12 permit, as well as the location of such pharmacy or drug-
13 store, including street and number, and such other infor-
14 mation as the board of pharmacy may require. If it is
15 desired to operate, maintain, open or establish more than
16 one pharmacy or drugstore, separate applications shall
17 be made and separate permits or licenses shall be issued
18 for each. Every initial application for a permit shall be
19 accompanied by the required fee of fifty dollars. The fee
20 for renewal of such permit or license shall be twenty-five
21 dollars annually. If an application is found satisfactory,
22 the secretary of the board of pharmacy shall issue to the
23 applicant a permit or license for each pharmacy or drug-
24 store for which application is made. Permits or licenses
25 issued under this section shall not be transferable and

26 shall expire on the thirtieth day of June of each calendar
27 year, and if application for renewal of permit or license
28 is not made or a new one granted on or before the first
29 day of August, following, the old permit or license shall
30 lapse and become null and void. Every such place of
31 business so registered shall be in direct charge of a
32 registered pharmacist and operate in compliance with
33 the general provisions governing the practice of pharmacy
34 and the operation of a drugstore or pharmacy.

35 The provisions of this section shall have no application
36 to the sale of patent or proprietary medicines which are
37 not poisonous, deleterious or habit-forming nor to such
38 ordinary drugs in original retail packages when such are
39 not poisonous, deleterious or habit-forming nor to flavor-
40 ing extracts or dyestuffs as are usually sold in a country
41 store.

§30-5-14a. Use of funds resulting from increased fees.

1 The increased funds resulting from the increased fees
2 under sections five, nine and fourteen of this article shall
3 be used only (a) for the employment of an investigator
4 or investigators pursuant to section two of this article,
5 (b) for the reimbursement of necessary expenses of
6 such investigator or investigators upon the submittal of
7 proper vouchers therefor, (c) for the payment of addi-
8 tional expenses necessitated by the conduct of the office
9 of such investigator or investigators, and (d) upon pay-
10 ment of the total expenses, including salaries of such
11 investigator or investigators, any remaining funds shall
12 be used for the conduct of the office of the West Virginia
13 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-

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; relating to 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.

1 Members of said board, before entering upon their
2 duties, shall take and subscribe to the oath of office pre-
3 scribed by the secretary of state.

4 Said board shall select from its own members a presi-
5 dent, a secretary and a treasurer. Each member shall be
6 reimbursed for his traveling expenses, incident to his at-
7 tendance upon the business of the board, and in addition
8 thereto, the sum of fifteen dollars per day for each day
9 actually spent by such member upon the business of the
10 board; except that the state health director shall receive
11 only such compensation as he is entitled to receive for
12 his services as state health director, together with actual
13 and necessary traveling expenses while engaged upon
14 the business or in attendance of the board, with such
15 compensation and expenses to be payable from the funds
16 of the state health department. The secretary shall re-
17 ceive an annual salary of not to exceed one thousand
18 dollars, the amount and payment of which shall be fixed
19 by said board, and in addition thereto shall receive travel-
20 ing and other incidental expenses incurred in the per-
21 formance of his duties.

22 The board may employ an executive secretary and such
23 clerks, inspectors and assistants as it shall deem necessary
24 to discharge the duties imposed by the provisions of this
25 article and the duly promulgated rules and regulations of
26 the board and to effect its purposes, and the board shall
27 determine the duties and fix the compensation of such
28 executive secretary, clerks, inspectors and assistants,
29 subject to the general laws of the state. Any inspector
30 employed by the board shall have either a West Vir-
31 ginia embalmer's license or a West Virginia funeral di-
32 rector's license. Any inspection shall be conducted in
33 such a manner so as not to interfere with the conduct of
34 business within the funeral establishment, and the in-
35 spector shall be absolutely prohibited from examining
36 any books and records of the funeral establishment.

37 All such expenses, per diem and compensation shall be
38 paid out of the receipts of the board, except such expenses
39 and compensation as may be payable to the state health
40 director, but such allowances shall at no time exceed the
41 receipts of the board.

42 The treasurer of the board shall give bond to the state
43 of West Virginia in such sum as the board shall direct
44 with two or more sureties or a reliable surety company
45 approved by the board, and such bond shall be condi-
46 tioned for the faithful discharge of the duties of such
47 officer. Such bond, with approval of the board endorsed
48 thereon, shall be deposited with the treasurer of the state
49 of West Virginia.

50 The board shall hold not less than two meetings during
51 each calendar year, one during the month of April and
52 one during the month of November for the purpose of
53 examining applicants for licenses, such meeting or meet-
54 ings to be held at such time and place as the board shall
55 determine. The time and place of such meeting shall be
56 announced by publication in three daily newspapers of
57 general circulation in different locations in the state, and
58 publication to be once a week for two consecutive weeks
59 immediately preceding each such meeting.

60 The board may hold such other meetings as it may
61 deem necessary and may transact any business at any
62 such meeting. Three or more members shall comprise
63 a quorum authorizing the board to transact such business
64 as is prescribed under this article.

65 The board shall have power and it shall be its duty to
66 make and enforce all necessary rules and regulations, not
67 inconsistent with this article, for the examination and
68 licensing of funeral directors, and the general practice of
69 funeral directing; the examination and licensing of em-
70 balmers and the general practice of embalming and the
71 registration and regulation of apprentices; the licensing of
72 funeral establishments and the general operation of
73 funeral establishments, except that no rules and regula-
74 tions issued by the board shall require that an applicant
75 for a license to operate a funeral establishment shall be
76 required to have either an embalmer's or funeral director's
77 license.

78 The board shall publish in its rules and regulations the
79 subjects to be covered in the said examinations and the
80 standards to be attained thereon. Changes in the rules
81 and regulations shall be published and shall be given due
82 publicity at least ninety days before becoming effective.

83 The board shall conduct annually a school of instruc-
84 tions to apprise funeral directors and embalmers of the
85 most recent scientific knowledge and developments affect-
86 ing their profession. Qualified lecturers and demon-
87 strators may be employed by the board for this purpose.
88 The board shall give notice of the time and place at which
89 such school will be held for all licensed funeral directors
90 and embalmers, and it shall be the duty of every licensed
91 funeral director and embalmer to attend at least one
92 such school in every three years.

93 The board or any of its members or any duly authorized
94 employee of the board shall have the authority to enter
95 at all reasonable hours for the purpose of inspecting
96 the premises in which the business or profession of
97 funeral directing is conducted or practiced or where em-
98 balming is practiced.

§30-6-4. Definitions.

1 For the purpose of this article, the following terms shall
2 be construed in the following manner:

3 "Funeral director" shall mean any person engaged,
4 or holding himself out as engaged, in the business of
5 funeral directing as herein defined, and shall use in con-
6 nection with his name or business the words or terms
7 "funeral director," "undertaker," "mortician," or any
8 other word, term, or title to imply or designate him as a
9 funeral director, undertaker, or mortician.

10 "Funeral directing" shall mean the business or pro-
11 fession of directing or supervising funerals for profit
12 by any person, partnership, association, corporation, or
13 other organization, or the business or profession of pre-
14 paring dead human bodies for burial by means other
15 than embalming by any person, partnership, associa-
16 tion, corporation, or other organization, or the disposition

17 of dead human bodies by any person, partnership, asso-
18 ciation, corporation, or other organization, or mainte-
19 nance of a place or establishment for the preparation
20 for disposition or for the care or disposition of dead
21 human bodies by any person, partnership, association,
22 corporation, or other organization, or the use in con-
23 nection with a business of the word or term "funeral
24 director," "undertaker," "mortician," by any person, part-
25 nership, association, corporation, or other organization,
26 directing or the holding out to the public that one is
27 a funeral director by any person, partnership, association,
28 corporation, or other organization.

29 A "funeral establishment" is a place of business main-
30 tained and operated by a person, partnership, association,
31 corporation, or other organization, conducted in a build-
32 ing, or series of buildings, or a separate portion of a
33 building having a specific street address or location, and
34 devoted to such activities as are incident, convenient,
35 or related to the preparation and arrangements, financial
36 and otherwise, for the embalming, funeral, transportation,
37 burial or other disposition of dead human bodies.

38 "Embalmer" shall mean any person engaged in, or
39 holding himself out to be engaged in, the practice of
40 embalming, whether on his own behalf or in the employ
41 of another, and shall include any person who shall use
42 in connection with his name, the term "embalmer," or
43 use any word, term, or title intending to imply or desig-
44 nate him as an embalmer or as one engaged in embalming.

45 "Embalming" is the introduction into the vascular
46 system or hollow organs of a dead human body, by
47 arterial or by hypodermic injection, of any chemical
48 substance, fluids, or gases used for the purpose of preser-
49 vation or disinfection.

50 "Apprentice" shall mean any person engaged in this
51 state in the learning of the practice of embalming or of
52 the practice of funeral directing under the instruction
53 and personal supervision of a duly licensed embalmer
54 or a duly licensed funeral director, under the provisions
55 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.

1 No person shall engage in or hold himself out as
2 engaging in, or discharge any of the duties of the busi-
3 ness or profession of embalming, or preserving in any
4 manner dead human bodies in this state, whether for
5 himself or in the employ of another, unless he holds
6 an embalmer's license issued to him by the board, and
7 shall at the date of its issuance have complied with the
8 provisions of this article.

9 No person shall engage in, or hold himself out as
10 engaging in, or discharge any of the duties of the busi-
11 ness or profession of funeral directing in this state, un-
12 less he holds a funeral director's license issued to him
13 by the board, and shall at the date of its issuance
14 have complied with the provisions of this article, or con-
15 duct a funeral unless he be a licensed funeral di-
16 rector.

17 No person shall be entitled to an embalmer's license
18 unless he:

19 (1) Is twenty-one years of age or over;

20 (2) A citizen of the United States;

21 (3) Of good moral character and temperate hab-
22 its;

23 (4) Holds a high school diploma or its equivalent;

24 (5) Has had not less than sixty hours' credit of
25 educational training in an accredited university or col-
26 lege, such credit shall be in such subjects only as are
27 recognized in the university or college where taken, as
28 credit toward a baccalaureate degree;

29 (6) Has completed a one-year course of apprentice-
30 ship under the supervision of a licensed embalmer ac-
31 tively and lawfully engaged in the practice of embalming
32 in this state, such apprenticeship to consist of diligent
33 attention to the work in the course of regular and steady
34 employment and not as a side issue to another employ-
35 ment, and under which said apprenticeship he shall have

36 taken an active part in the operation of embalming not
37 less than twenty-five dead human bodies, under the su-
38 pervision of a licensed embalmer;

39 (7) Possesses a diploma of graduation from a school
40 of embalming which requires as a prerequisite to gradu-
41 ation the completion of a course of study not less than
42 twelve months' duration, and which said school of em-
43 balming must be one duly approved by the board;

44 (8) Passes such examination as the board shall deem
45 necessary to ascertain his qualification and ability to
46 engage in the practice of embalming: *Provided, however,*
47 That any apprentice embalmer duly registered as such
48 with the board on or before July first, one thousand nine
49 hundred fifty-one, may be eligible to take the required
50 examination for an embalmer's license without having
51 had the sixty hours resident educational training in a
52 university or college heretofore mentioned, upon com-
53 pliance with all the other requirements, prerequisite to
54 the same, including the two years' apprenticeship.

55 The board shall issue licenses separately to embalmers
56 and to funeral directors.

57 An applicant for a funeral director's license must
58 furnish satisfactory proof to the board that his business
59 or profession of funeral directing is to be conducted in a
60 fixed place or establishment equipped for the care and
61 preparation for burial or disposition of dead human
62 bodies. What shall be deemed "necessary equipment"
63 shall be defined in the rules and regulations of the board,
64 the same to be in compliance with the public health laws
65 of the state or the rules of the state board of health of
66 West Virginia. This shall not be so construed as to deny
67 an applicant for a funeral director's license such a license
68 because he is not the owner, or part owner, of an estab-
69 lishment or proposed funeral business.

70 Licenses issued under the provisions of this article
71 shall not be transferable or assignable.

72 No person shall be eligible to receive a license as a
73 funeral director unless he:

74 (1) Holds an embalmer's license issued by this board;

75 (2) Has been duly registered with the board as an
76 apprentice;

77 (3) Has served not less than a one-year apprenticeship
78 under the personal supervision of a licensed funeral di-
79 rector actively and lawfully engaged in the business or
80 profession of funeral directing in this state, such ap-
81 prenticeship to consist of diligent attention to the work
82 in the course of regular and steady employment and not
83 as a side issue to another employment: *Provided, how-*
84 *ever,* That any apprentice funeral director twenty-one
85 years of age, or older, who is duly registered with the
86 board as such apprentice on or before July first, one thou-
87 sand nine hundred fifty-one, and who has served his two
88 years' apprenticeship may be eligible to take the required
89 examination for a funeral director's license, without hav-
90 ing first obtained an embalmer's license, upon compliance
91 with all other requirements as to eligibility for such
92 examination.

93 All funeral homes or establishments or any other places
94 pertaining to funeral directing or the conducting of
95 funerals, shall display in all advertising the name of the
96 licensed funeral director who is actually in charge of the
97 establishment. All branch establishments must display
98 the name of the funeral director who is actually in charge.
99 At least one licensed funeral director shall supervise each
100 main establishment and at least one licensed funeral
101 director shall directly supervise each branch establish-
102 ment.

103 No licensed funeral director or licensed embalmer shall
104 be permitted to register or have registered more than
105 five apprentices under his said license at the same time.

106 Any person now holding a license as an embalmer,
107 funeral director, or assistant funeral director, shall not
108 be required to make a new application, or submit to an
109 examination, but shall, upon the payment of the fee there-
110 for, be entitled to a renewal of his license upon the terms
111 and conditions herein provided for the renewal of licenses
112 of those who may be licensed after the passage of this
113 article, but all such persons shall be subject to every

114 provision of this article, and such rules and regulations
115 as the board may adopt in pursuance of this article.

116 No person shall be registered as an apprentice fu-
117 neral director or apprentice embalmer unless he is eigh-
118 teen years of age, or over, a citizen of the United
119 States, of good moral character and temperate habits,
120 and the holder of a high school diploma or its equiva-
121 lent.

122 The board may issue annual nonrenewable courtesy
123 cards to licensed funeral directors and licensed embalmers
124 of the states bordering on West Virginia, upon applica-
125 tion for same made on form prescribed by the board. The
126 annual fee for such courtesy cards shall be twenty-five
127 dollars and said fee shall be paid at the time application
128 is made therefor. Applications for said courtesy cards
129 shall be approved by the board before the same may be
130 issued, and said courtesy cards shall be issued under the
131 following conditions: Holders of courtesy cards shall not
132 be permitted to open or operate a place of business for
133 the purpose of conducting funerals or embalming bodies
134 in the state of West Virginia, nor shall they be permitted
135 to maintain an office or agency in this state. A violation
136 of this section shall be sufficient cause for the board to
137 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.**

1 The board may either refuse to issue, or may refuse
2 to renew, or may suspend, or may revoke any embalmer's
3 license or funeral director's license, or embalmer's or
4 funeral director's certificate of registration issued by it
5 for any one or combination of the following causes:

6 (a) The practice of fraud or deceit in obtaining or
7 attempting to obtain a license or a certificate of regis-
8 tration;

9 (b) Conviction of a felony as shown by a certified
10 copy of the record of the court of conviction;

11 (c) Violation of any of the provisions of this article
12 or the public health laws of this state;

13 (d) The use of false, misleading or unethical adver-
14 tising by any licensee or applicant for a license or cer-
15 tificate of registration;

16 (e) Upon satisfactory proof that a licensed embalmer
17 or a licensed funeral director has taken undue advantage
18 of his patrons or has committed a fraudulent act in the
19 conduct of his business;

20 (f) Solicitation of business by the licensee, his agents,
21 assistants or employees, whether such solicitation occurs
22 after death or while death is impending: *Provided*, That
23 this shall not be deemed to prohibit proper advertising;

24 (g) If the applicant therefor or holder thereof know-
25 ingly permits an unlicensed person to engage in the pro-
26 fession or business of embalming or funeral directing
27 under his supervision; or if any holder of an embalmer's
28 license or funeral director's license issued hereunder
29 knowingly permits any unlicensed person to use his
30 license number or numbers for the purpose of practicing,
31 or discharging any of the duties of, the professions of
32 embalming or funeral directing;

33 (h) Employment by the licensee of persons as "cap-
34 pers," "steerers" or "solicitors," or other such persons to
35 obtain funeral directing business;

36 (i) Employment directly or indirectly of any appren-
37 tice, agent, assistant, embalmer, employee, or other per-
38 son, on part or full time, or on commission, for the purpose
39 of calling upon individuals or institutions by whose in-
40 fluence dead human bodies may be turned over to a
41 particular funeral director;

42 (j) The buying of business by the licensee, his agents,
43 assistants, or employees or the direct or indirect payment
44 or offer of payment of a commission by the licensee, his
45 agent, assistants, or employees, for the purpose of securing
46 business;

47 (k) Gross immorality;

48 (l) If the applicant therefor or holder thereof has
49 been guilty of habitual drunkenness or is addicted to
50 the use of morphine, cocaine or other habit-forming
51 drugs.

§30-6-13. License required to operate funeral establishment; application and qualifications for license; renewal; fee; manager.

1 On or before July one, one thousand nine hundred
2 sixty-nine, every funeral establishment operating in West
3 Virginia shall obtain a license for the succeeding fiscal
4 year beginning July one, one thousand nine hundred
5 sixty-nine, as provided for in this section.

6 An application for a license to operate a funeral estab-
7 lishment shall be in writing and verified on a form pro-
8 vided by the board and shall be accompanied by a fee
9 as herein provided, and upon receipt of the same, the
10 board shall forthwith issue or renew a license to operate
11 a funeral establishment. Such application to operate a
12 funeral establishment shall be made by any person, part-
13 nership, association, corporation, organization, or fiduciary
14 having controlling interest in such funeral establishment.

15 Such application shall be signed by the applicant and by
16 the individual who is duly licensed as a funeral director,
17 and who shall be in charge and responsible for all trans-
18 actions conducted and services performed therein. If such
19 funeral establishment is owned by a person who is not
20 licensed as a funeral director or by a partnership, asso-
21 ciation, corporation, or other organization, then such
22 owner shall have in his or its employ and place in charge
23 of such establishment, a person who is duly licensed as
24 a funeral director, who shall manage, conduct and have
25 supervision of the work or business of such establishment
26 and be responsible therefor.

27 A license to operate a funeral establishment shall expire
28 on the thirtieth day of June of each calendar year and
29 the renewal date for any such license shall be the first
30 day of July of each calendar year.

31 Each funeral establishment license shall be valid only
32 for one funeral establishment to be located at a specific
33 street address or location; the fee to operate the principal
34 establishment shall be fifty dollars per year and the fee
35 to operate each additional funeral establishment by the
36 same applicant shall be thirty-five dollars per year. Each
37 separate funeral establishment shall have its own license,

38 which license shall be prominently displayed within the
39 funeral establishment. No additional license fee shall be
40 charged if during any given year it shall be necessary
41 to reapply for a license to operate a funeral establishment
42 at the same or different location.

43 The holder of any funeral establishment license who
44 ceases to operate the funeral establishment at the loca-
45 tion specified in the application shall, within twenty days
46 thereafter, surrender the funeral establishment license to
47 the board and such license shall be cancelled by the
48 board, except that in the event of the death of an indi-
49 vidual who was the holder of a funeral establishment
50 license, it shall be the duty of such holder's personal rep-
51 resentative to surrender such funeral establishment li-
52 cense within thirty days of qualifying as such personal
53 representative. It shall be the duty of any holder of a
54 funeral establishment license, pursuant to this section,
55 to notify the board within thirty days if for any reason
56 the licensed funeral director whose name is signed to
57 the application for the issuance thereof, ceases to be
58 employed by such funeral establishment. Within thirty
59 days after such notification, such holder of a funeral
60 establishment license may execute a new application
61 for a funeral establishment license signed by the ap-
62 plicant and by the licensed funeral director who shall
63 be in charge of and responsible for all transactions con-
64 ducted and services performed within the funeral es-
65 tablishment. Failure to comply with any of these provi-
66 sions shall be grounds for revocation of a funeral estab-
67 lishment license.

68 A licensee whose embalmer's license, funeral director's
69 license or license to operate a funeral establishment has
70 been revoked under this article shall not operate, either
71 directly or indirectly, or hold any interest in any funeral
72 establishment. Nothing herein contained shall prohibit
73 a licensee whose license has been revoked from leasing
74 any property owned by him or them for use as a funeral
75 establishment so long as he or they do not participate in
76 the control or profit of such funeral establishment other-
77 wise than as a lessor of the premises for a fixed rental
78 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
2 hearings are required to be given and held under the pro-
3 visions of section eight of this article, the board may re-
4 voke or suspend any license to operate a funeral establish-
5 ment issued under section thirteen of this article, for any
6 one or combination of the following causes:

7 (a) The practice of fraud or deceit or misrepresenta-
8 tion in obtaining or attempting to obtain a funeral estab-
9 lishment license;

10 (b) Conviction of a felony as shown by a certified copy
11 of the record of the court of conviction;

12 (c) Violation of any of the provisions of this article
13 or rules and regulations of the board;

14 (d) The use of false, misleading or unethical adver-
15 tising by any holder of a funeral establishment license;

16 (e) Upon satisfactory proof that a holder of a funeral
17 establishment license has taken undue advantage of his
18 patrons or has committed a fraudulent act in the conduct
19 of his or its business;

20 (f) Solicitation of business by the holder of a funeral
21 establishment license, his agents, assistants or employees:
22 *Provided*, That this shall not be deemed to prohibit proper
23 advertising;

24 (g) If the holder of a funeral establishment license
25 knowingly permits an unlicensed person to engage in the
26 profession or business of embalming or funeral directing
27 under his or its supervision;

28 (h) Employment by the holder of a funeral establish-
29 ment license of persons as "cappers," "steerers" or "solici-
30 tors," or other such persons to obtain funeral directing
31 business;

32 (i) Employment by the holder of a funeral establish-
33 ment license directly or indirectly of any apprentice,
34 agent, assistant, embalmer, employee, or other person,
35 on part or full time, or on commission, for the purpose of
36 calling upon individuals or institutions by whose in-

37 fluence dead human bodies may be turned over to a par-
38 ticular funeral establishment;

39 (j) The buying of business by the holder of a funeral
40 establishment license, his or its agents, assistants, or em-
41 ployees or the direct or indirect payment or offer of pay-
42 ment of a commission by the licensee, his or its agent,
43 assistants, or employees, for the purpose of securing
44 business;

45 (k) Gross immorality.

46 Any decision of the board suspending or revoking a
47 license to operate a funeral establishment shall be subject
48 to judicial review in the same manner as a decision to sus-
49 pend or revoke a funeral director's license or embalmer's
50 license is subject to judicial review under the provisions of
51 section eight of this article, and the written notice of ap-
52 peal specified in said section eight shall be filed with the
53 circuit court of the county in which such funeral estab-
54 lishment is located.

§30-6-15. Injunction proceedings.

1 The board may bring legal proceedings to enjoin a
2 person, partnership, association, corporation or other
3 organization violating the provisions of this article or any
4 rule or regulation of the board from practicing the science
5 of embalming or conducting the business of funeral di-
6 recting or operating a funeral establishment, as may be
7 the case, until such person, partnership, association, cor-
8 poration, or other organization complies with the require-
9 ments of this article and the rules and regulations of the
10 board.

§30-6-16. Reciprocity in licensing of embalmers and funeral directors.

1 The board may recognize licenses issued to funeral
2 directors or embalmers from other states, and, upon pres-
3 entation of such license, may, upon the payment of the
4 sum of twenty-five dollars to the secretary of the board,
5 issue to the lawful holder thereof, the funeral director's
6 or embalmer's license provided for in this article: *Pro-*
7 *vided, however,* That such recognition shall not be ex-
8 tended to funeral directors or embalmers holding licenses
9 from other states unless reciprocal rights are provided

10 by such other states to holders of funeral director's or
11 embalmer's licenses granted in this state. Such reciprocal
12 licenses may be renewed annually upon payment of the
13 renewal license fee as provided for in section six for
14 license holders residing in this state. No person is entitled
15 to a reciprocal license as a funeral director or embalmer
16 unless he furnishes proof that he has, in the state in
17 which he is regularly licensed, complied with require-
18 ments 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 documents 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 thousand 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-2. Definitions.
- §30-13A-3. Board of examiners of land surveyors created; appointment, terms, removal, etc., of members; officers; meetings; quorum; compensation and expenses.
- §30-13A-4. Powers and duties of board; funds.
- §30-13A-5. Qualifications of applicants for licenses; exceptions; applications; 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-9. Procedures for hearings.
- §30-13A-10. Judicial review; appeal to supreme court of appeals; legal representation for board.
- §30-13A-11. Seal.
- §30-13A-12. Duty of county clerks and public officials.
- §30-13A-13. Actions to enjoin violations.
- §30-13A-14. Offenses and penalties.
- §30-13A-15. Severability.

§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.

§30-13A-2. Definitions.

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

3 (a) "Applicant" means any person making application
4 for an original or renewal license under the provisions
5 of this article;

6 (b) "Licensee" means any person holding a license
7 issued under the provisions of this article;

8 (c) "Board" means the West Virginia state board of
9 examiners of land surveyors created under the provisions
10 of this article;

11 (d) "Practice of land surveying" means the rendering
12 or offering to render for a fee, salary or other compensa-
13 tion, monetary or otherwise, for the public generally,
14 any of the following services:

15 (1) The location, relocation, establishment, reestab-
16 lishment or retracement of any property line or boundary
17 of any parcel of land or of any road or utility right-of-
18 way, easement or alignment;

19 (2) The performance of any survey for the division,
20 subdivision or resubdivision of any tract of land;

21 (3) The determination of the position of any monu-
22 ment or reference point which marks a property line
23 boundary or corner, or setting, resetting or replacing any
24 such monument or reference point, by the use of the
25 principles of land surveying;

26 (4) The determination of the configuration or contour
27 of the earth's surface or the position of fixed objects
28 thereon or related thereto, by means of measuring lines
29 and angles, and applying the principles of mathematics;

30 (5) The performance of cadastral surveying, under-
31 ground surveying or hydrographic surveying;

32 (6) The preparation of subdivision maps; and

33 (7) The preparation of maps or drawings showing any
34 of the above.

35 (e) "Land surveyor" means any person who engages
36 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 exam-
2 iners of land surveyors which shall be composed of three
3 members appointed by the governor by and with the ad-
4 vice and consent of the Senate. Each member shall have
5 been actively engaged in the practice of land surveying
6 for at least ten years and shall be the holder of a license
7 under the provisions of this article, or in the case of the
8 members first appointed be eligible for such a license.

9 (b) The members of the board shall be appointed for
10 overlapping terms of three years each and until their re-
11 spective successors have been appointed and qualified,
12 except of the original appointments, one member shall
13 be appointed for a term of three years and until his suc-
14 cessor has been appointed and qualified, one member
15 shall be appointed for a term of two years and until his
16 successor has been appointed and qualified and one mem-
17 ber shall be appointed for a term of one year and until
18 his successor has been appointed and qualified. Members
19 may be reappointed for any number of terms. Before
20 entering upon the performance of his duties, each member
21 shall take and subscribe to the oath required by section
22 five, article four of the constitution of this state. Vacancies
23 shall be filled by appointment by the governor for the
24 unexpired term of the member whose office shall be
25 vacant and such appointment shall be made within sixty
26 days of the occurrence of such vacancy. Any member
27 may be removed by the governor in case of incompetency,
28 neglect of duty, gross immorality or malfeasance in office.

29 (c) The board shall elect from its membership a chair-
30 man and secretary-treasurer. A majority of the members
31 of the board shall constitute a quorum and meetings shall
32 be held at the call of the chairman or upon the written
33 request of two members at such time and place as desig-
34 nated in such call or request, and, in any event, the board
35 shall meet at least once annually to conduct the examina-

36 tion hereinafter provided for and to transact such other
37 business as may come before it.

38 (d) Members may be paid such reasonable compensa-
39 tion as the board may from time to time determine, and
40 in addition may be reimbursed for all reasonable and
41 necessary expenses actually incurred in the performance
42 of their duties, which compensation and expenses shall
43 be paid in accordance with the provisions of subsection
44 (b), section four of this article.

§30-13A-4. Powers and duties of board; funds.

1 (a) The board shall have the power and duty to:

2 (1) Examine applicants and determine their eligibility
3 for a license to engage in the practice of land surveying;

4 (2) Prepare, conduct and grade an apt and proper
5 written, oral or written and oral examination of appli-
6 cants for a license and determine the satisfactory passing
7 score thereon;

8 (3) Promulgate reasonable rules and regulations im-
9 plementing the provisions of this article and the powers
10 and duties conferred upon the board hereby, all of which
11 reasonable rules and regulations shall be promulgated in
12 accordance with the provisions of article three, chapter
13 twenty-nine-a of this code;

14 (4) Issue, renew, deny, suspend or revoke licenses to
15 engage in the practice of land surveying in accordance
16 with the provisions of this article;

17 (5) Investigate alleged violations of the provisions of
18 this article, reasonable rules and regulations promulgated
19 hereunder and orders and final decisions of the board
20 and take appropriate disciplinary action against any
21 licensee for the violation thereof or institute appropriate
22 legal action for the enforcement of the provisions of this
23 article, reasonable rules and regulations promulgated
24 hereunder and orders and final decisions of the board or
25 take such disciplinary action and institute such legal
26 action;

27 (6) Keep accurate and complete records of its pro-
28 ceedings, certify the same as may be appropriate, and

29 prepare, from time to time, a list showing the names
30 and addresses of all licensees; and

31 (7) Take such other action as may be reasonably neces-
32 sary or appropriate to effectuate the provisions of this
33 article.

34 (b) All moneys paid to the board shall be accepted by
35 a person designated by the board and deposited by him
36 with the treasurer of the state and credited to an account
37 to be known as the "board of examiners of land surveyors
38 fund." All of the reasonable compensation of the members
39 of the board, the reimbursement of all reasonable and
40 necessary expenses actually incurred by such members
41 and all other costs and expenses incurred by the board
42 in the administration of this article shall be paid from
43 such fund, and no part of the state's general revenue
44 fund shall be expended for this purpose.

**§30-13A-5. Qualifications of applicants for licenses; exceptions;
applications; fee; examinations.**

1 (a) To be eligible for a license to engage in the prac-
2 tice of land surveying, the applicant must:

3 (1) Be at least twenty-one years of age;

4 (2) Be of good moral character;

5 (3) Have been a resident of the United States for one
6 year immediately preceding the date of application;

7 (4) Not have been convicted of a crime involving
8 moral turpitude;

9 (5) Have four years or more experience in the prac-
10 tice of land surveying under the supervision of a licensee,
11 or a person eligible for a license hereunder, or a person
12 authorized in another state or country to engage in the
13 practice of land surveying; and each year of satisfactory
14 study in an accredited surveying curriculum may be
15 substituted for one year of experience, but only two years
16 of such experience requirement may be fulfilled by such
17 study; and

18 (6) Have passed the examination prescribed by the
19 board, which examination shall cover the basic subject
20 matter of land surveying and land surveying skills and
21 techniques.

22 (b) The following persons shall be eligible for a license
23 to engage in the practice of land surveying without
24 examination:

25 (1) Any applicant who is licensed, certificated or regis-
26 tered to engage in the practice of land surveying in any
27 other state or country, if the requirements to obtain a
28 license or certificate or to become registered in such
29 other state or country are found by the board to be at
30 least as great as those prescribed in this article.

31 (2) Any applicant who is a graduate of an accredited
32 surveying curriculum and has at least two years of experi-
33 ence in the practice of land surveying under the super-
34 vision of a licensee, or a person eligible for a license
35 hereunder, or a person authorized in another state
36 or country to engage in the practice of land surveying, if
37 such applicant meets the requirements of subdivisions
38 (1), (2), (3) and (4), subsection (a) of this section.

39 (3) Any applicant who has been engaged in the practice
40 of land surveying in West Virginia for at least six years
41 prior to the filing of such application, if such application
42 for a license is made within three years after the effective
43 date of this article and if such person meets the require-
44 ments of subdivisions (1), (2), (3) and (4), subsection
45 (a) of this section. Such applicant must also furnish the
46 names and addresses of ten persons who have engaged
47 such applicant as a land surveyor, together with satis-
48 factory records of such land surveying work.

49 (c) Any applicant for any such license shall submit an
50 application therefor on forms provided by the board. Such
51 applications shall be verified and shall contain a statement
52 of the applicant's education and experience, the names
53 of five persons for reference (at least three of whom shall
54 be licensees, or persons eligible for a license hereunder,
55 or persons authorized in another state or country to
56 engage in the practice of land surveying, who have knowl-
57 edge of his work) and such other information as the
58 board may from time to time by reasonable rule and regu-
59 lation prescribe.

60 (d) An applicant shall pay to the board with his ap-
61 plication a license fee of twenty dollars, which fee shall
62 be returned if he is denied a license.

63 (e) Examinations shall be held at least once each year
64 at such time and place as the board shall determine. The
65 scope of the examination and methods of procedure shall
66 be determined by the board. An applicant who fails to
67 pass an examination may reapply at any time and shall
68 furnish additional information as requested by the board.
69 Each such application shall be accompanied by a license
70 fee of twenty dollars, which fee shall be returned if the
71 applicant is again denied a license.

**§30-13A-6. Issuance of license; notice of expiration; renewal;
renewal fee; display.**

1 Whenever the board finds that an applicant meets all
2 of the requirements of this article for a license to engage
3 in the practice of land surveying, it shall forthwith issue
4 to him such license; and otherwise the board shall deny
5 the same. All licenses, whether original or renewal, shall
6 expire on the thirtieth day of June following the date
7 of issuance or renewal. The secretary-treasurer of the
8 board shall mail to every licensee, at least thirty days
9 prior to the expiration of such license, notice of the
10 expiration date and the amount of the renewal fee. A
11 license may be renewed without examination upon ap-
12 plication for a renewal on a form prescribed by the
13 board and payment to the board of an annual renewal
14 fee of five dollars. If a license is not renewed when
15 due, the fee shall increase fifty cents per month for each
16 month or fraction thereof that such renewal fee is not
17 paid, up to a maximum of thirty-six months. No license
18 shall be renewed after expiration of said period of thirty-
19 six months, and the fact that a license cannot be renewed
20 because of the expiration of said period of thirty-six
21 months shall not prevent such person from making ap-
22 plication for a new license. The board may deny any
23 application for renewal for any reason which would
24 justify the denial of an original application for a license.
25 The board shall prescribe the form of licenses and each
26 such license shall be conspicuously displayed by the
27 licensee at his principal place of practice. A duplicate
28 license may be issued upon payment of a fee of five
29 dollars.

§30-13A-7. Exemption from regulation and licensing.

1 The following persons are exempt from regulation and
2 licensing under the provisions of this article and any
3 reasonable rules and regulations promulgated hereunder,
4 and may engage in the practice of land surveying with-
5 out a license issued under the provisions of this article
6 and any such reasonable rules and regulations:

7 (a) Any professional engineer authorized to practice
8 the profession of engineering as provided in article thir-
9 teen of this chapter;

10 (b) Any resident of another state, when such practice
11 in this state does not exceed in the aggregate more than
12 thirty days per calendar year, or such additional time
13 as may be approved by the board, if such person is
14 licensed, certificated or registered in his own state and
15 the requirements for obtaining a license or certificate
16 or becoming registered in such other state are not lower
17 than those specified in this article;

18 (c) Any person who has filed with the board an
19 application for a license and who has paid the fee required
20 by this article, but such exemption shall continue only
21 for such time as the board requires for the consideration
22 and determination of the application for such license;

23 (d) Any employee of a person holding a license to
24 engage in the practice of land surveying in this state
25 or any employee of a person exempted from regulation
26 and licensing under subdivisions (a) and (b) of this
27 section: *Provided*, That the work of any such employee
28 is done under the supervision of and certified by his
29 employer;

30 (e) Any employee of a person, firm, association or
31 corporation, when such employee is engaged in the
32 practice of land surveying exclusively for the person,
33 firm, association or corporation by which employed,
34 or, if a corporation, its parents, affiliates or subsidiaries,
35 and such person, firm, association or corporation does
36 not hold himself or itself out to the public as being
37 engaged in the business of land surveying;

38 (f) Any employee or officer of the United States,
39 this state or any political subdivision thereof, when

40 such employee is engaged in the practice of land sur-
41 veying exclusively for such governmental unit.

§30-13A-8. Suspension or revocation of license.

1 (a) The board may at any time upon its own motion
2 and shall upon the verified written complaint of any per-
3 son conduct an investigation to determine whether there
4 are any grounds for the suspension or revocation of a
5 license issued under the provisions of this article.

6 (b) The board shall suspend or revoke any license
7 when it finds the holder thereof has:

8 (1) Been convicted of a crime involving moral turpi-
9 tude;

10 (2) Obtained a license by means of fraud or deceit;

11 (3) Been incompetent, grossly negligent, or guilty of
12 fraud, deceit or other misconduct in the practice of land
13 surveying as defined by the board by reasonable rules
14 and regulations; or

15 (4) Failed or refused to comply with the provisions of
16 this article or any reasonable rule and regulation promul-
17 gated by the board hereunder or any order or final de-
18 cision of the board.

19 (c) The board shall also suspend or revoke any license
20 if it finds the existence of any ground which would
21 justify the denial of an application for such license if
22 application were then being made for it.

23 (d) Any suspension of a license shall continue for the
24 period specified in the order of suspension. Revocation
25 of a license shall not preclude application for a new
26 license, which application shall be processed in the same
27 manner and the application approved or denied and the
28 license issued or refused on the same grounds as any
29 other application for a license is processed, considered
30 and determined, except that any previous suspension and
31 the revocation may be given such weight in deciding
32 whether to approve or deny such application and issue or
33 refuse to issue such license as is meet and proper under
34 all the circumstances.

§30-13A-9. Procedures for hearings.

1 (a) Whenever the board shall deny an application for
2 any original or renewal license or shall suspend or re-
3 voke any license, it shall make and enter an order to that
4 effect and serve a copy thereof on the applicant or li-
5 censee, as the case may be, by certified mail, return re-
6 ceipt requested. Such order shall state the grounds for
7 the action taken and shall require that any license sus-
8 pended or revoked thereby shall be returned to the board
9 by the holder within twenty days after receipt of said
10 order.

11 (b) Any person adversely affected by any such order
12 shall be entitled to a hearing thereon (as to all issues not
13 excluded from the definition of a "contested case" as set
14 forth in article one, chapter twenty-nine-a of this code)
15 if, within twenty days after receipt of a copy thereof, he
16 files with the board a written demand for such hearing.
17 A demand for hearing shall operate automatically to stay
18 or suspend the execution of any order suspending or re-
19 voking a license or denying an application for a renewal
20 license. The board may require the person demanding
21 such hearing to give reasonable security for the costs
22 thereof and if such person does not substantially prevail
23 at such hearing such costs shall be assessed against him
24 and may be collected by an action at law or other proper
25 remedy.

26 (c) Upon receipt of a written demand for such hearing,
27 the board shall set a time and place therefor not less than
28 ten and not more than thirty days thereafter. Any sched-
29 uled hearing may be continued by the board upon its own
30 motion or for good cause shown by the person demanding
31 the hearing.

32 (d) All of the pertinent provisions of article five,
33 chapter twenty-nine-a of this code shall apply to and
34 govern the hearing and the administrative procedures in
35 connection with and following such hearing, with like
36 effect as if the provisions of said article five were set
37 forth in this subsection.

38 (e) Any such hearing shall be conducted by a quorum
39 of the board. For the purpose of conducting any such

40 hearing any member of the board shall have the power
41 and authority to issue subpoenas and subpoenas duces
42 tecum which shall be issued and served within the time,
43 for the fees and shall be enforced, as specified in section
44 one, article five of said chapter twenty-nine-a, and all
45 of the said section one provisions dealing with subpoenas
46 and subpoenas duces tecum shall apply to subpoenas
47 and subpoenas duces tecum issued for the purpose of a
48 hearing hereunder.

49 (f) At any such hearing the person who demanded
50 the same may represent himself or be represented by
51 an attorney at law admitted to practice before any circuit
52 court of this state. Upon request by the board, it shall
53 be represented at any such hearing by the attorney
54 general or his assistants without additional compensation.

55 (g) After any such hearing and consideration of all of
56 the testimony, evidence and record in the case, the board
57 shall render its decision in writing. The written decision
58 of the board shall be accompanied by findings of fact and
59 conclusions of law as specified in section three, article five,
60 chapter twenty-nine-a of this code, and a copy of such
61 decision and accompanying findings and conclusions shall
62 be served by certified mail, return receipt requested, upon
63 the person demanding such hearing, and his attorney of
64 record, if any.

65 (h) The decision of the board shall be final unless
66 reversed, vacated or modified upon judicial review there-
67 of in accordance with the provisions of section ten of this
68 article.

**§30-13A-10. Judicial review; appeal to supreme court of ap-
peals; legal representation for board.**

1 Any person adversely affected by a decision of the board
2 rendered after a hearing held in accordance with the
3 provisions of section nine of this article shall be entitled
4 to judicial review thereof. All of the pertinent provisions
5 of section four, article five, chapter twenty-nine-a of this
6 code shall apply to and govern such judicial review with
7 like effect as if the provisions of said section four were
8 set forth in this section.

9 The judgment of the circuit court shall be final unless
10 reversed, vacated or modified on appeal to the supreme
11 court of appeals in accordance with the provisions of
12 section one, article six, chapter twenty-nine-a of this code.

13 Legal counsel and services for the board in all appeal
14 proceedings in any circuit court and the supreme court of
15 appeals shall be provided by the attorney general or his
16 assistants and in any circuit court by the prosecuting
17 attorney of the county as well, all without additional
18 compensation.

§30-13A-11. Seal.

1 Each licensee shall obtain a seal of the design autho-
2 rized by the board, bearing his name and the legend,
3 "Licensed Land Surveyor." Plans, plats, maps, drawings
4 and reports issued by a licensee shall be stamped with the
5 seal. It shall be unlawful for anyone to stamp or seal any
6 document with such seal unless the license of the licensee
7 named thereon remains unsuspended, unrevoked and un-
8 expired.

§30-13A-12. Duty of county clerks and public officials.

1 No document prepared by or alleged to have been pre-
2 pared by a land surveyor shall be filed by any clerk of
3 a county court or accepted by any public official of this
4 state unless the seal required by section eleven of this
5 article has been affixed thereto, except that any document
6 prepared by a person exempted from the regulation and
7 licensing requirements of this article, as provided in sec-
8 tion seven of this article, shall not be required to have
9 the seal required by section eleven of this article affixed
10 thereto.

§30-13A-13. Actions to enjoin violations.

1 Whenever it appears to the board that any person
2 has been or is violating or is about to violate any pro-
3 vision of this article, any reasonable rule and regulation
4 promulgated hereunder or any order or final decision
5 of the board, the board may apply in the name of the
6 state to the circuit court of the county in which the
7 violation or violations or any part thereof has occurred,

8 is occurring or is about to occur, or the judge thereof
9 in vacation, for an injunction against such person and
10 any other persons who have been, are or are about to
11 be, involved in any practices, acts or omissions, so in
12 violation, enjoining such person or persons from any
13 such violation or violations. Such application may be
14 made and prosecuted to conclusion whether or not any
15 such violation or violations have resulted or shall result in
16 prosecution or conviction under the provisions of section
17 fourteen of this article.

18 Upon application by the board, the circuit courts of
19 this state may by mandatory or prohibitory injunction
20 compel compliance with the provisions of this article,
21 the reasonable rules and regulations promulgated here-
22 under and all orders and final decisions of the board.
23 The court may issue a temporary injunction in any
24 case pending a decision on the merits of any application
25 filed.

26 The judgment of the circuit court upon any appli-
27 cation permitted by the provisions of this section shall
28 be final unless reversed, vacated or modified on appeal
29 to the supreme court of appeals. Any such appeal shall
30 be sought in the manner and within the time provided
31 by law for appeals from circuit courts in other civil
32 actions.

33 The board shall be represented in all such proceedings
34 by the attorney general or his assistants and in such pro-
35 ceedings in the circuit court by the prosecuting attorneys
36 of the several counties as well, all without additional
37 compensation.

§30-13A-14. Offenses and penalties.

1 Any person who violates any of the provisions of this
2 article, any of the reasonable rules and regulations pro-
3 mulgated hereunder or any order or any final decision
4 of the board shall be guilty of a misdemeanor, and, upon
5 conviction thereof, shall be punished by imprisonment
6 for not more than three months or by a fine of not more
7 than one hundred dollars, or by both such fine and impris-
8 onment.

§30-13A-15. Severability.

1 If any provision of this article or the application
2 thereof to any person or circumstance is held uncon-
3 stitutional or invalid, such unconstitutionality or in-
4 validity shall not affect other provisions or applications
5 of the article, and to this end the provisions of this article
6 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
3 value of five hundred dollars or more, it shall prescribe
4 in the decree that such sale shall be advertised in a
5 newspaper by the commissioner or person appointed to
6 make the sale. It shall always be advertised as a Class
7 III legal advertisement in compliance with the provi-
8 sions of article three, chapter fifty-nine of this code,
9 and the publication area for such publication shall be
10 the county where the real estate to be sold is situate.
11 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
2 state that all public buildings and facilities covered by
3 this article, as specified in section two of this article, be
4 accessible to and functional for the physically handi-
5 capped, without loss of function, space or facilities so
6 far as the general public is concerned.

§18-10F-2. Application of article.

1 (a) The provisions of this article and the reasonable
2 rules and regulations promulgated hereunder shall apply
3 to all temporary, emergency or permanent buildings and
4 facilities used by the public which are constructed after
5 the effective date of this article in whole or in part by
6 the use of state, county or municipal funds or the funds
7 of any other political subdivision of this state, except
8 as hereinafter provided.

9 (b) Notwithstanding the provisions of subsection (a)
10 of this section, the provisions of this article and the
11 reasonable rules and regulations promulgated hereunder
12 shall also be applicable to all buildings and facilities
13 used by the public and which are under construction
14 on the effective date of this article by the use in whole
15 or in part of state, county or municipal funds or the
16 funds of any other political subdivision of this state,
17 unless the governmental authorities responsible for the
18 construction shall determine that the construction has
19 reached a state where compliance is impractical.

§18-10F-3. Rules and regulations.

1 In order to implement the provisions of this article,
2 the director of the division of vocational rehabilitation
3 of the state board of education, with the approval of the
4 state board of public buildings hereinafter created, shall
5 promulgate reasonable rules and regulations. The director
6 and the board, in promulgating and approving such
7 reasonable rules and regulations, shall take into account
8 the following:

9 (1) Use of buildings and facilities by persons confined
10 to wheelchairs, persons using crutches or other walking

11 aids, persons afflicted by sight or hearing loss, persons
12 disabled by age, and any other persons whose mobility
13 is limited; and data shall be gathered to determine the
14 needs of any such persons;

15 (2) Frequency of use by disabled persons as above
16 enumerated; and

17 (3) Additional construction cost required to comply
18 with the provisions of this article and such reasonable
19 rules and regulations.

20 The director shall have the authority to except build-
21 ings and facilities from the provisions of this article and
22 such reasonable rules and regulations, in whole or in
23 part, if, in his opinion, compliance therewith would
24 create a financial hardship, be impractical or serve no
25 benefit.

26 All such reasonable rules and regulations shall be
27 promulgated in accordance with the provisions of article
28 three, chapter twenty-nine-a of this code, and shall in-
29 clude, but not be limited to, provisions pertaining to the
30 following:

31 (1) Reservation of parking spaces for the disabled,
32 where possible;

33 (2) Construction of exterior walkways and ramps;

34 (3) Design and construction of doorways;

35 (4) Design and construction of interior floors, steps,
36 ramps, and doorways;

37 (5) Design of and accessibility to elevators;

38 (6) Design and construction of toilet facilities for use
39 by the disabled;

40 (7) Design and location of public telephones, water
41 fountains and other conveniences to facilitate their use
42 by the disabled; and

43 (8) Accessibility of at least one primary entrance to
44 individuals in wheelchairs.

**§18-10F-4. State board of public buildings created; member-
ship; expenses.**

1 There is hereby created the state board of public build-
2 ings which shall consist of five members appointed by the

3 governor, one member to be a representative of the state
4 building commission, one member to be a representative
5 of a municipality, one member to be a representative
6 of a county court, one member to be a representative
7 of the state board of education, and one member to be
8 an architect. Each member shall serve at the will and
9 pleasure of the governor. The members of the board
10 shall receive no compensation for their services on such
11 board, but they shall be reimbursed for all reasonable
12 and necessary expenses actually incurred in the perform-
13 ance of their duties as members of the board.

§18-10F-5. Enforcement of article.

1 It shall be the duty of the director to enforce the
2 provisions of this article and all reasonable rules and
3 regulations promulgated hereunder, and it shall be the
4 duty of the state, any county, municipality or other
5 political subdivision thereof, or any department, agency,
6 commission, board or bureau thereof, responsible for the
7 construction of any public building or facility to comply
8 with the provisions of this article and all such reasonable
9 rules and regulations. Whenever the director ascertains
10 that any such public building or facility is about to be
11 constructed or is under construction (which construction
12 began after the effective date of this article) in violation
13 of the provisions of this article or any such reasonable
14 rules and regulations, he may petition the circuit court
15 of the county wherein the construction is to be or is
16 taking place for an order to compel compliance with the
17 provisions of this article and such reasonable rules and
18 regulations, and the court may compel compliance unless
19 such court finds that compliance would create a financial
20 hardship, be impractical or serve no benefit.

§18-10F-6. Severability.

1 If any provision of this article or the application thereof
2 to any person or circumstance is held unconstitutional
3 or invalid, such unconstitutionality or invalidity shall
4 not affect other provisions or applications of the article,
5 and to this end the provisions of this article are declared
6 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.

1 The board of trustees of the West Virginia public em-
2 ployees retirement system is hereby created. The ad-
3 ministration and management of the retirement system,
4 the responsibility for making effective the provisions of
5 this article, and the authority to make all rules and regu-
6 lations therefor, are hereby vested in the said board of
7 trustees, except as is otherwise specifically provided in
8 this article. The board shall consist of five trustees, as
9 follows:

10 (a) The auditor of the state, by virtue of his office;

11 (b) The treasurer of the state, by virtue of his office;

12 (c) The commissioner of finance and administration,
13 by virtue of his office;

14 (d) A resident of the state, who is not a member,
15 retirant, or beneficiary of the retirement system, to be

16 appointed by the governor with confirmation by the
17 Senate;

18 (e) One member of the retirement system to be
19 appointed by the governor.

CHAPTER 111

(Senate Bill No. 170—By Mr. Hylton)

[Passed March 7, 1969; in effect ninety days from passage. Approved by the Governor.]

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
2 with the prior service and contributing service to which
3 he is entitled based upon such rules and regulations as the
4 board of trustees shall from time to time adopt: *Provided*,
5 That in no case shall less than ten days of service rendered by a member in any calendar month be credited as
6 a month of service; nor shall less than ten months of
7 service rendered in any calendar year be credited as a
8 year of service; nor shall more than one year of service
9 be credited any member for all service rendered by him
10

11 in any calendar year; nor shall any member who was not
12 in the employ of a political subdivision within a period
13 of twenty-five years immediately preceding the date the
14 political subdivision became a participating public em-
15 ployer be credited with prior service.

16 (b) The board of trustees may grant service credit to
17 employees of boards of health, the clerk of the House of
18 Delegates and the clerk of the state Senate who are partic-
19 ipating members, for service previously credited by the
20 state teachers retirement system, and may require a
21 transfer of the members contributions to the retire-
22 ment system, and may also require a deposit, with in-
23 terest, of any withdrawals of contributions.

24 (c) Court reporters who are acting in an official capac-
25 ity, although paid by funds other than the county court
26 or state auditor, may receive prior service credit for such
27 time as served in such capacity.

c

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

3 be suspended during the period of his reemployment and
4 he shall become a contributing member to the retirement
5 system. If his reemployment is for a period of one year
6 or longer, his annuity shall be recalculated and he shall
7 be granted an increased annuity due to such additional
8 employment, said annuity to be computed according to
9 section twenty-two of this article. A retirant may accept
10 temporary employment for a participating employer so
11 long as he shall not receive compensation in excess of
12 eighteen hundred dollars per year and continue to draw
13 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-
2 rized and empowered to render such aid and assistance,

3 financial, advisory and/or otherwise, to public, school,
4 county, or regional libraries, whether established or main-
5 tained by said library commission or not, under such
6 conditions and rules and regulations as the said commis-
7 sion deems necessary to further the interests of the state
8 and best increase the efficiency of the service it is ex-
9 pected to render the public.

10 Having determined that the development and support
11 of such libraries will further the education of the people
12 of the state as a whole and will thereby aid in the dis-
13 charge of the responsibility of the state to encourage and
14 foster education, the West Virginia library commission
15 is authorized and empowered to pay over and contribute
16 to any board of library directors created and maintained
17 pursuant to the provisions of this article or any special act
18 of the Legislature such sum or sums of money as may be
19 available from funds included in appropriations made for
20 the West Virginia library commission for such purpose.
21 The amount of any such payment or contribution by the
22 commission to any such local library board of directors
23 shall be determined in accordance with rules and regula-
24 tions promulgated by the commission. The library com-
25 mission shall have authority to promulgate rules and
26 regulations governing the manner in which such amount
27 or amounts of money shall be accounted for and ex-
28 pended.

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
2 any person appointed by him to perform the service, to
3 examine into all financial affairs of every local govern-
4 mental office or political subdivision and all boards, com-
5 missions, authorities, agencies or other offices created
6 under authority thereof and shall make such an examina-
7 tion at least once a year, if practicable. On every such
8 examination inquiry shall be made as to the financial con-
9 ditions and resources of the agency having jurisdiction
10 over the appropriations and levies disbursed by the office,
11 whether the requirements of the constitution and statu-
12 tory laws of the state and the ordinances and orders of
13 the agency have been properly complied with, and also
14 inquire into the methods and accuracy of the accounts,
15 and as to such other matters of audit and accounting as
16 the chief inspector may prescribe. He or any of his as-
17 sistants shall have power and may exercise all the au-
18 thority to issue subpoenas and compulsory process, and
19 to direct the service thereof by any constable or sheriff,
20 to compel the attendance of witnesses and the production
21 of books and papers before him at any designated time
22 and place, selected in their respective county, and to ad-
23 minister oaths. If any person shall refuse to appear before
24 said chief inspector or his assistants when required so to
25 do, or shall refuse to testify in regard to any matter or
26 refuse to produce any books or papers in his possession
27 or under his control, he shall be guilty of a misdemeanor,
28 and, upon conviction thereof, shall be fined not more than
29 one hundred dollars and imprisoned not more than six
30 months. Wilful false swearing in such examinations shall
31 be punishable as such. A report of each examination
32 shall be made in duplicate, one copy to be filed in the

33 office of the state tax commissioner and one in the audit-
34 ing department of the agency. If any such examination
35 discloses misfeasance, malfeasance or nonfeasance in of-
36 fice on the part of any public officer or employee, a certi-
37 fied copy of the report shall be filed with the proper legal
38 authority of the agency, the prosecuting attorney of the
39 county wherein the agency is located and with the at-
40 torney general for such legal action as is proper in the
41 premises. At the time of the filing of such certified audit
42 the chief inspector shall notify the proper legal authority,
43 the said prosecuting attorney, and the attorney general, in
44 writing, of his recommendation as to the legal action
45 that the chief inspector considers proper in the premises,
46 whether criminal prosecution or civil action to effect
47 restitution, or both. If the proper legal authority or said
48 prosecuting attorney, within nine months of the receipt
49 of such certified audit and recommendations, refuses,
50 neglects or fails to take efficient legal action by a civil suit
51 to effect restitution or by prosecuting criminal proceed-
52 ings to a final conclusion, in accordance with the said
53 recommendations, then the chief inspector shall have the
54 right to institute the necessary proceedings, or to partici-
55 pate therein, and to prosecute the same in any of the
56 courts of the state, to a final conclusion.

C

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."

1 (a) All public utilities subject to the provisions of this
2 chapter shall pay a special license fee in addition to those
3 now required by law. The amount of such fees shall be
4 fixed by the auditor and levied by him upon each of such
5 public utilities according to the value of its property as
6 ascertained by the last assessment, and shall be appor-
7 tioned among such public utilities upon the basis of such
8 valuation, so as to produce a revenue of three hundred
9 twenty thousand dollars per annum, which fees shall be
10 paid on or before the twentieth day of January in each
11 year. Such sum of three hundred twenty thousand
12 dollars, together with that provided in subsection (b)
13 hereof shall be paid into the state treasury and kept as a
14 special fund, designated "public service commission
15 fund," to be appropriated as provided by law for the
16 purpose of paying the salaries of the commission, as fixed
17 by this chapter, its expenses and salaries, compensations,
18 costs and expenses of its employees.

19 (b) All public utilities subject to the provisions of this
20 chapter shall pay a special license fee in addition to any
21 and all fees now required by law. The amount of such
22 fees shall be fixed by the auditor and levied by him upon
23 each of such public utilities, in the proportion which the
24 total gross revenue derived from intrastate business done
25 by each of such public utilities in the calendar year next
26 preceding bears to the total gross revenue derived from
27 intrastate business done in such year by all public utilities
28 subject to regulation by the public service commission,
29 so as to produce a revenue of six hundred forty thousand
30 dollars per annum, in addition to such fees as may be
31 fixed by the auditor under the provisions of subsection
32 (a) hereof and which fees shall be paid on or before the

33 first day of July in each year. Such sum of six hundred
34 forty thousand dollars shall be paid into the state treasury
35 and be kept, appropriated and used as provided in sub-
36 section (a) hereof.

37 (c) Any balance in said fund at the end of any fiscal
38 year shall not revert to the treasury but shall remain
39 in said fund and may be appropriated and used as pro-
40 vided in subsection (a) hereof.

C

CHAPTER 116

(Com. Sub. for House Bill No. 649—By Mr. Zakaib)

[Passed March 7, 1969; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new chapter, designated chapter 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.
6. Judicial Review; Nature of Commission's Powers.

ARTICLE 1. PURPOSE AND DEFINITIONS.

§24B-1-1. Purpose.

§24B-1-2. Definitions.

§24B-1-1. Purpose.

1 It is hereby declared to be the purpose and policy of
2 the Legislature in enacting this chapter to empower the
3 public service commission of West Virginia, in addition
4 to all other powers conferred and duties imposed upon
5 it by law, to prescribe and enforce safety standards for
6 pipeline facilities as hereinafter defined, and to regulate
7 safety practices of persons engaged in the transportation
8 of gas as hereinafter defined.

§24B-1-2. Definitions.

1 When used in this chapter:

2 (1) "Person" means any individual, firm, joint venture,
3 partnership, corporation, association, state, municipality,
4 cooperative association, or joint-stock association, and
5 includes any trustee, receiver, assignee, or personal rep-
6 resentative thereof;

7 (2) "Gas" means natural gas, flammable gas, or gas
8 which is toxic or corrosive;

9 (3) "Transportation of gas" means the gathering,
10 transmission or distribution of gas by pipeline or its
11 storage;

12 (4) "Pipeline facilities" means without limitation, new
13 and existing pipe, pipe right-of-ways and any equipment,
14 facility, or building used in the transportation of gas or
15 the treatment of gas during the course of transportation;
16 but "right-of-ways" as used in this chapter does not
17 authorize the commission to prescribe the location or
18 routing of any pipeline facility;

19 (5) "Municipality" means a city, county, or any other
20 political subdivision of the state;

21 (6) "Interstate transmission facilities" means facilities
22 used in the transportation of gas which are subject to the
23 jurisdiction of the federal power commission under the
24 act of Congress known as the Natural Gas Act;

25 (7) "Director" means the director of the gas pipeline
26 safety division of the commission;

27 (8) "Commission" means the public service commis-
28 sion of West Virginia;

29 (9) "Secretary" means the United States secretary of
30 transportation;

31 (10) "Pipeline company" means a person engaged in
32 the operation of pipeline facilities or the transportation
33 of gas subject to the provisions of this chapter; and

34 (11) "Act of 1968" means the act of Congress known
35 as the Natural Gas Pipeline Safety Act of 1968.

ARTICLE 2. POWERS AND DUTIES OF THE COMMISSION.

§24B-2-1. Jurisdiction.

§24B-2-2. Rules and regulations.

§24B-2-3. General investigatory powers.

§24B-2-4. Cooperation with the federal government.

§24B-2-1. Jurisdiction.

1 The commission shall have power and authority to
2 prescribe and enforce safety standards for pipeline facili-
3 ties, and to regulate safety practices of persons engaged
4 in the transportation of gas, to the extent permitted by
5 the "Act of 1968" and any amendments thereto. Such
6 standards may apply to the design, installation, inspection,
7 testing, construction, extension, operation, replacement
8 and maintenance of pipeline facilities. Standards affecting
9 the design, installation, construction, initial inspection
10 and initial testing shall not be applicable to pipeline
11 facilities in existence on the date such standards are
12 adopted. Whenever the commission shall find a particular
13 facility to be hazardous to life or property, it shall be
14 empowered to require the person operating such facility
15 to take such steps necessary to remove such hazards. Such
16 safety standards shall be practicable and designed to
17 meet the need for pipeline safety. In prescribing such
18 standards, the commission shall consider:

19 (a) Relevant available pipeline safety data;

20 (b) Whether such standards are appropriate for the
21 particular type of pipeline transportation;

22 (c) The reasonableness of any proposed standards;
23 and

24 (d) The extent to which such standards will contrib-
25 ute to public safety.

§24B-2-2. Rules and regulations.

1 The commission shall prescribe such rules and regu-
2 lations as it may deem proper for the enforcement of the
3 provisions of this chapter without distinction based on the
4 interstate or intrastate character of the person, thing or
5 activity to which such rules and regulations apply.

§24B-2-3. General investigatory powers.

1 The commission shall have power to investigate all
2 methods and practices of pipeline companies; to require
3 the maintenance and filing of reports, records and other
4 information in such form and detail as the commission
5 may prescribe; to enter upon and to inspect the property,
6 buildings, plants, and offices of such pipeline companies;
7 and to inspect books, records, papers and documents
8 relevant to the enforcement of this chapter.

§24B-2-4. Cooperation with the federal government.

1 The commission shall cooperate with the secretary and
2 other agencies of the United States in the enforcement
3 of this chapter and the "Act of 1968" and amendments
4 thereto; and to this end, the commission shall take such
5 steps as may be necessary to make annual certifications
6 to the secretary under section five (a) of the "Act of
7 1968," and shall file such certificates with the secretary.
8 The commission is hereby authorized and empowered
9 (a) to act as the secretary's agent in the enforcement
10 of the "Act of 1968" and amendments thereto with re-
11 spect to interstate transmission facilities; and (b) to
12 accept for the state of West Virginia, and expend for
13 the purpose designated, any funds that may hereafter
14 be made available to the commission out of the federal
15 treasury by an act or acts of Congress and allocated to
16 this state for the purpose of carrying out the provisions
17 of this chapter and the "Act of 1968" and amendments
18 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 provi-
2 sions of this chapter and of all valid regulations and
3 orders issued by the commission.

§24B-3-2. Inspection and maintenance plans.

1 Every pipeline company shall file with the commission
2 a plan for inspection and maintenance of the pipeline
3 facilities owned or operated by it, and shall subsequently
4 file any changes in such plan, in form and content as
5 the commission may prescribe.

§24B-3-3. Annual safety reports.

1 Every pipeline company shall file with the commission
2 an annual report showing: (1) Name and address of the
3 pipeline company filing the report; (2) all accidents or
4 incidents involving its pipeline facilities that occurred
5 during the preceding twelve months involving personal
6 injury requiring hospitalization, fatality, or property
7 damage exceeding one thousand dollars, together with
8 a summary of the pipeline company's investigation as
9 to the cause and circumstances surrounding such acci-
10 dent or incident; and (3) such other information as the
11 commission may require.

§24B-3-4. Effect of chapter.

1 Nothing in this chapter shall affect the common law
2 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-4-3. Rules of practice and procedure.

§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 com-
2 mission is authorized to conduct conferences, formal and
3 informal hearings, to make findings of fact and con-

4 clusions of law, and to enter orders with respect to any
5 issues that may arise under this chapter.

§24B-4-2. Burden of proof.

1 Where an issue is made of the propriety of a plan
2 submitted under section two, article three hereof, the
3 burden of proof of the propriety of such plan shall be
4 on the pipeline company submitting such plan.

§24B-4-3. Rules of practice and procedure.

1 The commission shall prescribe rules of practice and
2 procedure, the method and manner of holding hearings,
3 and for taking evidence on all matters that may come
4 before it, and enter such orders as may be just and law-
5 ful. In the investigations, preparations, and hearings of
6 cases, the commission shall not be bound by the technical
7 rules of pleadings and evidence, but in that respect it
8 may exercise such discretion as will facilitate its efforts
9 to understand and learn all the facts bearing upon the
10 right and justness of the matter before it.

§24B-4-4. Witnesses; testimony; subpoena.

1 The commission shall, either as a commission or by
2 any of its members, or by designated employees, sub-
3 poena witnesses, take testimony, administer oaths to any
4 witness in any proceeding or examination instituted be-
5 fore or conducted by it with reference to any matter
6 within its jurisdiction hereunder. In all hearings or
7 proceedings before the commission or its designated
8 employees, the evidence of witnesses and the production
9 of documentary evidence may be required at any desig-
10 nated place of hearing within the state; and in the case
11 of disobedience to a subpoena or other process, the com-
12 mission or any party to the proceedings before the com-
13 mission may invoke the aid of any circuit court in the
14 state in requiring the evidence and testimony of wit-
15 nesses and the production of papers, books, and docu-
16 ments. And such court, in case of refusal to obey this
17 subpoena issued to any person or other witness, shall
18 issue an order requiring such person or other witness
19 to appear before the commission or designated employees

20 and produce books and papers, if so ordered, and give
21 evidence touching the matter in question. Any failure
22 to obey such order of the court may be punished by such
23 court as contempt thereof. A claim that such testimonial
24 evidence may intend to incriminate the witness giving
25 the same shall not excuse any witness from testifying,
26 but such witness shall not be prosecuted for any offense
27 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
17 determined, or the amount agreed upon in compromise,
18 may be deducted from any sums owing by the state to
19 the person charged or may be recovered in a civil action
20 in the state courts.

21 (c) Civil penalties collected under this section shall
22 be paid into the state treasury and be kept in a special
23 fund established by subsection (b), section three, article
24 five hereof.

ARTICLE 5. EMPLOYEES OF COMMISSION; COMPENSATION TO COMMISSIONERS; FUNDING.

§24B-5-1. Director and other employees.

§24B-5-2. Compensation to commissioners.

§24B-5-3. Funding; property and revenue license fees.

§24B-5-1. Director and other employees.

1 The commission shall appoint a director of the gas
2 pipeline safety division of the public service commission,
3 and such other employees as may be necessary to carry
4 out the provisions of this chapter, and shall fix their
5 respective salaries or compensation. The commission may
6 designate such employees as it deems necessary to take
7 evidence at any hearing held or required by the pro-
8 visions of this chapter, which employees are hereby
9 empowered to administer oaths in all parts of this state
10 so far as the exercise of such power is properly incidental
11 to the performance of their duties in connection with
12 the provisions of this chapter.

§24B-5-2. Compensation to commissioners.

1 Each member of the commission shall receive a salary
2 of one thousand dollars per annum as compensation for
3 the administration of this chapter in addition to all
4 other salary or compensation otherwise provided for by
5 law, to be paid in monthly installments from the public
6 service commission gas pipeline safety fund.

§24B-5-3. Funding; property and revenue license fees.

1 (a) Every pipeline company shall pay a special license
2 fee in addition to those now required by law. The amount
3 of such fees shall be fixed by the auditor and levied by
4 him upon each of such pipeline companies according to
5 the number of three inch equivalent pipeline miles in-
6 cluded in its pipeline facilities, and shall be apportioned
7 among such pipeline companies upon the basis of the
8 pipeline companies' reports submitted to the auditor in
9 such form as the commission may prescribe, so as to
10 produce a revenue of not more than ninety thousand
11 dollars per annum, which fees shall be paid on or before
12 the first day of July in each year: *Provided*, That the
13 expenses for the period between the effective date hereof

14 and June thirty, one thousand nine hundred sixty-nine,
15 shall be payable from the public service commission fund.

16 (b) Such sums collected under section six, article
17 four hereof and under subsection (a) of this section shall
18 be paid into the state treasury and kept as a special fund,
19 designated "public service commission gas pipeline safety
20 fund," to be appropriated as provided by law for the
21 purpose of paying the salaries of the commission, as
22 fixed by this chapter, its expenses and salaries, compen-
23 sation, costs and expenses of its employees. Any balance
24 in said fund at the end of any fiscal year shall not revert
25 to the treasury, but shall remain in said fund and may
26 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
2 order by the commission, affecting him or it, may present
3 a petition in writing to the supreme court of appeals,
4 or to a judge thereof in vacation, within thirty days
5 after the entry of such order, praying for the suspension
6 of such final order. The petitioner shall deliver a copy
7 of such petition to the secretary of the commission before
8 presenting the same to the court or the judge. The court
9 or judge shall fix a time for the hearing on the petition,
10 but such hearing, unless by agreement of the parties,
11 shall not be held sooner than five days after its presen-
12 tation; and notice of the time and place of such hearing
13 shall be forthwith delivered to the secretary of the com-
14 mission, so that the commission may be represented at
15 such hearing by one or more of its members or by counsel.
16 If the court or the judge after such hearing be of the
17 opinion that a suspending order should issue, the court
18 or the judge may require bond, upon such conditions
19 and in such penalty, and impose such terms and condi-
20 tions upon the petitioner, as are just and reasonable.
21 For such hearing the commission shall file with the clerk
22 of said court all papers, documents, evidence and records

23 or certified copies thereof as were before the commission
24 at the hearing or investigation resulting in the entry
25 of the order from which the petitioner appeals. The com-
26 mission shall file with the court before the day fixed
27 for the final hearing a written statement of its reasons
28 for the entry of such order, and after arguments by
29 counsel the court shall decide the matter in controversy
30 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.]

AN ACT to amend chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article four, providing for a statutory body to be known as the citizens hearing committee of the purchasing division; relating to the expenses of such committee; and specifying its powers and duties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. CITIZENS HEARING COMMITTEE.

§4-4-1. Citizens hearing committee of purchasing division; composition; terms of members.

§4-4-2. Expenses of committee; approval of joint committee on government and finance.

§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.

1 The citizens hearing subcommittee of the purchasing
2 division, heretofore existing under the rules and regula-
3 tions of the department of finance and administration,
4 is hereby continued as a statutory body, to be known as
5 the citizens hearing committee of the purchasing division.
6 This committee shall be composed of six private citizens
7 to be appointed as follows: Three members by the speak-
8 er of the House of Delegates, no more than two of whom
9 shall be of the same political party and three members
10 by the president of the Senate, no more than two of whom
11 shall be of the same political party.

12 The initial appointments shall be as follows: The speak-
13 er and the president will each appoint two members for
14 a one-year term and one member each for a two-year
15 term. After the initial term all terms will be for two
16 years. All such members may be reappointed.

§4-4-2. Expenses of committee; approval of joint committee on government and finance.

1 The expenses of the committee shall be paid from the
2 funds of the joint committee on government and finance.
3 The members of the committee shall receive no com-
4 pensation for their services, but shall be entitled to be
5 reimbursed for all reasonable and necessary expenses
6 actually incurred in the discharge of their duties here-
7 under, but the committee shall obtain the advance ap-
8 proval of the joint committee on government and finance
9 before incurring any expenses to be paid out of the funds
10 of the joint committee on government and finance as
11 aforesaid.

§4-4-3. Powers and duties generally; clerical personnel; rules and regulations; meetings.

1 It shall be the duty of the committee to hold hearings
2 throughout the state at which time vendors and members
3 of the general public shall have an opportunity to voice

4 their criticisms and opinions of the purchasing practices
5 of the state. All interviews will be private and reports
6 concerning the information obtained shall be made an-
7 nually to the joint committee on government and finance,
8 together with any recommendations as to legislation
9 deemed necessary or desirable.

10 The legislative auditor shall provide the committee all
11 necessary clerical personnel. The committee shall formu-
12 late its own rules and regulations and file same with the
13 legislative auditor.

14 Meeting rooms shall be provided for the committee at
15 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.

1 Bids shall be based on the standard specifications pro-
2 mulgated and adopted in accordance with the provisions
3 of section five of this article. All open market orders,
4 purchases based on advertised bid requests, or contracts
5 made by the director or by a state department shall be

6 awarded to the lowest responsible bidder, taking into
7 consideration the qualities of the articles to be supplied,
8 their conformity with specifications, their suitability to
9 the requirements of the state government, and the de-
10 livery terms. Any or all bids may be rejected. If all
11 bids received on a pending contract are for the same unit
12 price or total amount, the director shall have authority to
13 reject all bids, and to purchase the required commodities
14 and printing in the open market, if the price paid in the
15 open market does not exceed the bid prices.

16 All bidders submitting bid proposals to the purchasing
17 division are required to submit an exact or duplicate
18 copy to the state auditor. Both copies must be received
19 at the respective offices prior to the specified date and
20 time of the bid openings. The failure to deliver or the
21 nonreceipt of these bid forms at either of these offices
22 prior to the appointed date and hour are grounds for
23 rejection of the bids. Any deviation between the bids
24 submitted to the purchasing division and the state auditor
25 are cause for rejection of the bids.

26 Each bid, with the name of the bidder, shall be en-
27 tered on a record and each record, with the successful
28 bid indicated thereon, shall, after the award of the order
29 or contract, be open to public inspection.

30 At the request of either the state auditor or the director
31 of purchasing, the legislative auditor shall make a check
32 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.]

AN ACT to amend article three, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section forty-six, relating to the powers, authority and

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.

1 Notwithstanding any other provision in this article to
2 the contrary, the powers, authority and duties set forth
3 in this article to be exercised and discharged by the di-
4 rector shall be exercised and discharged in each instance
5 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.**

1 The trustee or trustees of any church, religious sect,
2 society or denomination, or of any individual church,
3 parish, congregation or branch, within this state, shall
4 have power to receive donations, gifts and bequests of
5 personal property, and, subject to the limitations of sec-
6 tion eight of this article, to take by devise, conveyance or
7 dedication or to purchase and to hold, real property, in
8 trust for such church, religious sect, society or denomina-
9 tion, or for any individual church, parish, congregation
10 or branch; and in their own name or names to sue or
11 be sued in all proper actions and suits, for or on account
12 of the real or personal property so held or claimed, and
13 for and on account of any matters relating thereto: *Pro-*
14 *vided*, That, in the absence of gross negligence, no trustee
15 shall be personally liable for any tort arising from or
16 growing out of the ownership of property as a trustee
17 and no such action or suit shall abate because of the death,
18 removal or resignation of any trustee, or the appointment
19 of another trustee, but may be proceeded with in the
20 name of the trustee or trustees by or against whom it was
21 instituted, or in the name of the succeeding trustee or
22 trustees. The trustee or trustees shall be accountable to
23 that church, religious sect, society, or denomination, or
24 to that individual church, parish, congregation or branch,
25 for which he or they hold in trust, for the use and man-
26 agement of such property, and shall surrender it to **any**
27 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
2 by highway construction is hereby declared to be a cost
3 of highway construction and may be paid from the state
4 road fund, subject to the provisions of this section. The
5 state road commissioner shall make the payments autho-
6 rized by this section to reduce hardships to persons so dis-
7 located. In addition, the commissioner shall render ad-
8 visory assistance to persons affected and shall call upon
9 and coordinate the services of such other agencies of state
10 and local government as may be capable of rendering such
11 assistance to reduce hardships to persons affected and to
12 reduce delays in highway construction. In rendering such
13 advisory assistance, the commissioner may accumulate
14 and maintain lists of various kinds of properties available
15 to which persons affected may be relocated, and acquire
16 and file such other information and take such other
17 action as may be necessary to render such advisory
18 assistance. With respect to persons dislocated by
19 federal-aid highway projects, the commissioner shall
20 provide a relocation assistance program which will
21 comply with and implement the federal laws and regu-
22 lations relating to relocation assistance to displaced
23 persons.

24 Any individual, family, business concern (including the
25 operation of a farm) or nonprofit organization to be dis-
26 placed by a highway construction project shall be com-
27 pensated consistent with the provisions and limitations
28 of this section for reasonable and necessary costs to be
29 incurred in consequence of being so displaced. When a

30 family is displaced, no additional payments shall be made
31 to individuals who are members of such family; but, if
32 two or more displaced families occupy the same dwelling
33 or comprise a single household, each family within such
34 dwelling or household may receive relocation costs as
35 provided in this section. Payments under this section are
36 subject to the following limitations and to any rules
37 and regulations made by the commissioner as herein
38 authorized:

39 (1) With respect to state highway projects not on the
40 federal-aid highway system.

41 (a) Payments shall not exceed two hundred dollars
42 in the case of a family or an individual, or three thou-
43 sand dollars in the case of a business concern (including
44 the operation of a farm) or nonprofit organization.

45 (b) In the case of a business concern (including the
46 operation of a farm) and in the case of a nonprofit organi-
47 zation, the allowable expense for transportation under
48 this section shall not exceed the reasonable and neces-
49 sary cost of moving fifty miles from the point from which
50 such business or organization is being displaced and no
51 expenses shall be allowed if a substantial portion of such
52 business or organization is to be relocated outside the
53 state.

54 (2) With respect to federal-aid highway projects, the
55 commissioner shall have authority to make such pay-
56 ments for relocation costs, replacement housing costs,
57 and expenses incidental to the transfer of property
58 as are authorized by the federal laws and regula-
59 tions relating to relocation payments to displaced
60 persons.

61 The commissioner shall establish by rules and regula-
62 tions a procedure for the payment of relocation costs with-
63 in the limits of and consistent with the policies of this
64 section. Such rules and regulations may authorize lump
65 sum payments to individuals or families, in lieu of their
66 respective provable costs, based upon the size of the
67 dwelling being vacated or the number of persons being
68 affected or any other reasonable basis. The commissioner
69 may authorize the obligations of or payment of relocation

70 costs in advance of expenditure for relocation by any per-
71 son, firm or organization eligible to receive such pay-
72 ment where such advance obligation or payment would
73 speed the clearance of highway construction sites or re-
74 duce hardships.

75 Nothing contained in this section or in the federal laws
76 and regulations relating to relocation assistance and pay-
77 ments to displaced persons shall be construed as creat-
78 ing in any condemnation proceedings brought under the
79 power of eminent domain, any element of damages not
80 in existence on the effective date of this section (June 5,
81 1969) or of the federal laws and regulations relating to re-
82 location 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
2 this state to permit the erection of signs within the right-

3 of-ways of the interstate highway system, as authorized
4 by subsection (f) of Section 131, Title 23, United States
5 Code, to the full extent authorized or agreed to by the
6 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-5. Commission's general powers.

§17-16A-19a. Additional powers of commission; issuance of special obligation bonds.

§17-16A-5. Commission's general powers.

- 1 The commission is hereby authorized and empowered:
- 2 (1) To adopt bylaws for the regulation of its affairs
- 3 and the conduct of its business;
- 4 (2) To adopt an official seal and alter the same at
- 5 pleasure;

6 (3) To maintain an office at such place or places
7 within the state as it may designate;

8 (4) To sue and be sued in its own name, plead
9 and be impleaded. Any and all actions against the
10 commission shall be brought only in the county in
11 which the principal office of the commission shall be
12 located;

13 (5) To construct, maintain, repair and operate turn-
14 pike projects as hereinabove defined at such locations
15 within the state as may be determined by the commis-
16 sion;

17 (6) To issue turnpike revenue bonds of the state of
18 West Virginia, payable solely from revenues, for the pur-
19 pose of paying all or any part of the cost of any one or
20 more turnpike projects;

21 (7) To fix and revise from time to time tolls for transit
22 over each turnpike project constructed by it;

23 (8) To acquire, hold and dispose of real and personal
24 property in the exercise of its powers and the performance
25 of its duties under this article;

26 (9) To acquire in the name of the state by purchase or
27 otherwise, on such terms and conditions and in such
28 manner as it may deem proper, or by the exercise of the
29 right of condemnation in the manner hereinafter pro-
30 vided, such public or private lands, including public
31 parks, playgrounds or reservations, or parts thereof or
32 rights therein, right-of-ways, property, rights, easements
33 and interests, as it may deem necessary for carrying out
34 the provisions of this article. No compensation shall be
35 paid for public lands, playgrounds, parks, parkways or
36 reservations so taken, and all public property damaged
37 in carrying out the powers granted by this article, shall
38 be restored or repaired and placed in its original condi-
39 tion as nearly as practicable;

40 (10) To designate the locations, and establish, limit
41 and control such points of ingress to and egress from
42 each turnpike project as may be necessary or desirable
43 in the judgment of the commission to insure the proper
44 operation and maintenance of such project, and to pro-

45 hibit entrance to such project from any point or points
46 not so designated;

47 (11) To make and enter into all contracts and agree-
48 ments necessary or incidental to the performance of its
49 duties and the execution of its powers under this article,
50 and to employ consulting engineers, attorneys, account-
51 ants, construction and financial experts, superintendents,
52 managers, and such other employees and agents as may
53 be necessary in its judgment, and to fix their compensa-
54 tion. All such expenses shall be payable solely from the
55 proceeds of turnpike revenue bonds issued under the
56 provisions of this article or from revenues;

57 (12) To receive and accept from any federal agency
58 grants for or in aid of the construction of any turnpike
59 project, and to receive and accept aid or contributions
60 from any source of either money, property, labor or other
61 things of value, to be held, used and applied only for the
62 purposes for which such grants and contributions may
63 be made;

64 (13) To do all acts and things necessary or convenient
65 to carry out the powers expressly granted in this article;
66 and

67 (14) To file the necessary petition or petitions pur-
68 suant to Title 11, United States Code, § 401 (being section
69 81 of the act of Congress entitled "An act to establish a
70 uniform system of bankruptcy throughout the United
71 States," approved July 1, 1898, as amended) and to prose-
72 cute to completion all proceedings permitted by Title 11,
73 United States Code, §§ 401-403 (being sections 81 to 83,
74 inclusive, of said act of Congress). The state of West
75 Virginia hereby consents to the application of said Title
76 11, United States Code, §§ 401-403, to the West Virginia
77 turnpike commission.

**§17-16A-19a. Additional powers of commission; issuance of
special obligation bonds.**

1 (a) In addition to all powers granted by the foregoing
2 sections of this article, the commission in connection with
3 a proceeding prosecuted to completion under Title 11,
4 United States Code, §§ 401-403 as permitted by subdivi-

5 sion (14), section five of this article is hereby authorized
6 to provide by resolution for the issuance of special obliga-
7 tion bonds of the state for the purpose of exchanging such
8 special obligation bonds for all bonds then outstanding
9 which shall have been issued under the provisions of
10 this article. Special obligation bonds issued under the
11 provisions of this section shall not be deemed to consti-
12 tute a debt of the state or of any political subdivision
13 thereof or a pledge of the faith and credit of the state
14 or of any such political subdivision, but such bonds shall
15 be payable solely from the funds herein provided there-
16 for from pledged property and income therefrom as
17 provided in subdivision (1) of this subsection. All such
18 special obligation bonds shall contain on the face thereof
19 a statement in accordance with the preceding sentence.
20 The issuance of such bonds, the maturities and other
21 details thereof, the rights of the holders thereof, and the
22 rights, duties and obligations of the commission in respect
23 of the same shall be governed by the provisions of this
24 article insofar as the same may be applicable with the
25 following express exceptions:

26 (1) The principal of and the interest on such special
27 obligation bonds shall not be payable from tolls or reve-
28 nues of any turnpike project but shall be payable solely
29 from such other property purchased and pledged as secur-
30 ity therefor as the commission shall determine together
31 with the income derived therefrom which other property
32 may include direct obligations of, or obligations the prin-
33 cipal of and the interest on which are guaranteed by, the
34 United States government or participation certificates or
35 other obligations issued by or by authority of the United
36 States government; and

37 (2) Following the issuance of such special obligation
38 bonds there shall be no obligation to fix, revise, charge
39 and collect tolls for the use of any turnpike project and
40 any turnpike project shall be transferred to the state road
41 commission and shall thereafter be maintained by the
42 state road commission free of tolls. At such time as the
43 special obligation bonds are issued, then section sixteen of
44 this article shall be of no further force and effect.

45 (b) Financial, legal, engineering and feasibility con-
46 sultants may be employed to perform such services as the
47 commission shall deem necessary or desirable in connec-
48 tion with the Title 11 proceedings mentioned above and
49 the issuance and exchange of the special obligation bonds.

50 (c) The entire powers herein granted by this section
51 to the commission may be exercised by the state road
52 commission in which event the special obligation bonds
53 herein authorized shall be signed by the governor or
54 with a facsimile signature of the governor and by the
55 state road commissioner, and the official seal of the state
56 road commission shall be affixed thereto and attested by
57 the executive secretary of the state road commission, and
58 any coupons attached thereto shall bear the facsimile
59 signature of the state road commissioner. In the event
60 that the state road commission shall elect to exercise the
61 powers granted by this section, it shall file a statement to
62 that effect in the office of the chairman of the commis-
63 sion and in the office of the secretary of state, and upon
64 the issuance of the special obligation bonds herein pro-
65 vided for the state road commission shall succeed immedi-
66 ately to the principal functions of the commission and the
67 commission shall then be abolished.

68 (d) The state road commission is hereby empowered
69 to acquire by purchase the turnpike commission and all
70 its right-of-ways, equipment, facilities and any and all
71 other rights or interest the turnpike commission has or
72 had in any turnpike project, from any funds available to
73 it, and to pay any expenses incident to such acquisition
74 under the provisions of this article: *Provided*, That the
75 contribution of the state road commission in making such
76 acquisition shall not exceed the sum of twenty million
77 dollars from all sources of public moneys of the state
78 of West Virginia, excluding any funds reimbursed or
79 reimbursable or otherwise provided or to be provided
80 by the federal government. No funds derived from the
81 sale of the three hundred fifty million dollars bond
82 issue authorized by the roads development amendment
83 shall be included in the acquisition of the West Virginia
84 turnpike.

CHAPTER 124

(House Bill No. 585—By Mr. Speaker, Mr. Boiarsky)

[Passed January 23, 1969; in effect from passage. Approved by the Governor.]

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
2 to arrange for the transfer of registered bonds and for
3 each such transfer a fee of fifty cents shall be charged
4 by and paid to the state of West Virginia, to the credit
5 of the state road sinking fund. Bonds taken in exchange
6 shall be cancelled by the auditor and treasurer and
7 be carefully preserved by the treasurer. The treasurer
8 shall make provisions for registering "payable to bearer"
9 bonds, and for each bond registered a fee of fifty cents
10 shall likewise be charged by and paid to the state of
11 West Virginia, to the credit of the state road sinking
12 fund. All such bonds shall be payable at the office of
13 the treasurer of the state of West Virginia, or, at the
14 option of the holder, at some bank in the city of New
15 York to be designated by the governor. The bonds shall
16 bear interest, payable semiannually, to bearer, at the
17 office of the treasurer of the state of West Virginia, at
18 the capitol of the state, or at the bank designated by

19 the governor, upon presentation and surrender of in-
20 terest coupons, then due, in the case of coupon bonds.
21 For the payment of interest on registered bonds, the
22 treasurer of the state of West Virginia shall requisition
23 a warrant from the auditor of the state to be drawn
24 on the state treasurer, and shall mail such warrant to
25 the registered owner at the address as shown by the
26 record of registration. Both the principal and interest
27 of the bonds shall be payable in lawful money of the
28 United States of America and the bonds shall be exempt
29 from taxation by the state of West Virginia, or by any
30 county, district, or municipality thereof, which facts
31 shall appear on the face of the bonds as part of the
32 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.
- §2. Transfer fee; registration fee; where payable; interest rate; tax exempt.
- §3. Form of bond.
- §4. Form of coupon.
- §5. Listing by auditor.
- §6. State road sinking fund sources used to pay bonds and interest; investment of remainder.
- §7. Covenants of state.
- §8. Sale by governor; minimum price.
- §9. Proceeds paid into separate account in state road fund; expenditures.
- §10. Plates, etc., property of state.
- §11. Auditor to be custodian of unsold bonds.
- §12. Interim certificates.
- §13. Payment of expenses.

§1. Road bonds; amount; when may issue.

- 1 Bonds of the state of West Virginia of the par value not
- 2 to exceed twenty million dollars during the fiscal year
- 3 ending June thirty, one thousand nine hundred seventy,
- 4 are hereby authorized to be issued and sold for the
- 5 sole purpose of raising funds for the building and con-
- 6 struction of free state roads and highways as provided
- 7 for by the constitution and the laws enacted thereunder.
- 8 Such bonds may be issued by the governor in such
- 9 amounts, in coupon or registered form, in such denomina-
- 10 tions, at such time and bearing such date or dates as the
- 11 governor may determine, based upon an examination of
- 12 the state road commission's yearly program which justi-

13 fies the issuance by the governor of said bonds, and shall
14 become due and payable serially in equal amounts be-
15 ginning one year and ending twenty-five years from the
16 date thereof.

§2. Transfer fee; registration fee; where payable; interest rate; tax exempt.

1 The auditor and the treasurer are hereby authorized to
2 arrange for the transfer of registered bonds and for each
3 such transfer a fee of fifty cents shall be charged by and
4 paid to the state of West Virginia, to the credit of the
5 state road sinking fund. Bonds taken in exchange shall be
6 cancelled by the auditor and treasurer and be carefully
7 preserved by the treasurer. The treasurer shall make
8 provisions for registering "payable to bearer" bonds, and
9 for each bond registered a fee of fifty cents shall like-
10 wise be charged by and paid to the state of West Virginia,
11 to the credit of the state road sinking fund. All such bonds
12 shall be payable at the office of the treasurer of the state
13 of West Virginia, or, at the option of the holder, at some
14 bank in the city of New York to be designated by the
15 governor. The bonds shall bear interest, payable semi-
16 annually, to bearer, at the office of the treasurer of the
17 state of West Virginia, at the capitol of the state, or at the
18 bank designated by the governor, upon presentation and
19 surrender of interest coupons, then due, in the case of
20 coupon bonds. For the payment of interest on registered
21 bonds, the treasurer of the state of West Virginia shall
22 requisition a warrant from the auditor of the state to
23 be drawn on the state treasurer, and shall mail such
24 warrant to the registered owner at the address as shown
25 by the record of registration. Both the principal and in-
26 terest of the bonds shall be payable in lawful money
27 of the United States of America and the bonds shall be
28 exempt from taxation by the state of West Virginia,
29 or by any county, district, or municipality thereof, which
30 facts shall appear on the face of the bonds as part of
31 the contract with the holder thereof.

§3. Form of bond.

1 The bonds shall be signed on behalf of the state of
2 West Virginia, by the treasurer thereof, under the great

3 seal of the state, and countersigned by the auditor of
4 the state, and shall be in the following form or to the
5 following effect, as nearly as may be, namely:

6 COUPON ROAD BOND

7 (Or registered road bond, as the case may be)

8 OF THE

9 STATE OF WEST VIRGINIA

10 \$ No.

11 The state of West Virginia, under and by virtue of
12 authority of an amendment to the constitution, which
13 was proposed by House Joint Resolution No. 10, adopt-
14 ed the seventh day of March, one thousand nine hundred
15 sixty-three, and was ratified by a vote of the people
16 at the general election on the third day of November,
17 one thousand nine hundred sixty-four, which is hereby
18 made a part hereof as fully as if set forth at length
19 herein, acknowledges itself to be indebted to and here-
20 by promises to pay to the bearer hereof (in case of a
21 coupon bond) or to or
22 assigns (the owner of record, in case of registered bonds)
23 on the day of, 19..., in lawful
24 money of the United States of America at the office of
25 the treasurer of the state of West Virginia at the capitol
26 of said state, or at the option of the holder at
27 bank in the city of New York, the
28 sum of dollars, with interest there-
29 on at per centum per annum from the date,
30 payable semiannually in like lawful money of the
31 United States of America at the treasurer's office or
32 bank aforesaid, on the first day of and the
33 first day of of each year, (and in the
34 case of coupon bonds) according to the tenor of the an-
35 nexed coupons bearing the facsimile signature of the
36 treasurer of the state of West Virginia, upon surrender of
37 such coupons. This bond (in case of a coupon bond) may
38 be exchanged for a registered bond of like tenor upon
39 application to the treasurer of the state of West Virginia.
40 To secure the payment of the principal and interest
41 of this bond, the state of West Virginia covenants and
42 agrees with the holder as follows: (1) That this bond shall
43 constitute a direct and general obligation of the state of

44 West Virginia; (2) that the full faith and credit of the
45 state is pledged to secure the payment of the principal
46 and interest of this bond; (3) that an annual state tax
47 shall be collected in an amount sufficient to pay as it
48 may accrue the interest on this bond and the principal
49 thereof; and (4) that such tax shall be levied in any
50 year only to the extent that the moneys in the state
51 road fund irrevocably set aside and appropriated for
52 and applied to the payment of the interest on and princi-
53 pal of this bond becoming due and payable in such year
54 are insufficient therefor.

55 This bond is hereby made exempt from any taxation
56 by the state of West Virginia, or by any county, district,
57 or municipal corporation thereof.

58 In testimony whereof, witness the signature of the
59 treasurer of the state of West Virginia, and the counter-
60 signature of the auditor of the state, hereto affixed ac-
61 cording to law, dated the.....day of.....,
62 one thousand nine hundred....., and the seal of the
63 state of West Virginia.

64 (SEAL)

65 Treasurer of the State of West Virginia

66 Countersigned:

67

68 Auditor of the State of West Virginia

§4. Form of coupon.

1 The form of coupon shall be substantially as follows,
2 to wit:

3 STATE OF WEST VIRGINIA

4 Bond No..... Coupon No.....

5 On the first day of....., 19....., the state of West
6 Virginia will pay to the bearer, in lawful money of the
7 United States of America, at the office of the treasurer of
8 the state, or at the option of the holder at.....
9 bank in the city of New York, the sum of.....
10 dollars, the same being semiannual interest on Road
11 Bond No.....

12

13 Treasurer of the State of West Virginia

14 The signature of the treasurer to such coupon shall be
15 by his facsimile signature and the coupons shall be num-
16 bered in the order of their maturity, from number one
17 consecutively. The bonds and coupons may be signed by
18 the present treasurer and auditor, or by any of their
19 respective successors in office, and the bonds signed by
20 the persons now in the office may be sold by the governor
21 or his successor in office without being signed by the
22 successor in office of the present treasurer or auditor.

§5. Listing by auditor.

1 All coupons and registered bonds issued under this bill
2 shall be separately listed by the auditor of the state in
3 books provided for the purpose, in each case giving the
4 date, number, character and amount of obligations issued,
5 and in case of registered bonds, the name and post-office
6 address of the person, firm or corporation registered as
7 the owner thereof.

§6. State road sinking fund sources used to pay bonds and interest; investment of remainder.

1 Into the state road sinking fund there shall be paid
2 all money from any and all appropriations made by the
3 state from the state road fund for the purpose of paying
4 the interest on such bonds or paying off and retiring the
5 bonds, from transfer and registration fees as herein
6 provided, and from any other source whatsoever which
7 is made liable by law for the payment of the principal
8 of such bonds or the interest thereon.

9 All such funds shall be kept by the treasurer in a
10 separate account, under the designation aforesaid, and
11 all money belonging to the fund shall be deposited in
12 the state treasury to the credit thereof.

13 Such fund shall be applied by the treasurer of the
14 state first to the payment of the semiannual interest on
15 such bonds as it shall become due as herein provided.
16 The remainder of the fund shall be turned over by
17 the state treasurer to the state sinking fund commis-
18 sion, whose duty it shall be to invest the same in obliga-
19 tions of the government of the United States, bonds of
20 the state of West Virginia, or any political subdivision

21 thereof: *Provided*, That bonds or other obligations so
22 purchased by the state sinking fund commission shall
23 mature so as to provide sufficient money to pay off all
24 bonds herein provided to be issued as they become due;
25 and the money so paid into the state road sinking fund
26 under the provisions of this act shall be expended for
27 the purpose of paying the interest and principal of the
28 bonds hereby provided for as they severally become
29 due and payable and for no other purpose except that
30 the fund may be invested until needed, as herein pro-
31 vided.

§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-
3 lows: (1) That such bonds shall constitute direct and
4 general obligation of the state of West Virginia; (2)
5 that the full faith and credit of the state is hereby pledged
6 to secure the payment of the principal and interest of
7 such bonds; (3) that an annual state tax shall be col-
8 lected in an amount sufficient to pay as it may accrue
9 the interest on such bonds and the principal thereof; and
10 (4) that such tax shall be levied in any year only to the
11 extent that the moneys in the state road fund irrevocably
12 set aside and appropriated for and applied to the pay-
13 ment of the interest on and principal of said bonds
14 becoming due and payable in such year are insufficient
15 therefor.

§8. Sale by governor; minimum price.

1 The governor shall sell the bonds herein authorized
2 at such time or times as he may determine necessary to
3 provide funds for the building and construction of free
4 state roads and highways, as herein provided, upon the
5 recommendation of the state road commissioner, and
6 after reviewing the program of the state road commis-
7 sion and subject to the limitations contained in section
8 one hereof. All sales shall be at not less than par and
9 accrued interest. All interest coupons becoming payable
10 prior to the sale date shall be cancelled by the treasurer

11 and rendered ineffective, before the delivery of the
12 bonds so sold.

§9. Proceeds paid into separate account in state road fund; expenditures.

1 The proceeds of all sales of bonds herein authorized
2 shall be paid into a separate and distinct account in the
3 state road fund, and shall be used and appropriated
4 solely for the building and construction of free state roads
5 and highways provided for by the state constitution and
6 the laws enacted thereunder. Except for such sums necessary
7 for current operating balances, such account shall
8 be invested and reinvested in short-term obligations of
9 the United States treasury: *Provided*, That no such investment
10 or reinvestment shall adversely affect the current
11 operating balances of such account.

§10. Plates, etc., property of state.

1 The plates, casts, dies or other forms from which the
2 bonds authorized by this act are produced or made shall
3 be the property of the state of West Virginia.

§11. Auditor to be custodian of unsold bonds.

1 The state auditor shall be the custodian of all unsold
2 bonds issued pursuant to the provisions of this act.

§12. Interim certificates.

1 The governor may authorize the issuance of interim
2 certificates to be issued to the purchasers of such bonds to
3 be held by them in lieu of permanent bonds. When
4 interim certificates are so issued, they shall become full
5 and legal obligations of the state of West Virginia under
6 all of the provisions of this act just as fully and completely
7 as the permanent bonds.

§13. Payment of expenses.

1 All necessary expenses incurred in the execution of
2 this act shall be paid out of the state road fund on warrants
3 of the auditor of the state drawn on the state
4 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.

1 Bonds of the state of West Virginia of the par value
2 not to exceed seventy million dollars during the fiscal
3 year ending June thirtieth, one thousand nine hundred
4 seventy, are hereby authorized to be issued and sold
5 for the sole purpose of raising funds for the building
6 and construction of free state roads and highways as
7 provided for by the constitution and the laws enacted
8 thereunder. Such bonds may be issued by the governor
9 in such amounts, in coupon or registered form, in such
10 denominations, at such time and bearing such date or
11 dates as the governor may determine, based upon an
12 examination of the state road commission's yearly pro-
13 gram which justifies the issuance by the governor of said
14 bonds, and shall become due and payable serially in
15 equal amounts beginning one year and ending twenty-
16 five years from the date thereof.

§2. Transfer fee; registration fee; where payable; interest rate; tax exempt.

1 The auditor and the treasurer are hereby authorized
2 to arrange for the transfer of registered bonds and for
3 each such transfer a fee of fifty cents shall be charged
4 by and paid to the state of West Virginia, to the credit
5 of the state road sinking fund. Bonds taken in exchange
6 shall be cancelled by the auditor and treasurer and be
7 carefully preserved by the treasurer. The treasurer shall
8 make provisions for registering "payable to bearer"
9 bonds, and for each bond registered a fee of fifty cents
10 shall likewise be charged by and paid to the state of
11 West Virginia, to the credit of the state road sinking

12 fund. All such bonds shall be payable at the office
13 of the treasurer of the state of West Virginia, or, at the
14 option of the holder, at some bank in the city of New
15 York to be designated by the governor. The bonds shall
16 bear interest payable semiannually, to bearer, at the
17 office of the treasurer of the state of West Virginia,
18 at the capitol of the state, or at the bank designated by
19 the governor, upon presentation and surrender of in-
20 terest coupons, then due, in the case of coupon bonds.
21 For the payment of interest on registered bonds, the
22 treasurer of the state of West Virginia shall requisition
23 a warrant from the auditor of the state to be drawn on
24 the state treasurer, and shall mail such warrant to the
25 registered owner at the address as shown by the record
26 of registration. Both the principal and interest of the
27 bonds shall be payable in lawful money of the United
28 States of America and the bonds shall be exempt from
29 taxation by the state of West Virginia, or by any county,
30 district, or municipality thereof, which facts shall appear
31 on the face of the bonds as part of the contract with
32 the holder thereof.

§3. Form of bond.

1 The bonds shall be signed on behalf of the state of
2 West Virginia, by the treasurer thereof, under the
3 great seal of the state, and countersigned by the auditor
4 of the state, and shall be in the following form or to the
5 following effect, as nearly as may be, namely:

6 COUPON ROAD BOND

7 (Or registered road bond, as the case may be)

8 OF THE

9 STATE OF WEST VIRGINIA

10 \$ No.

11 The state of West Virginia, under and by virtue of
12 authority of an amendment to the constitution, which
13 was proposed by Senate Joint Resolution No. 2, adopted
14 the eighth day of February, one thousand nine hun-
15 dred sixty-eight, and was ratified by a vote of the people
16 at the general election on the fifth day of November,
17 one thousand nine hundred sixty-eight, which is hereby
18 made a part hereof as fully as if set forth at length

19 herein, acknowledges itself to be indebted to and hereby
20 promises to pay to the bearer hereof (in case of a
21 coupon bond) or to or
22 assigns (the owner of record, in case of registered bonds)
23 on the day of, 19....., in
24 lawful money of the United States of America at the
25 office of the treasurer of the state of West Virginia at
26 the capitol of said state, or at the option of the holder
27 at, bank in
28 the city of New York, the sum of
29 dollars, with interest thereon at per centum
30 per annum from the date, payable semiannually in like
31 lawful money of the United States of America at the
32 treasurer's office or bank aforesaid, on the first day of
33 and the first day of
34 of each year, (and in the case of coupon bonds) ac-
35 cording to the tenor of the annexed coupons bearing the
36 facsimile signature of the treasurer of the state of West
37 Virginia, upon surrender of such coupons. This bond
38 (in case of a coupon bond) may be exchanged for a
39 registered bond of like tenor upon application to the
40 treasurer of the state of West Virginia.

41 To secure the payment of the principal and interest of
42 this bond, the state of West Virginia covenants and
43 agrees with the holder as follows: (1) That this bond
44 shall constitute a direct and general obligation of the
45 state of West Virginia; (2) that the full faith and credit
46 of the state is pledged to secure the payment of the
47 principal and interest of this bond; (3) that an annual
48 state tax shall be collected in an amount sufficient to
49 pay as it may accrue the interest on this bond and the
50 principal thereof; and (4) that such tax shall be levied
51 in any year only to the extent that the moneys in the
52 state road fund irrevocably set aside and appropriated
53 for and applied to the payment of the interest on and
54 principal of this bond becoming due and payable in
55 such year are insufficient therefor.

56 This bond is hereby made exempt from any taxation
57 by the state of West Virginia, or by any county, district,
58 or municipal corporation thereof.

59 In testimony whereof, witness the signature of the
60 treasurer of the state of West Virginia, and the counter-
61 signature of the auditor of the state, hereto affixed ac-
62 cording to law, dated the day of,
63 one thousand nine hundred, and
64 the seal of the state of West Virginia.

65 (SEAL)

66

67
Treasurer of the State of West Virginia

68 Countersigned:

69

70
Auditor of the State of West Virginia

§4. Form of coupon.

1 The form of coupon shall be substantially as follows,
2 to wit:

3 STATE OF WEST VIRGINIA

4 Bond No. Coupon No.

5 On the first day of, 19....., the
6 state of West Virginia will pay to the bearer, in lawful
7 money of the United States of America, at the office of
8 the treasurer of the state, or at the option of the holder
9 at bank in the city of New
10 York, the sum of dollars, the
11 same being semiannual interest on Road Bond No.

12

13
Treasurer of the State of West Virginia

14 The signature of the treasurer to such coupon shall
15 be by his facsimile signature and the coupons shall be
16 numbered in the order of their maturity, from number
17 one consecutively. The bonds and coupons may be signed
18 by the present treasurer and auditor, or by any of their
19 respective successors in office, and the bonds signed by
20 the persons now in the office may be sold by the governor
21 or his successor in office without being signed by the
22 successor in office of the present treasurer or auditor.

§5. Listing by auditor.

1 All coupons and registered bonds issued under this
2 bill shall be separately listed by the auditor of the state
3 in books provided for the purpose, in each case giving

4 the date, number, character and amount of obligations
5 issued, and in case of registered bonds, the name and
6 post-office address of the person, firm or corporation
7 registered as the owner thereof.

§6. State road sinking fund sources used to pay bonds and interest; investment of remainder.

1 Into the state road sinking fund there shall be paid
2 all money from any and all appropriations made by the
3 state from the state road fund for the purpose of paying
4 the interest on such bonds or paying off and retiring the
5 bonds, from transfer and registration fees as herein 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-

3 lows: (1) That such bonds shall constitute direct and
4 general obligation of the state of West Virginia; (2) that
5 the full faith and credit of the state is hereby pledged
6 to secure the payment of the principal and interest of
7 such bonds; (3) that an annual state tax shall be collected
8 in an amount sufficient to pay as it may accrue the
9 interest on such bonds and the principal thereof; and
10 (4) that such tax shall be levied in any year only to the
11 extent that the moneys in the state road fund irrevocably
12 set aside and appropriated for and applied to the payment
13 of the interest on and principal of said bonds becoming
14 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
2 such time or times as he may determine necessary to
3 provide funds for the building and construction of free
4 state roads and highways, as herein provided, upon the
5 recommendation of the state road commission, and after
6 reviewing the program of the state road commission and
7 subject to the limitations contained in section one hereof.
8 All sales shall be at not less than par and accrued interest.
9 All interest coupons becoming payable prior to the sale
10 date shall be cancelled by the treasurer and rendered
11 ineffective, before the delivery of the bonds so sold.

§9. Proceeds paid into separate account in state road fund; expenditures.

1 The proceeds of all sales of bonds herein authorized
2 shall be paid into a separate and distinct account in the
3 state road fund, and shall be used and appropriated
4 solely for the building and construction of free state
5 roads and highways provided for by the state consti-
6 tution and the laws enacted thereunder. Except for
7 such sums necessary for current operating balances, such
8 account shall be invested and reinvested in short-term
9 obligations of the United States treasury. No such invest-
10 ment or reinvestment shall adversely affect the current
11 operating balances of such account.

§10. Plates, etc., property of state.

1 The plates, casts, dies or other forms from which the
2 bonds authorized by this act are produced or made shall
3 be the property of the state of West Virginia.

§11. Auditor to be custodian of unsold bonds.

1 The state auditor shall be the custodian of all unsold
2 bonds issued pursuant to the provisions of this act.

§12. Interim certificates.

1 The governor may authorize the issuance of interim
2 certificates to be issued to the purchasers of such bonds
3 to be held by them in lieu of permanent bonds. When
4 interim certificates are so issued, they shall become
5 full and legal obligations of the state of West Virginia
6 under all of the provisions of this act just as fully and
7 completely as the permanent bonds.

§13. Payment of expenses.

1 All necessary expenses incurred in the execution of
2 this act shall be paid out of the state road fund on
3 warrants of the auditor of the state drawn on the state
4 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; appointment; 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

4 shall be appointed by the governor, by and with the
5 advice and consent of the Senate. Each of such appointive
6 state officers shall serve at the will and pleasure of the
7 governor and until the respective state officer's successors
8 have been appointed and qualified. Each of such appoin-
9 tive state officers shall hereafter be subject to the existing
10 qualifications for holding each such respective office and
11 each shall have and is hereby granted all of the powers
12 and authority and shall perform all of the functions and
13 services heretofore vested in and performed by virtue of
14 existing law respecting each such office. The annual
15 salary of each such named appointive state officer shall
16 be as follows:

17 The state road commissioner, thirty thousand dollars;
18 director of mental health, twenty-two thousand five
19 hundred dollars; commissioner of commerce, eighteen
20 thousand five hundred dollars; commissioner of finance
21 and administration, fifteen thousand dollars; tax com-
22 missioner, twenty thousand dollars; director of depart-
23 ment of natural resources, eighteen thousand five hun-
24 dred dollars; commissioner of department of welfare,
25 eighteen thousand five hundred dollars; alcohol beverage
26 control commissioner, sixteen thousand dollars; director
27 of department of mines, twenty thousand dollars;
28 commissioner of public institutions, sixteen thousand dol-
29 lars; commissioner of employment security, eighteen
30 thousand five hundred dollars; commissioner of labor,
31 seventeen thousand dollars; director of personnel civil
32 service commission, seventeen thousand dollars; super-
33 intendent of department of public safety, sixteen thousand
34 dollars; insurance commissioner, fifteen thousand dollars;
35 commissioner of motor vehicles, fifteen thousand dollars;
36 commissioner of banking, fifteen thousand dollars; mem-
37 bers of the board of probation and parole, twelve thou-
38 sand dollars; nonintoxicating beer commissioner, twelve
39 thousand dollars; state historian and archivist, twelve
40 thousand dollars; adjutant general, twelve thousand dol-
41 lars; director of civil and defense mobilization, twelve
42 thousand dollars; director of veterans affairs, twelve thou-
43 sand dollars; members of board of review of employment
44 security, twelve thousand dollars; members of workmen's

45 compensation appeal board, six thousand dollars; state
46 workmen's compensation commissioner, sixteen thousand
47 dollars.

CHAPTER 129

(Senate Bill No. 203—By Mr. McKown)

[Passed March 6, 1969; in effect July 1, 1969. Approved by the Governor.]

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.

1 The education of teachers in the state shall be under
2 the general direction and control of the state board of
3 education, which shall, through the state superintendent
4 of schools, exercise supervisory control over teacher
5 preparation programs in all institutions of higher educa-
6 tion, including student teaching in the public schools, in
7 accordance with standards for program approval stated
8 in writing by the board. To give prospective teachers
9 the teaching experience needed to demonstrate compe-
10 tence, as a prerequisite to licensure, the state board of
11 education may enter into an agreement with county
12 boards of education for the use of the public schools. Such
13 agreement shall recognize student teaching as a joint
14 responsibility of the teacher preparation institution and
15 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 super-
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-
55 scribed by the state board of education. All institutions

56 of higher education approved for teacher preparation in
57 the school year of nineteen hundred sixty-two—sixty-
58 three shall continue to hold that distinction so long as
59 they measure up to the minimum standards for teacher
60 preparation. Nothing contained herein shall infringe
61 upon the rights granted to any institution by charter
62 given according to law previous to the adoption of this
63 code.

64 No charter or other instrument containing the right to
65 issue diplomas or other certificates of proficiency shall
66 be granted by the state of West Virginia to any institu-
67 tion or other associations or organizations of less than
68 collegiate or university status within the state until the
69 condition of granting or issuing such diplomas or other
70 certificates of proficiency has first been approved in
71 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 thousand 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, supervision and management of the West Virginia schools for the deaf and blind; and the establishment of a West Virginia 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 Virginia 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 University; 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-
2 cation is designated as the state board of vocational
3 education serving and meeting as the sole agency respon-
4 sible for the administration of vocational education and
5 for supervision of the administration thereof by local
6 educational agencies and is hereby authorized and em-
7 powered to establish, operate and maintain area voca-
8 tional educational programs including the acquisition
9 by purchase, lease, gift or otherwise of necessary lands
10 and the construction, expansion, remodeling, alteration
11 and equipping of necessary buildings for the purpose of
12 operating and conducting educational training centers.
13 To this end, there is hereby expressly established in the
14 state board of education a division of vocational edu-
15 cation which shall establish the area or areas in which
16 the programs are to be conducted and shall have au-
17 thority to promulgate rules and regulations necessary
18 to carry out the provisions of this article. The admin-

19 istration and supervision of the area vocational edu-
20 cational programs shall be administered by the director
21 of the division of vocational education.

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
2 pupils heretofore established and located at Romney,
3 in Hampshire county, shall be continued and shall be
4 known as the "West Virginia schools for the deaf and
5 the blind." The schools shall be maintained for the care
6 and education of the deaf youth and blind youth of the
7 state. The educational or business affairs of the schools
8 shall be under the control, supervision and management
9 of the state board of education and the state board shall
10 employ the superintendent, principals, teachers and other
11 employees and shall fix the yearly or monthly salary to
12 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.

§18-26-8. Powers and duties.

§18-26-9. Advisory boards.

§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
2 this article is to establish a state agency to be known
3 as the West Virginia board of regents which will have

4 the general determination, control, supervision and man-
5 agement of the financial, business, and educational poli-
6 cies and affairs of all state colleges and universities.
7 The board's responsibilities shall include, without limi-
8 tation, the making of studies and recommendations re-
9 specting higher education in West Virginia; allocating
10 among the state colleges and universities specific func-
11 tions and responsibilities; and submitting budget re-
12 quests for the state colleges and universities.

13 Except as otherwise provided in this article, the presi-
14 dent of each state college and university shall exercise
15 all the duties and powers conferred upon him by law
16 in the government of the institution under his manage-
17 ment and control.

§18-26-2. Definitions.

1 Notwithstanding the provisions of section one, article
2 one of this chapter, the following words when used in
3 this article shall have the meaning hereafter ascribed
4 to them unless the context clearly indicates a different
5 meaning:

6 (a) The term "board" shall mean the West Virginia
7 board of regents.

8 (b) The term "state colleges" shall mean Bluefield
9 State College, Concord College, Fairmont State College,
10 Glenville State College, Shepherd College, West Liberty
11 State College, West Virginia Institute of Technology and
12 West Virginia State College.

13 (c) The term "state college" shall mean one of the
14 state colleges.

15 (d) The terms "state universities" and "universities"
16 shall mean Marshall University and West Virginia Uni-
17 versity, including Potomac State College thereof.

18 (e) The terms "state university" and "university"
19 shall mean one of the state universities.

20 (f) The term "institutions of higher education" shall
21 have the meaning ascribed to it by the federal higher
22 education facilities act of one thousand nine hundred
23 sixty-three, as amended.

§18-26-3. West Virginia board of regents created.

1 There is hereby created a state agency to be known
2 as the West Virginia board of regents, which shall be a
3 corporation and as such may contract and be contracted
4 with, plead and be impleaded, sue and be sued, and have
5 and use a common seal.

§18-26-4. Composition of board; terms of members; qualifications of members.

1 The board shall consist of ten members, of whom one
2 shall be the state superintendent of schools, ex officio,
3 who shall not be entitled to vote. The other nine members
4 shall be citizens of the state, appointed by the governor,
5 by and with the advice and consent of the Senate, for
6 overlapping terms of six years, except that three of
7 the original appointments shall be for terms of two
8 years, three of the original appointments shall be for
9 terms of four years, and three of the original appoint-
10 ments shall be for terms of six years.

11 Each of the members appointed to the board shall be
12 especially qualified in the field of higher education by
13 virtue of his knowledge, learning, experience or interest
14 in the field.

15 No person shall be eligible for appointment to mem-
16 bership on the board who is an officer, employee or mem-
17 ber of an advisory board of any state college or uni-
18 versity, or an officer or member of any political party
19 executive committee, or the holder of any other public
20 office or public employment under the federal govern-
21 ment or under the government of this state or any of
22 its political subdivisions, or an appointee or employee
23 of the board. Of the nine members appointed by the
24 governor from the public at large, not more than five
25 thereof shall belong to the same political party. At least
26 one member of the board shall be appointed from each
27 congressional district.

§18-26-5. Commencement of original term of members; vacancies; eligibility for reappointment; oath of office; removal from office.

1 The governor shall appoint the nine members of the

2 board to be appointed by him as soon after the effective
3 date of this article as is practicable, and the original
4 terms of the nine members appointed by the governor
5 and of the one member, who is such by virtue of being
6 the state superintendent of schools, shall commence
7 on July one, one thousand nine hundred sixty-nine.

8 The governor shall appoint a member to fill any
9 vacancy among the nine members of the board appointed
10 by the governor, by and with the advice and consent of the
11 Senate, which member appointed to fill such vacancy shall
12 serve for the unexpired term of the vacating member.

13 All members of the board appointed by the governor
14 shall be eligible for reappointment. A person who has
15 served as a member during all or any part of two con-
16 secutive terms shall be ineligible to serve as a member
17 for a period of three years immediately following the
18 second of the two consecutive terms.

19 Before exercising any authority or performing any
20 duties as a member of the board, each member shall
21 qualify as such by taking and subscribing to the oath
22 of office prescribed by section five, article four of the
23 state constitution, the certificate whereof shall be filed
24 with the secretary of state.

25 No member of the board appointed by the governor
26 may be removed from office by the governor except for
27 official misconduct, incompetence, neglect of duty, or
28 gross immorality and then only in the manner prescribed
29 by law for the removal by the governor of state elective
30 officers.

**§18-26-6. Meetings; quorum; per diem and expenses of
members.**

1 The board shall hold at least six meetings in every
2 fiscal year commencing July one and ending the follow-
3 ing June thirty, one of which meetings, to be known as
4 the annual meeting, shall be held in July, or as soon
5 thereafter as practicable, in the year one thousand nine
6 hundred sixty-nine and in June of each subsequent year.
7 The first annual meeting of the board to be held in
8 July, or as soon thereafter as practicable, in the year

9 one thousand nine hundred sixty-nine, shall be called by
10 the governor on such date and at such place as he may
11 prescribe. Subsequent annual meetings, as well as the
12 five additional required meetings in each fiscal year,
13 shall be held on such dates and at such places as the
14 board may prescribe, subject only to the requirement
15 that the annual meeting shall be held in June. In addi-
16 tion to the statutorily required meetings, the board may
17 meet at such other times as may be necessary, such
18 meetings to be held upon its own resolution or at the
19 call of the president of the board.

20 Of the nine appointed, five members of the board shall
21 constitute a quorum, and a majority vote of the quorum
22 shall be necessary to pass upon matters before the board.

23 The members of the board shall be paid fifty dollars
24 per diem for actual time spent in the performance of
25 duties under this article, and shall be reimbursed for
26 actual and necessary expenses incident to the perform-
27 ance of their duties, upon presentation of an itemized
28 sworn statement thereof. The foregoing per diem and
29 reimbursement for actual and necessary expenses shall be
30 paid from appropriations made by the Legislature to the
31 board.

§18-26-7. Organization of board; staff; offices.

1 At its first annual meeting in July, or as soon there-
2 after as practicable, in the year one thousand nine hun-
3 dred sixty-nine, the board shall elect a president and
4 such other officers as the board may deem necessary or
5 desirable from the members of the board appointed by
6 the governor, to serve for a term ending June thirty,
7 one thousand nine hundred seventy. At its annual meet-
8 ing in June, one thousand nine hundred seventy, and at
9 each annual meeting held in each June thereafter, the
10 board shall elect a president and such other officers as
11 the board may deem necessary or desirable from the
12 members of the board appointed by the governor for a
13 one-year term commencing on July one following the
14 annual meeting and ending June thirty the following
15 year. The president of the board shall not be eligible to
16 succeed himself.

17 The board shall employ a chancellor, and such other
18 professional, administrative, clerical and other employees
19 as may be necessary to assist the board in the perform-
20 ance of its duties and responsibilities. The board shall
21 prescribe the duties and fix the compensation and emolu-
22 ments of all such employees, and they shall serve at the
23 will and pleasure and under the direction and control of
24 the board or its designated representative. The board
25 shall provide suitable offices for the chancellor and his
26 staff in Charleston.

§18-26-8. Powers and duties.

1 On and after the effective date of this article, the
2 general determination, control, supervision and manage-
3 ment of the financial, business and educational policies
4 and affairs of all state colleges and universities shall be
5 under the control, supervision and management of the
6 board. In addition, the board is fully authorized and
7 empowered to make studies and recommendations re-
8 lating to all aspects of higher education in the state; it
9 shall, upon reasonable basis, prescribe and allocate
10 among the state colleges and universities specific func-
11 tions and responsibilities to meet the higher educational
12 needs of the state and avoid unnecessary duplication;
13 and it shall consider, revise, and submit to the appro-
14 priate agencies of the executive and legislative branches
15 of state government separate budget requests on behalf
16 of the state colleges and universities or the board may,
17 in its discretion, submit a single budget for the state
18 colleges and universities and allocate among them appro-
19 priations made for the state colleges and universities.

20 The power herein given to the board to prescribe and
21 allocate among the state colleges and universities spe-
22 cific functions and responsibilities to meet the higher
23 educational needs of the state and avoid unnecessary
24 duplication shall not be restricted by any provision of
25 law assigning specified functions and responsibilities to
26 designated state colleges and universities but such power
27 shall supersede any such provision of law: *Provided,*
28 That the board may delegate, with prescribed standards
29 and limitations, such part of its power and control over

30 the business affairs of a particular university or state
31 college to the president or other administrative head of
32 such university or college in any case where it deems
33 such delegation necessary and prudent in order to enable
34 such institution to function in a proper and expeditious
35 manner. Any such delegation or power and control may
36 be rescinded by the board at any time, in whole or in
37 part.

38 The board is authorized and empowered, from time
39 to time, to promulgate such rules and regulations as it
40 may deem necessary and convenient to insure the full
41 implementation of its powers and duties.

§18-26-9. Advisory boards.

1 Each state college and university president or other
2 administrative head shall be authorized to nominate per-
3 sons for appointment to an advisory board, consisting of
4 seven members, to serve as advisors and consultants to
5 him.

6 The board of regents shall appoint members of the
7 advisory board from the persons so nominated for terms
8 of seven years, except that the original appointments
9 shall be for terms of one, two, three, four, five, six and
10 seven years. Thereafter each member shall be appointed
11 to serve for a term of seven years or until his successor
12 is appointed. An appointment to fill a vacancy shall be
13 for the unexpired term of the vacating member.

14 Members of advisory boards shall be eligible to suc-
15 ceed themselves. Members of advisory boards shall
16 serve without compensation, but shall be entitled to
17 reimbursement for actual and necessary expenses in-
18 curred in the performance of the duties of their office
19 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.

1 With the exception of Titles I, II and III of the Higher
2 Education Facilities Act of 1963 and Titles I and VI of the
3 Higher Education Act of 1965, the administration of
4 which are reserved to the commission on higher educa-

5 tion, the board of regents, on behalf of the state of West
6 Virginia, is authorized and empowered to apply for, to
7 accept and administer and expend for the purpose or
8 purposes designated, any funds which now are, or may
9 be, made available to the board or institutions under its
10 authority from federal or private grants, appropriations,
11 allocations and programs.

**§18-26-11. Transfer of powers, duties, property, obligations,
etc., of board of governors of West Virginia Uni-
versity to board of regents.**

1 All powers, duties and authorities which the board of
2 governors of West Virginia University, established by
3 article eleven of this chapter or by any other provisions
4 of law, may have had immediately prior to the effective
5 date of this article, are hereby transferred from the
6 board of governors of West Virginia University to the
7 West Virginia board of regents; and on and after the
8 effective date of this article all of the policies and affairs
9 of West Virginia University shall be determined, con-
10 trolled, supervised and managed, and all such powers,
11 duties and authorities of the board of governors of
12 West Virginia University shall be exercised and per-
13 formed by the West Virginia board of regents, and the
14 board of governors of West Virginia University shall be
15 abolished and repealed.

16 The title to all property vested in the board of gov-
17 ernors of West Virginia University is hereby transferred
18 to and vested in the West Virginia board of regents.

19 Each valid agreement and obligation of the board of
20 governors of West Virginia University shall on or after
21 the effective date of this article become and be deemed
22 the agreement and obligation of the West Virginia board
23 of regents.

24 All orders, resolutions, rules and regulations adopted
25 or promulgated by the board of governors of West Vir-
26 ginia University, and in effect immediately prior to the
27 effective date of this article, shall continue in effect and
28 shall be deemed the orders, resolutions, rules and regu-
29 lations of the West Virginia board of regents until re-

30 rescinded by the board; and all such orders, resolutions,
31 rules and regulations may be rescinded, revised, altered
32 or amended by the board in the manner and to the
33 extent authorized and permitted by law.

**§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
2 Virginia board of education may have had with respect
3 to state colleges and universities immediately prior to the
4 effective date of this article, are hereby transferred
5 from the West Virginia board of education to the West
6 Virginia board of regents; and on and after the effective
7 date of this article, all of the policies and affairs of the
8 state colleges and universities shall be determined, con-
9 trolled, supervised and managed, and all powers, duties
10 and authorities shall be exercised and performed by the
11 West Virginia board of regents: *Provided*, That the
12 standards for education of teachers and teacher prepara-
13 tion programs at the state colleges and universities shall
14 continue to be under the general direction and control of
15 the West Virginia board of education, and the West Vir-
16 ginia board of education shall have sole authority to
17 continue, as authorized by section six, article two of
18 this chapter, to enter into agreements with county boards
19 of education for the use of the public schools to give
20 prospective teachers teaching experience.

21 The title to all property heretofore acquired in the
22 name of the state board of control or the West Virginia
23 board of education and used by or for the state colleges
24 and universities, is hereby transferred to and vested in
25 the West Virginia board of regents.

26 Each valid agreement and obligation of the state board
27 of education with respect to the state colleges and uni-
28 versities shall on or after the effective date of this article
29 become and be deemed the agreement and obligation of
30 the West Virginia board of regents.

31 All orders, resolutions, rules and regulations respecting
32 the state colleges and universities adopted or promulgated

33 by the West Virginia board of education and in effect
34 immediately prior to the effective date of this article
35 shall continue in effect and shall be deemed the orders,
36 resolutions, rules and regulations of the West Virginia
37 board of regents until rescinded by the board; and all
38 such orders, resolutions, rules and regulations may be
39 rescinded, revised, altered or amended by the board in
40 the manner and to the extent authorized and permitted
41 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,
2 and upon the dates provided by law for the laying of
3 levies, and at such other times as the board may fix upon
4 its records. At any meeting as authorized above and in
5 compliance with the provisions of article four of this
6 chapter, the board may employ such qualified teachers,

7 or those who will qualify by the time of entering upon
8 their duties, necessary to fill existing or anticipated
9 vacancies for the current or next ensuing school year.
10 At a meeting of the board, on or before the first Monday
11 in May, the superintendent shall furnish in writing to the
12 board a list of those teachers to be considered for trans-
13 fer and subsequent assignment for the next ensuing
14 school year; all other teachers not so listed shall be
15 considered as reassigned to the positions held at the
16 time of this meeting. Such list of those recommended for
17 transfer shall be included in the minute record and the
18 teachers so listed shall be notified in writing, which notice
19 shall be delivered in writing, by certified mail, return
20 receipt requested, to such teachers' last known addresses
21 within ten days following said board meeting, of their
22 having been so recommended for transfer and subsequent
23 assignment.

24 Special meetings may be called by the president or
25 any three members, but no business shall be transacted
26 other than that designated in the call.

27 A majority of the members shall constitute the quorum
28 necessary for the transaction of official business.

29 Board members shall receive compensation at the rate
30 of twenty-five dollars per meeting attended. But they
31 shall not receive pay for more than thirty-six meetings in
32 any one fiscal year.

33 Members shall also be paid, upon the presentation of
34 an itemized sworn statement, for all necessary traveling
35 expenses, including all authorized meetings, incurred on
36 official business, at the order of the board.

37 When, by a majority vote of its members, a county
38 board of education deems it a matter of public interest,
39 such board may join the West Virginia school board
40 association and the national school board association,
41 and may pay such dues as may be prescribed by said
42 associations and approved by action of the respective
43 county boards. Membership dues and actual traveling
44 expenses of board members for attending meetings of
45 the West Virginia school board association may be paid
46 by their respective county boards of education out of

47 funds available to meet actual expenses of the members,
48 but no allowance shall be made except upon sworn item-
49 ized 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
2 of the following:

3 (a) All persons, except new entrants, employed as
4 teachers at the time they become eligible for member-
5 ship who, within a year after becoming eligible for mem-
6 bership, notify the retirement board in writing of their
7 decision to become members. Any such persons who
8 fail to notify the board shall automatically be consti-
9 tuted members one year after they become eligible,
10 unless the retirement board receives written notice from
11 them declining membership in the system.

12 (b) New entrants, whose membership in the system
13 shall be compulsory upon employment as teachers.

14 The membership of any person in the retirement sys-
15 tem shall cease:

16 (1) Upon the withdrawal of his accumulated con-
17 tributions after the cessation of teaching service, or (2)
18 upon retirement, or (3) at death, or (4) if service amounts
19 to less than five years in any period of ten consecutive
20 years. For the sole purpose of preventing loss of mem-
21 bership under subdivision four, a deposit by the member
22 to his individual account in the teachers accumulation
23 fund of an amount equalling his last annual contribution
24 shall be the amount necessary to maintain membership
25 status for a period of one year.

26 Any former member of the retirement system who
27 has withdrawn his accumulated contributions but sub-
28 sequently reenters the retirement system shall be per-
29 mitted to repay to the retirement fund the amount
30 withdrawn, plus payment for absence as provided herein,
31 and shall be accorded all the rights to prior service and
32 experience as he held at the time of withdrawal of such
33 accumulated contributions.

34 Any person in subdivision (a) of this section who
35 elects to become a member after having declined to
36 accept membership, shall be permitted to enter the re-
37 tirement system, but shall be accorded only the rights
38 of a new entrant, unless he deposits in the reserve fund
39 twenty-five dollars for each year of his prior service.
40 After making such a deposit, he shall be deemed a present
41 teacher, and may elect to contribute retroactively to
42 retirement account for those years, if any, during which
43 he served as a teacher but elected not to contribute. No
44 member shall be eligible for prior service credit unless
45 he is eligible for prior service pension, as prescribed by
46 section twenty-two of this article; however, a new entrant
47 who becomes a present teacher as provided in this
48 paragraph shall be deemed eligible for prior service
49 pension upon retirement.

CHAPTER 133

(Senate Bill No. 286—By Mr. McKown)

[Passed March 8, 1969; in effect July 1, 1969. Approved by the Governor.]

AN ACT to amend and reenact sections fourteen and twenty-six, article seven-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to 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-26. Computation of annuities.

§18-7A-14. Contributions by members.

1 At the end of each month every member of the retire-
2 ment system shall contribute four and one-half percent
3 of his monthly earnable compensation to the retirement
4 board: *Provided*, That in no case shall the contribution of
5 any member employed by the board of governors of West
6 Virginia University, or by the West Virginia board of
7 education at an institution of higher education under its
8 control, exceed two hundred sixteen dollars in any fiscal
9 year.

10 Such contributions shall be deemed to include the an-
11 nual supplementary fee of the contributor, determined as
12 hereinafter provided, which fee shall be used to help
13 finance the additional retirement benefit provided for
14 in subdivision (e) of Plan A of section twenty-six of this
15 article. Annually, the contributions of each member,
16 minus his supplementary fee, shall be credited to his ac-
17 count in the teachers accumulation fund. The contribu-
18 tions shall be deducted from the salaries of the members

19 as herein prescribed, and every member shall be deemed
20 to have given his consent to such deductions. No de-
21 ductions, however, shall be made from the earnable com-
22 pensation of any teacher who retired because of age or
23 service, and then resumed service as a teacher.

24 The retirement board shall each year determine to the
25 nearest dollar the amount of the supplementary fee to
26 be paid by each member, so that the sum of such fees
27 paid by all members shall be sufficient to defray one half
28 of the cost of the retirement benefit provided for in sub-
29 division (e) of Plan A of section twenty-six of this article.
30 The amount so fixed shall not exceed twenty dollars, nor
31 shall it in any case exceed one sixth of the annual contri-
32 bution of the member. All supplementary fees shall be
33 deposited in the benefit fund.

34 The aggregate of employer contributions, due and pay-
35 able under this article, shall equal annually the total
36 deductions from the earnable compensation of members
37 required by this section. All employer contributions shall
38 be credited to the employers accumulation fund, from
39 which fund an amount equalling annually the supple-
40 mentary fees of members shall be transferred to the
41 benefit fund.

42 Payment by an employer to a member of the sum
43 specified in the employment contract minus the amount
44 of the employee's deductions shall be deemed to be a full
45 discharge of the employer's contractual obligation as to
46 earnable compensation.

47 Each contributor shall file with the retirement board
48 or with the employer to be forwarded to the retirement
49 board an enrollment form showing his date of birth and
50 other data needed by the retirement board. Upon notice
51 from the retirement board to the employer that a contri-
52 butor has failed to file such forms as prescribed, the em-
53 ployer shall withhold the salary of the contributor until
54 the needed form is filed with the retirement board.

§18-7A-26. Computation of annuities.

1 Annuitants whose annuities were approved by the re-
2 tirement board prior to the effective date of this article

3 (July 1, 1963) shall be paid the annuities which were
4 approved by the retirement board. Annuities approved
5 by the board after the effective date of this article shall
6 be computed as provided herein.

7 Upon establishment of eligibility for a retirement al-
8 lowance, a member shall be granted an annuity which
9 shall be the sum of either Plan A or Plan B, whichever
10 provides the larger annuity.

11 Plan A shall be computed as follows:

12 (a) The actuarial equivalent of the contributions and
13 deposits of the member in his individual account up to
14 the time of his retirement, with regular interest.

15 (b) The actuarial equivalent of the contributions of
16 the employer up to the time of the member's retirement,
17 which shall equal the sum in subdivision (a) of Plan A
18 minus deposits with regular interest on such deposits.

19 (c) Where prior service credit has been granted, an
20 allowance of one and one-half percent of the member's
21 average final salary multiplied by the number of years
22 of prior service credited to him.

23 (d) The actuarial equivalent of the amounts that
24 would have accumulated under subdivisions (a) and
25 (b) of Plan A, if the member had contributed to his
26 individual account until he was fifty years old, at the
27 annual rate of his past actual contributions, but this
28 subdivision shall apply only as additional income to
29 members who qualify for disability retirement before
30 they are fifty years old.

31 (e) Twelve dollars multiplied by his total service
32 credit as a teacher.

33 (f) The member shall receive in addition to the al-
34 lowances under subdivisions (c) and (d) an amount
35 equal to six dollars multiplied by his total service credit:
36 *Provided*, That the maximum allowance under this sub-
37 division shall be one hundred and ninety-two dollars:
38 *Provided, however*, That this subdivision shall be ef-
39 fective on and after July first, one thousand nine hun-
40 dred fifty-seven.

41 (g) Twelve dollars multiplied by the member's total
42 service credit as a teacher.

43 For the purpose of subdivision (c) in Plan A:

44 (1) An allowance for prior service shall in no case
45 exceed three fifths of the member's average final salary.

46 (2) Average final salary for this purpose shall in no
47 case exceed two thousand five hundred dollars, nor shall
48 it be less than twelve hundred dollars.

49 Plan B shall be computed as follows:

50 (a) One percent of the member's average salary multi-
51 plied by his total service credit as a teacher. In this para-
52 graph "average salary" shall mean the average of the high-
53 est annual salaries received by the member during any five
54 years contained within his last fifteen years of total service
55 credit: *Provided*, That the highest annual salary used
56 in this calculation for members employed by the board
57 of governors of West Virginia University, or by the West
58 Virginia board of education at institutions of higher
59 education under its control, shall be four thousand eight
60 hundred dollars.

61 (b) The actuarial equivalent of the deposits of the
62 member in his individual account up to the time of his
63 retirement, with regular interest.

64 The disability annuities of all teachers retired for dis-
65 ability shall be based upon a disability table prepared
66 by a competent actuary approved by the retirement
67 board.

68 Upon the death of an annuitant who qualified for an
69 annuity as a surviving spouse or because of permanent
70 disability, the estate of the deceased or beneficiary desig-
71 nated for such purpose, shall be paid the difference, if
72 any, between the member's contributions with regular
73 interest thereon, and the sum of the annuity payments.

74 All annuities shall be paid in twelve monthly payments.
75 In computing such monthly payments, fractions of a
76 cent shall be deemed a cent. Such monthly payments
77 shall cease with the payment for the month within which
78 the beneficiary dies, and shall begin with the payment
79 for the month succeeding the month within which the
80 annuitant became eligible under this article for the an-
81 nuity granted; in no case, however, shall an annuitant
82 receive more than four monthly payments which are

83 retroactive after the board receives his application for
84 annuity.

85 In case the retirement board receives data affecting the
86 approved annuity of a retired teacher, the annuity shall
87 be changed in accordance with such data, the change
88 being effective with the payment for the month within
89 which the board received the new data.

90 An annuity application shall be cancelled immediately
91 if the applicant dies before the retirement board approves
92 such application.

93 Any person who has attained the age of sixty-five and
94 who has served at least twenty-five years as a teacher
95 prior to July one, one thousand nine hundred forty-one,
96 shall be eligible for prior service credit and for prior
97 service pensions as prescribed in this section.

CHAPTER 134

(House Bill No. 868—By Mr. Speaker, Mr. Boiarsky, 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-

3 proved by the retirement board prior to January one, one
4 thousand nine hundred sixty-nine, shall receive a monthly
5 amount equal to fifty cents multiplied by his total service
6 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
3 education.

4 (2) "Division" means the division of vocational reha-
5 bilitation established by this article.

6 (3) "Director" means the director of the division of
7 vocational rehabilitation.

8 (4) "Employment handicap" means a physical or men-
9 tal condition which constitutes, contributes to, or if not
10 corrected will probably result in, an obstruction to occupa-
11 tional performance.

12 (5) "Disabled individual" means any person who has a
13 substantial employment handicap.

14 (6) "Vocational rehabilitation" and "vocational re-
15 habilitation services" mean any services, provided di-
16 rectly or through public or private instrumentalities,
17 found by the director to be necessary to compensate a
18 disabled individual for his employment handicap, and to
19 enable him to engage in a remunerative occupation includ-
20 ing, but not limited to, medical and vocational diagnosis,
21 vocational guidance, counselling and placement, rehabili-
22 tation training, physical restoration, transportation, occu-
23 pational licenses, customary occupational tools and
24 equipment, maintenance, and training books and ma-
25 terials.

26 (7) "Rehabilitation training" means all necessary train-
27 ing provided to a disabled individual to compensate for his
28 employment handicap including, but not limited to,
29 manual, preconditioning, prevocational, vocational, and
30 supplementary training and training provided for the
31 purpose of achieving broader or more remunerative skills
32 and capacities.

33 (8) "Physical restoration" means any medical, surgical
34 or therapeutic treatment necessary to correct or sub-
35 stantially reduce a disabled individual's employment
36 handicap within a reasonable length of time including,
37 but not limited to, medical, psychiatric, dental and surgical
38 treatment, nursing services, hospital care, convalescent

39 home care, drugs, medical and surgical supplies, and
40 prosthetic appliances, but excluding curative treatment
41 for acute or transitory conditions.

42 (9) "Prosthetic appliance" means any artificial device
43 necessary to support or take the place of a part of the
44 body or to increase the acuity of a sense organ.

45 (10) "Occupational licenses" means any license, permit
46 or other written authority required by any governmental
47 unit to be obtained in order to engage in an occupation.

48 (11) "Maintenance" means money payments not ex-
49 ceeding the estimated cost of subsistence during voca-
50 tional rehabilitation.

51 (12) "Regulations" means regulations made by the di-
52 rector with the approval of the state board.

§18-10A-8. Eligibility for vocational rehabilitation.

1 Vocational rehabilitation services shall be provided to
2 any disabled individual who is present in the state at the
3 time of filing his application therefor, if the director after
4 full investigation shall determine that his rehabilitation
5 can be satisfactorily achieved. Such services shall also
6 be provided to any person who is eligible therefor under
7 the terms of an agreement with another state or with the
8 federal government.

9 Except as otherwise provided by law or as specified
10 in an agreement with the federal government with re-
11 spect to classes of individuals certified to the state board
12 thereunder, the following rehabilitation services shall be
13 provided at public cost only to disabled individuals found
14 to require financial assistance with respect thereto:

15 (1) Physical restoration.

16 (2) Transportation, for any other purpose than that of
17 determining the eligibility of the individual for vocational
18 rehabilitation services and the nature and extent of the
19 services necessary.

20 (3) Occupational licenses.

21 (4) Customary occupational tools and equipment.

22 (5) Maintenance.

23 (6) Training books and materials.

24 The rights of a disabled individual under the provisions
25 of this article shall not be transferable or assignable at
26 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
2 and directed to cooperate with the federal government in
3 providing vocational evaluation and work adjustment
4 services to disadvantaged individuals.

5 “Vocational evaluation and work adjustment services”
6 include, as appropriate in each case, such services as:

7 (a) A preliminary diagnostic study to determine that
8 the individual is disadvantaged, has an employment
9 handicap, and that services are needed;

10 (b) A thorough diagnostic study consisting of a com-
11 prehensive evaluation of pertinent medical, psychological,
12 vocational, educational, cultural, social, and environ-
13 mental factors which bear on the individual’s handicap
14 to employment and rehabilitation potential including, to
15 the degree needed, an evaluation of the individual’s per-
16 sonality, intelligence level, educational achievements,
17 work experience, vocational aptitudes and interests, per-
18 sonal and social adjustments, employment opportunities,
19 and other pertinent data helpful in determining the nature
20 and scope of services needed;

21 (c) Services to appraise the individual’s patterns of
22 work behavior and ability to acquire occupational skills,
23 and to develop work attitudes, work habits, work toler-
24 ance, and social and behavior patterns suitable for suc-
25 cessful job performance, including the utilization of work,
26 simulated or real, to assess and develop the individual’s
27 capacities to perform adequately in a work environment;

28 (d) Any other goods or services provided to a disad-
29 vantaged individual, determined (in accordance with
30 regulations of the federal government) to be necessary
31 for, and which are provided for the purpose of, ascertain-
32 ing the nature of the handicap to employment and wheth-
33 er it may reasonably be expected the individual can bene-

34 fit from vocational rehabilitation services or other ser-
35 vices available to disadvantaged individuals;

36 (e) Outreach, referral, and advocacy; and

37 (f) The administration of these evaluation and work
38 adjustment services.

39 As used in this section, the term "disadvantaged in-
40 dividuals" means (1) disabled individuals as defined in
41 subdivision five, section one of this article, (2) individuals
42 disadvantaged by reason of their youth or advanced age,
43 low educational attainments, ethnic or cultural factors,
44 prison or delinquency records, or other conditions which
45 constitute a barrier to employment, and (3) other mem-
46 bers of their families when the provision of vocational
47 rehabilitation services to family members is necessary
48 for the rehabilitation of the individual described in sub-
49 division 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 re-
habilitation 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
3 which is operated for the primary purpose of providing
4 vocational rehabilitation services to, or gainful employ-
5 ment for, handicapped individuals, or, for providing
6 evaluation and work adjustment services for disadvan-
7 tagged individuals, and which provides singly or in com-
8 bination one or more of the following services for handi-
9 capped individuals: (a) Comprehensive rehabilitation ser-
10 vices which shall include, under one management, medi-
11 cal, psychological, social, and vocational services; (b) test-
12 ing, fitting, or training in the use of prosthetic and ortho-
13 pedic devices; (c) provocational conditioning or recrea-

14 tional therapy; (d) physical and occupational therapy; (e)
15 therapy for speech and hearing pathology; (f) psycho-
16 logical and social services; (g) evaluation; (h) personal
17 and work adjustment; (i) vocational training (in com-
18 bination with other rehabilitation services); (j) evalua-
19 tion or control of special disabilities; and (k) extended
20 employment for the severely handicapped who cannot
21 be readily absorbed in the competitive labor market;
22 but all medical and related health services must be pre-
23 scribed by, or under the formal supervision of, persons
24 licensed to practice medicine or surgery in the state.

25 (2) "Workshop" means a particular type of vocational
26 rehabilitation facility where any manufacture or handi-
27 work is carried on and which is operated by a public
28 agency or by a private corporation or association, no
29 part of the net earnings of which inures or may lawfully
30 inure to the benefit of any private shareholder or indi-
31 vidual, or by a cooperative, for the primary purpose of
32 providing remunerative employment to disabled persons
33 (a) as an interim step in the rehabilitation process for
34 those who cannot be readily absorbed in the competi-
35 tive labor market; or (b) during such time as employ-
36 ment opportunities for them in the competitive labor
37 market do not exist; or (c) for providing vocational
38 evaluation and work adjustment services for disadvan-
39 tagged persons.

40 (3) "Cooperative" means an association, or member-
41 ship corporation, whose membership is limited to disabled
42 individuals and which is organized and operated on a co-
43 operative basis for the exclusive benefit of its members
44 and, by its charter or bylaws, is required to divide any
45 profits, realized from the operation of workshops oper-
46 ated by it and not reinvested in such workshops, among
47 its disabled members actually working therein.

48 (4) "Nonprofit institution" means a corporation or
49 association no part of the net earnings of which inures,
50 or may lawfully inure, to the benefit of any private share-
51 holder or individual.

52 (5) "State board," "division," and "director" shall
53 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
2 empowered to establish, operate, and maintain vocational
3 rehabilitation facilities: *Provided*, That to establish voca-
4 tional rehabilitation facilities includes the acquisition by
5 purchase, lease, gift, or otherwise, of necessary lands, and
6 the construction, expansion, remodeling, or alteration and
7 equipment of necessary buildings; or, for any particular
8 facility, the making of contracts and agreements with any
9 state, county, or municipal agency, or nonprofit institution
10 providing for the equipment, operation or maintenance
11 by the state board, through the division, of any facility
12 of such agency or institution in accordance with, and for
13 the purpose of this article: *Provided further*, That not-
14 withstanding any other provisions of law, the state board,
15 through the division, shall, itself, properly operate, main-
16 tain, repair, and manage and control the fiscal affairs of
17 vocational rehabilitation facilities established pursuant to
18 this section: *Provided further*, That the state board,
19 through the division, is authorized and empowered to
20 make and enter into all contracts and agreements neces-
21 sary and incidental to the performance of its powers and
22 duties under this section, in connection with which it is
23 also authorized and empowered to cooperate with other
24 agencies of the state.

§18-10B-3. Establishment of local vocational rehabilitation facilities.

1 Counties and municipalities in accordance with rules,
2 regulations and standards made and adopted by the di-
3 rector, individually or jointly with any one or more such
4 counties or municipalities are authorized and empowered
5 to establish, operate, and maintain necessary vocational
6 rehabilitation facilities for disabled persons: *Provided*,
7 That to establish vocational rehabilitation facilities in-
8 cludes the acquisition by purchase, lease, gift, or other-
9 wise, of necessary lands, and the construction, expansion,
10 remodeling, or alteration and equipment of necessary
11 buildings.

§18-10B-4. Rules and regulations.

1 The director shall make and adopt rules, regulations,
2 and standards for the establishment, operation and main-
3 tenance, government and control of vocational rehabilita-
4 tion facilities established pursuant to this article, includ-
5 ing such rules, regulations and standards as may be neces-
6 sary for cooperation under and compliance with any exist-
7 ing or future federal statutes pertaining to grants-in-aid
8 for vocational rehabilitation facilities.

§18-10B-5. Cooperation with federal government in vocational rehabilitation facility program.

1 The state board, through the division, is hereby desig-
2 nated the sole state agency to cooperate with the federal
3 government in any federal program relating to the estab-
4 lishment, operation and maintenance of vocational re-
5 habilitation facilities; and is hereby authorized and em-
6 powered to adopt and supervise the administration of
7 such a statewide plan, or such statewide plans, for the
8 establishment of vocational rehabilitation facility or work-
9 shop programs as may be necessary to comply with the
10 requirements and conditions of federal law with respect
11 to federal grants-in-aid for such purposes.

§18-10B-6. Cooperation with state department of health.

1 The state board, through the division, and the state
2 department of health shall cooperate to assure coordina-
3 tion of the vocational rehabilitation facility program
4 under this article with the hospital construction program
5 provided for under chapter sixteen, article one, section
6 fourteen of the code of West Virginia, one thousand nine
7 hundred thirty-one, as amended.

§18-10B-7. Personnel.

1 The director shall appoint in accordance with chapter
2 eighteen, article ten-a, section five of the code of West
3 Virginia, one thousand nine hundred thirty-one, as
4 amended, all personnel he deems necessary for the effi-
5 cient and economical operation and maintenance of voca-
6 tional rehabilitation facilities established, operated and
7 maintained pursuant to section two of this article.

§18-10B-8. Advisory committee.

1 There shall be an advisory committee of not less than
2 five and not more than ten members to serve as advisors
3 and consultants to the director of the division. The com-
4 mittee shall meet at least twice each year and at the call
5 of the director of the division. The members of the com-
6 mittee shall annually elect one of its members to serve as
7 chairman.

8 The advisory committee shall be appointed by the di-
9 rector, by and with the advice and consent of the state
10 board, and shall include among its members representa-
11 tives of state and nongovernmental agencies concerned
12 with the establishment, operation or utilization of voca-
13 tional rehabilitation services and facilities, and at least
14 one of the members shall be a person well versed in
15 problems related to employment of the disabled.

16 The members shall serve for five-year terms, or until
17 replaced, except that in the first year one fifth of the
18 members shall be named for a one-year term, one fifth
19 for a two-year term, one fifth for a three-year term, one
20 fifth for a four-year term, and one fifth for a five-year
21 term. Thereafter each member shall be appointed for
22 five years or until his successor is appointed. In the case
23 of a vacancy the appointee shall serve the remainder of
24 the unexpired term.

25 Members of the advisory committee shall be eligible
26 to succeed themselves. Members of the advisory com-
27 mittee shall serve without compensation but shall be
28 entitled to reimbursement for all reasonable and neces-
29 sary expenses actually incurred in the performance of
30 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
2 personnel is hereby enacted into law and entered into
3 with all jurisdictions legally joining therein, in the form
4 substantially as follows:

5 **INTERSTATE COMPACT ON QUALIFICATIONS**
6 **OF EDUCATIONAL PERSONNEL**

7 **Article I. Purpose, Findings and Policy.**

8 1. The states party to this compact, desiring by com-
9 mon action to improve their respective school systems
10 by utilizing the teacher or other professional educational
11 person wherever educated, declare that it is the policy
12 of each of them, on the basis of cooperation with one
13 another to take advantage of the preparation and exper-
14 ience of such persons wherever gained, thereby serving
15 the best interests of society, of education, and of the
16 teaching profession. It is the purpose of this compact to
17 provide for the development and execution of such pro-
18 grams of cooperation as will facilitate the movement of
19 teachers and other professional educational personnel
20 among the states party to it, and to authorize specific
21 interstate educational personnel contracts to achieve that
22 end.

23 2. The party states find that included in the large
24 movement of population among all sections of the nation

25 are many qualified educational personnel who move for
26 family and other personal reasons but who are hindered
27 in using their professional skill and experience in their
28 new locations. Variations from state to state in require-
29 ments for qualifying educational personnel discourage
30 such personnel from taking the steps necessary to qualify
31 in other states. As a consequence, a significant number
32 of professionally prepared and experienced educators is
33 lost to our school systems. Facilitating the employment
34 of qualified educational personnel without reference to
35 their states of origin, can increase the available educa-
36 tional resources. Participation in this compact can in-
37 crease the availability of educational manpower.

38 **Article II. Definitions.**

39 As used in this compact and contracts made pursuant
40 to it, unless the context clearly requires otherwise:

41 1. "Educational personnel" means persons who must
42 meet requirements pursuant to state law as a condition of
43 employment in educational programs.

44 2. "Designated state official" means the education
45 official of a state selected by that state to negotiate and
46 enter into, on behalf of his state, contracts pursuant to
47 this compact.

48 3. "Accept", or any variant thereof, means to recog-
49 nize and give effect to one or more determinations of an-
50 other state relating to the qualifications of educational
51 personnel in lieu of making or requiring a like determina-
52 tion that would otherwise be required by or pursuant to
53 the laws of a receiving state.

54 4. "State" means a state, territory or possession of
55 the United States; the District of Columbia; or the Com-
56 monwealth of Puerto Rico.

57 5. "Originating state" means a state and the subdi-
58 vision thereof, if any, whose determination that certain
59 educational personnel are qualified to be employed for
60 specific duties in schools is acceptable in accordance with
61 the terms of a contract made pursuant to Article III.

62 6. "Receiving state" means a state and the subdivisions
63 thereof which accept educational personnel in accord-

64 ance with the terms of a contract made pursuant to Ar-
65 ticle III.

66 **Article III. Interstate Educational Personnel**
67 **Contracts.**

68 1. The designated state official of a party state may
69 make one or more contracts on behalf of his state with
70 one or more other party states providing for the accep-
71 tance of educational personnel. Any such contract for the
72 period of its duration shall be applicable to and binding
73 on the states whose designated state officials enter into
74 it, and the subdivisions of those states, with the same
75 force and effect as if incorporated in this agreement. A
76 designated state official may enter into a contract pur-
77 suant to this article only with states in which he finds
78 that there are programs of education, certification stan-
79 dards or other acceptable qualifications that assure prep-
80 aration or qualification of educational personnel on a
81 basis sufficiently comparable, even though not identical
82 to that prevailing in his own state.

83 2. Any such contract shall provide for:

84 (a) Its duration;

85 (b) The criteria to be applied by an originating
86 state in qualifying educational personnel for acceptance
87 by a receiving state;

88 (c) Such waivers, substitutions and conditional
89 acceptances as shall aid the practical effectuation of the
90 contract without sacrifice of basic educational standards;

91 (d) Any other necessary matters.

92 3. No contract made pursuant to this compact shall
93 be for a term longer than five years but any such contract
94 may be renewed for like or lesser periods.

95 4. Any contract dealing with acceptance of educa-
96 tional personnel on the basis of their having completed
97 an educational program shall specify the earliest date
98 or dates on which originating state approval of the pro-
99 gram or programs involved can have occurred. No con-
100 tract made pursuant to this compact shall require ac-
101 ceptance by a receiving state of any persons qualified
102 because of successful completion of a program prior to
103 January one, one thousand nine hundred fifty-four.

104 5. The certification or other acceptance of a person
105 who has been accepted pursuant to the terms of a con-
106 tract shall not be revoked or otherwise impaired because
107 the contract has expired or been terminated. However,
108 any certificate or other qualifying document may be re-
109 voked or suspended on any ground which would be suffi-
110 cient for revocation or suspension of a certificate or other
111 qualifying document initially granted or approved in the
112 receiving state.

113 6. A contract committee composed of the designated
114 state officials of the contracting states or their representa-
115 tives shall keep the contract under continuous review,
116 study means of improving its administration, and report
117 no less frequently than once a year to the heads of the
118 appropriate education agencies of the contracting states.

119 **Article IV. Approved and Accepted Programs.**

120 1. Nothing in this compact shall be construed to repeal
121 or otherwise modify any law or regulation of a party
122 state relating to the approval of programs of educational
123 preparation having effect solely on the qualification of
124 educational personnel within that state.

125 2. To the extent that contracts made pursuant to this
126 compact deal with the educational requirements for the
127 proper qualification of educational personnel, acceptance
128 of a program of educational preparation shall be in ac-
129 cordance with such procedures and requirements as may
130 be provided in the applicable contract.

131 **Article V. Interstate Cooperation.**

132 The party states agree that:

133 1. They will, so far as practicable, prefer the making
134 of multilateral contracts pursuant to Article III of this
135 compact.

136 2. They will facilitate and strengthen cooperation in
137 interstate certification and other elements of educational
138 personnel qualification and for this purpose shall cooper-
139 ate with agencies, organizations, and associations in-
140 terested in certification and other elements of educational
141 personnel qualification.

142 **Article VI. Agreement Evaluation.**

143 The designated state officials of any party states may
144 meet from time to time as a group to evaluate progress
145 under the compact, and to formulate recommendations for
146 changes.

147 **Article VII. Other Arrangements.**

148 Nothing in this compact shall be construed to prevent
149 or inhibit other arrangements or practices of any party
150 state or states to facilitate the interchange of educational
151 personnel.

152 **Article VIII. Effect and Withdrawal.**

153 1. This compact shall become effective when enacted
154 into law by two states. Thereafter it shall become effec-
155 tive as to any state upon its enactment of this compact.

156 2. Any party state may withdraw from this compact
157 by enacting a statute repealing the same, but no such
158 withdrawal shall take effect until one year after the
159 governor of the withdrawing state has given notice in
160 writing of the withdrawal to the governors of all other
161 party states.

162 3. No withdrawal shall relieve the withdrawing state
163 of any obligation imposed upon it by a contract to which
164 it is a party. The duration of contracts and the methods
165 and conditions of withdrawal therefrom shall be those
166 specified in their terms.

167 **Article IX. Construction and Severability.**

168 This compact shall be liberally construed so as to effec-
169 tuate the purposes thereof. The provisions of this com-
170 pact shall be severable and if any phrase, clause, sen-
171 tence or provision of this compact is declared to be con-
172 trary to the constitution of any state or of the United
173 States, or the application thereof to any government,
174 agency, person or circumstances is held invalid, the
175 validity of the remainder of this compact and the ap-
176 plicability thereof to any government, agency, person or
177 circumstance shall not be affected thereby. If this com-
178 pact shall be held contrary to the constitution of any
179 state participating therein, the compact shall remain in

180 full force and effect as to the state affected as to all
181 severable matters.

182 The "designated state official" for this state shall be
183 the state superintendent of schools. He may enter into
184 contracts pursuant to Article III of the compact only with
185 the approval of the specific text thereof by the state
186 board of education.

187 True copies of all contracts made on behalf of this
188 state pursuant to the compact shall be kept on file in
189 the office of the state superintendent of schools and in
190 the office of the secretary of state. The state superin-
191 tendent of schools shall publish all such contracts in con-
192 venient form.

§18-10E-2. Effective date.

1 The effective date of this article shall be July one, one
2 thousand nine hundred sixty-nine.

CHAPTER 137

(Senate Bill No. 44—By Mr. Jackson, Mr. President,
and Mr. Carrigan)

[Passed March 7, 1969; in effect July 1, 1969. Approved by the Governor.]

AN ACT to amend and reenact section one, article twenty,
chapter eighteen of the code of West Virginia, one thou-
sand nine hundred thirty-one, as amended, relating to
establishment of special schools and teaching services for
exceptional children.

Be it enacted by the Legislature of West Virginia:

That section one, article twenty, 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 20. EDUCATION OF EXCEPTIONAL CHILDREN.

**§18-20-1. Establishment of special schools and teaching ser-
vices for exceptional children.**

1 In accordance with the following provisions, county
2 boards of education throughout the state having five

3 or more exceptional children of any one of the types
4 or classifications hereinafter provided for shall establish
5 and maintain special schools, classes, home-teaching or
6 visiting-teacher services for such type or classification
7 in order to provide for educating exceptional children
8 between the ages of six and twenty-one, but who differ
9 from the average or normal in physical, mental or emo-
10 tional characteristics, or in communicative or intellectual
11 deviation characteristics, or in both communicative and
12 intellectual deviation characteristics, to the extent that
13 they cannot be educated safely or profitably in the regu-
14 lar grades of the public schools, and for whom special
15 educational provisions need to be made in order to edu-
16 cate them in accordance with their capacities, limitations
17 and needs. In addition, county boards of education may
18 establish and maintain other educational services for
19 such types or classifications as the state superintendent
20 of free schools may approve.

21 The general types and classifications of exceptional
22 children for whom provision may be made under this
23 article are the following areas of exceptionality: Visu-
24 ally impaired, hearing impaired, physically or ortho-
25 pedically handicapped, epileptic, mentally retarded, speech
26 handicapped, multiple handicapped, autistic, intellectually
27 gifted, socially or emotionally maladjusted including the
28 delinquent, learning disabilities both physical and psy-
29 chological and any other areas of exceptionality which are
30 identified and approved by the state superintendent of
31 free schools.

32 By the school year beginning on the first day of July,
33 one thousand nine hundred seventy-four, county boards
34 of education shall establish and maintain these special
35 schools, classes, home-teaching and visiting-teacher ser-
36 vices. The state superintendent of free schools shall adopt
37 rules and regulations to advance and accomplish this
38 program.

39 Nothing in this section shall be construed to prevent
40 county boards of education from providing special schools,
41 classes, home-teaching or visiting teacher's services for
42 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
2 article shall be used exclusively for the purpose of
3 acquiring contingent or vested rights in obligations which
4 it may acquire under this article, and such appropriation,
5 payments, revenue and interest, as well as other income
6 received in connection with such obligations, is hereby
7 established as a trust fund. Such fund shall be used for
8 the purposes of the commission other than maintenance
9 and operation.

10 The maintenance and operating expenses of the com-
11 mission shall be paid from funds specifically appropriated
12 for such purposes. No part of the trust fund established
13 under this section shall be expended for such pur-
14 poses.

15 The commission shall be the trustee of the trust fund
16 hereby created and all investments to be made from
17 the assets of such trust shall be made by the state

18 treasurer in the manner provided by law. 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.

C

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 hundred thirty-one, as amended; to repeal 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; 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 education with reference to deeds and contracts, condemnation, sale or exchange of property, acceptance of gift or

devise, construction and repair of buildings, bonds of certain officers and employees, disposition of state moneys, expenditure of appropriations on proper requisition, certification to the governor of deficiency in appropriations, visitation and inspection of state institutions of higher education by the governing boards, requirements and procedures as to books, accounts, inventory and statistical records, authority to assemble any or all chief officers of the institutions, performance by governing boards of duty or work required by governor, construction and operation of dormitories, homes, refectories, gymnasiums, revenue bond authority, procedure and redemption, and special investigation of institutions by governor or his committee; powers, duties and authority of governing boards of state institutions of higher education regarding fees and other money charged and collected at the institutions, scholarships, excuse from payment of certain fees, student union fees and revenue bonds, establishment and operation of book stores, joint establishment and operation of a two-year branch college, authority to provide special services and programs and fees and charges thereof, and disposition of certain funds in state treasury heretofore collected; and the purchase of tax sheltered annuities for teachers and employees.

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.

18. Education.

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,
2 commissions, boards or institutions, public or private,
3 other than state institutions of higher education, state
4 charitable institutions, state hospitals and sanatoriums
5 and state penal and correctional institutions, not having
6 an office at the state capital, shall, unless otherwise pro-
7 vided by law, be expended on requisitions of such offi-
8 cer, commission, board or institution, after approval by
9 the commissioner of the department of finance and ad-
10 ministration.

CHAPTER 18. EDUCATION.

Article

23. Additional Powers, Duties and Responsibilities of Governing Boards of State Institutions of Higher 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.
- §18-23-5. Construction and repair of buildings.
- §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.
- §18-23-9. Books and accounts.
- §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.

- §18-23-13. Construction and operation of dormitories, homes and refectories for teachers and students.
- §18-23-14. Construction and operation of gymnasiums, etc.
- §18-23-15. Power of condemnation; payment; orders; bond.
- §18-23-16. Cost of dormitories, homes and refectories to be paid from proceeds of revenue bonds.
- §18-23-17. Agreements with trustees for bondholders.
- §18-23-18. Operation and control of fiscal affairs of dormitories, homes or refectories.
- §18-23-19. Payment of principal and interest of construction bonds from revenues or dormitories, homes and refectories; redemption of bonds.
- §18-23-20. When dormitories, homes or refectories become property of state.
- §18-23-21. State debt not to be incurred for dormitories, homes or refectories; federal and private assistance; provisions separable.
- §18-23-22. Sections regarded as supplementary.
- §18-23-23. Approval of dormitories, homes or refectories.
- §18-23-24. Liberal construction.

§18-23-1. Governing boards defined.

- 1 For purposes of this chapter, "governing board" or
- 2 "governing boards" means any board or other agency
- 3 having general control, supervision and management of
- 4 the business and educational affairs of any state insti-
- 5 tutions of higher education.

§18-23-2. Execution of deeds and contracts.

- 1 All deeds, contracts, agreements and other such writ-
- 2 ings may be executed by the governing boards by the
- 3 signing of the name of the board thereto by the presi-
- 4 dent of the board attested by the signature of the sec-
- 5 retary of the board; and, when so executed, the same
- 6 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
- 2 condemnation land or buildings for the use and benefit of
- 3 any of the state institutions subject to their control and
- 4 management, and, by and with the consent of the gover-
- 5 nor, to sell or exchange any property held by or for such
- 6 institutions. All condemnation proceedings had here-
- 7 under 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 ac-
2 cept any gift or devise of any property or thing which
3 lawfully may be given. If such gift or devise is to any
4 particular state institution of higher education, whatever
5 profit shall arise from its use or investment shall be paid
6 into the state treasury for the use and benefit of such
7 institution, and the governing board of each such insti-
8 tution is hereby invested with the title to the property
9 which is or may be the subject of such gift or devise.

§18-23-5. Construction and repair of buildings.

1 The governing boards shall have authority to employ
2 competent architects for the preparation of plans and
3 specifications for all new buildings to be built for state
4 institutions of higher education or for the repairing or
5 remodeling of such existing buildings, or the construc-
6 tion of additions thereto; to employ competent persons
7 to superintend the work of constructing such new build-
8 ings or of such repairs, remodeling or additions; and to
9 call for bids and award contracts for such work. The
10 governing boards shall have authority to erect any new
11 building, or to make repairs or additions to, or changes
12 in, any building already constructed that is used for
13 higher education, without letting the same to contract,
14 or by employing thereon the labor of the inmates of
15 any institution of the state subject to the approval of the
16 director of the department of correction, whenever in
17 the judgment of the governing boards the best interests
18 of the state will be served thereby. The governing
19 boards may also arrange with contractors for the erec-
20 tion of new buildings or for additions or repairs to old
21 ones, to use thereon the labor of such inmates subject
22 to approval of the director of the department of cor-
23 rection. The governing boards shall have authority,
24 whenever in their judgment a new building is needed
25 by a state institution of higher education, or whenever
26 it is necessary to build an addition or make material
27 repairs to such building already in existence, with the
28 approval of the governor, to employ a competent archi-
29 tect or architects to make plans and specifications there-

30 for, and estimates of the cost thereof, for submission to
31 the next session of the Legislature, to aid that body in
32 making an appropriation for the purpose. The gover-
33 nor may pay the cost of such plans and specifications
34 and estimates out of his civil contingent fund, or the
35 governing boards may cause the same to be paid out of
36 the current expense fund, or out of any appropriation
37 made for buildings and land or for repairs and improve-
38 ments of the institution for which the building or work
39 is designed. So far as practicable all buildings erected
40 for the use of the state shall be fireproof.

§18-23-6. Bonds of officers and employees of state institutions of higher education.

1 The governing boards shall have authority to cause
2 the head officer or any other officer of any state institu-
3 tion of higher education or any employee thereof under
4 its control or management in whole or in part, or any
5 of its own employees, to give bond, in such sum as the
6 governing boards may require, conditioned for the faith-
7 ful performance of their duties, and for accounting for
8 and paying over all money and other property of the
9 state which shall come into their hands or control by
10 virtue of their office. The governing boards may pro-
11 vide that the surety in any such bond shall be a surety
12 or bonding company authorized to do business in this
13 state, and cause the premiums for bonds so given to be
14 paid out of the current or contingent expense fund of
15 the institution or governing board with which the per-
16 son so bound is connected. All such bonds shall be ap-
17 proved by the attorney general as to form, and by the
18 governing boards as to sufficiency, and, when so ap-
19 proved, shall be filed with the treasurer of the govern-
20 ing 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.

1 All moneys and funds belonging to the state which
2 shall come into the possession or under the control of

3 the head officer, or any other officer, of any state insti-
4 tution of higher education, or of any person connected
5 therewith, under the control and management of the
6 governing boards in whole or in part, or the fiscal or
7 financial affairs of which are subject to the control and
8 management of the governing boards, shall be paid to
9 the treasurer of said boards monthly, on or before the
10 tenth day of the month succeeding the month in which
11 such moneys or funds were received, under such rules
12 and regulations as the governing boards shall prescribe.
13 They shall cause such moneys and funds to be paid into
14 the state treasury immediately in the manner provided
15 in article two, chapter twelve of this code.

16 All moneys appropriated for the governing boards or
17 for any state institution of higher education under their
18 supervision and management may be expended on proper
19 requisitions issued by the appropriate governing board.
20 Whenever the appropriations by the Legislature for any
21 of said institutions are insufficient to pay the expenses
22 of conducting such institution, the deficiency shall be
23 certified by the appropriate governing board to the gov-
24 ernor. Such certificate shall state the name of the in-
25 stitution and the items and amount in detail needed, and
26 the governor may direct payment of the same or any
27 part thereof out of any appropriation available for that
28 purpose.

**§18-23-8. Visitation and inspection of state institutions of
higher education.**

1 The governing boards, or one or more of their mem-
2 bers, shall visit each of the state institutions of higher
3 education under their control and management in whole
4 or in part as often as may be necessary, and may hold a
5 regular meeting of the governing boards at any such
6 institution. During any such visitation the governing
7 boards or any member thereof shall thoroughly inspect
8 all the departments thereof and investigate the condi-
9 tion and management of the same; and for the purpose
10 of aiding any such investigation the governing boards
11 or any member thereof shall have power to summon
12 and compel the attendance of witnesses, to be examined

13 under oath, which any member shall have the power to
14 administer; and the governing boards or any member
15 thereof shall have access to all books, papers and prop-
16 erty necessary to any such investigation, and may order
17 the production of any books, papers or property. Wit-
18 nesses, other than employees of the state, shall be en-
19 titled to the same fees as in civil cases in the circuit
20 court. In any investigation by the governing boards, or
21 by any member thereof, they or he may cause the tes-
22 timony to be taken in shorthand and transcribed and
23 filed in the office of the governing board as soon after
24 the same is taken as practicable. Any person refusing
25 or failing to obey the order of the governing boards
26 or any member thereof, issued under the provisions of
27 this section, or to give or produce any evidence required,
28 shall be reported by the governing boards or the mem-
29 ber thereof conducting the investigation to the proper
30 circuit court or the judge thereof, and such person so
31 refusing or failing shall be dealt with by the court or
32 judge as for contempt.

§18-23-9. Books and accounts.

1 The governing boards shall cause to be kept at their
2 office a proper and complete set of books and accounts
3 with each state institution of higher education under their
4 respective control, which shall clearly show every ex-
5 penditure authorized and made thereat. The books shall
6 exhibit an account of all appropriations made by the
7 Legislature concerning any institution under their con-
8 trol, and of all other funds under the control of the
9 governing boards. They shall, in conjunction with and
10 subject to the approval of the chief inspector of public
11 offices, prescribe the form of vouchers, records and meth-
12 ods of keeping accounts at and by each of the institu-
13 tions under their control. Such vouchers, records and
14 methods of accounts of the institutions shall be as nearly
15 uniform as possible. The governing boards, or any mem-
16 ber thereof, shall have the power to investigate the con-
17 ditions and to examine and check the records of any of
18 said institutions at any time. The governing boards shall
19 also have the power to authorize any of their members

20 or officers, its bookkeeper, accountant, or other employee,
21 to proceed to any of the institutions under their control,
22 and to examine and check its records, take inventory
23 of its property, or that of any of its departments or for
24 any other purpose the governing boards may deem
25 necessary. Any person doing such work shall receive, in
26 addition to regular compensation, his actual expenses
27 incurred thereby. Upon the completion of any such spe-
28 cial work the governing boards shall cause a full and
29 complete written report of the same to be made to it as
30 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
2 be kept for statistical and other purposes in the state
3 institutions of higher education under their respective
4 control. Each month they shall require a copy of such
5 record to be transmitted to them for the preceding month,
6 and they shall keep in their office in a substantially
7 bound book a copy of every report that they may re-
8 quire from the chief officers of any institution under
9 their control. The governing boards shall have author-
10 ity to assemble the chief officers of the institutions under
11 their respective control or any of them at their office,
12 for the purpose of discussing any question which may
13 be common to their welfare. The actual expenses made
14 necessary in traveling to and from such meeting, and
15 while in attendance thereat, shall be paid out of the
16 funds of the several institutions involved in any such
17 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
2 investigation, either in person or by a committee ap-
3 pointed by him, of the condition, management or affairs
4 of any state institution of higher education, and for the
5 purpose of aiding any such investigation the governor

6 or committee shall have the same powers as are con-
7 ferred upon the governing boards by section eight of
8 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
2 perform any duty or work pertaining to the manage-
3 ment and control of any of the institutions under their
4 control and consistent with the objects of this article.

**§18-23-13. Construction and operation of dormitories, homes
and refectories for teachers and students.**

1 The governing boards are hereby authorized to pro-
2 vide, construct, erect, improve, equip, maintain and oper-
3 ate dormitories, homes or refectories on land owned by
4 the state for students or teachers at the various state
5 educational institutions of higher education under their
6 control, but the cost of construction, erection, improve-
7 ment or equipment shall be solely by means of or with
8 the proceeds of the revenue bonds hereinafter authorized.
9 The governing boards shall have power and authority to
10 employ engineering, architectural and construction ex-
11 perts, and such other employees as may be necessary in
12 their judgment, and fix their compensation, all of whom
13 shall do such work as the governing boards shall direct,
14 all of which shall be included as part of the cost of con-
15 struction and equipment thereof.

§18-23-14. Construction and operation of gymnasiums, etc.

1 The governing boards, within their discretion, are
2 hereby authorized to provide, construct, erect, improve,
3 equip, maintain and operate gymnasiums or stadia for
4 athletic games, contests or exhibitions or physical train-
5 ing, dormitories, homes, refectories, swimming pools,
6 or such other structures or buildings, for students,
7 teachers, officers and employees at the various state
8 institutions of higher education under their control and
9 management subject to the provisions and limitations
10 of sections thirteen, fifteen, sixteen, seventeen, eigh-

11 teen, nineteen, twenty, twnty-one, twenty-two, twenty-
12 three and twenty-four of this article.

§18-23-15. Power of condemnation; payment; orders; bond.

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 acqui-
5 sition 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

16 bonds shall have and are hereby declared to have all
17 the qualities of negotiable instruments under the Uni-
18 form Commercial Code. Such bonds shall bear inter-
19 est, payable semiannually, and shall mature in not more
20 than thirty years from their date or dates and may
21 be made redeemable at the option of the state, to be
22 exercised by the governing boards, at such price and
23 under such terms and conditions as they may fix prior
24 to the issuance of such bonds. They shall determine
25 the form of such bonds, including coupons to be at-
26 tached thereto to evidence the right of interest pay-
27 ments, which bonds shall be signed by the governor
28 and the president of the appropriate governing board,
29 under the great seal of the state, attested by the secre-
30 tary of the state, and the coupons attached thereto
31 shall bear the facsimile signature of the president
32 of the appropriate board. In case any of the officers
33 whose signatures appear on the bonds or coupons shall
34 cease to be such officers before the delivery of such
35 bonds, such signatures shall nevertheless be valid and
36 sufficient for all purposes the same as if they had re-
37 mained in office until such delivery. The governing
38 boards shall fix the denominations of such bonds, the
39 principal and interest of which shall be payable at the
40 office of the treasurer of the state of West Virginia,
41 at the capitol of said state, or, at the option of the holder,
42 at some bank or trust company in the city of New York
43 to be named in the bonds, either in lawful money or
44 in gold coin of the United States of America, of or equal
45 to the then current standard of weight and fineness,
46 as may be determined by the governing boards. Such
47 bonds shall be exempt from taxation by the state of
48 West Virginia or any county, school district or munici-
49 pality therein. The governing boards may provide for
50 the registration of such bonds in the name of the owner
51 as to principal alone and as to both principal and interest
52 under such terms and conditions as the governing boards
53 may determine, and shall sell such bonds in such man-
54 ner as they may determine to be for the best interest
55 of the state, taking into consideration the financial
56 responsibility of the purchaser and the terms and con-

57 ditions of the purchase and especially the availability
58 of the proceeds of the bonds when required for payment
59 of the cost of the dormitories, homes or refectories, such
60 sale to be made at a price not lower than a price which,
61 computed upon standard tables of bond values, will show
62 a net return of not more than six per centum per
63 annum to the purchaser based on the purchase price
64 thereof.

65 The proceeds of such bonds shall be used solely for
66 the payment of the cost of such dormitories, homes or
67 refectories, and shall be checked out by the president
68 of the appropriate governing board and the treasurer
69 thereof and under such further restrictions, if any, as
70 the board may provide. If the proceeds of such bonds,
71 by error or otherwise, shall be less than the cost of such
72 dormitories, homes or refectories, additional bonds may
73 in like manner be issued to provide the amount of such
74 deficit, and, unless otherwise provided in the trust
75 agreement hereinafter mentioned, shall be deemed to
76 be of the same issue and shall be entitled to payment
77 from the same fund, without preference or priority of
78 the bonds first issued for the same dormitory or dor-
79 mitories, home or homes, or refectory or refectories. If
80 the proceeds of bonds issued for any such dormitories,
81 homes or refectories shall exceed the cost thereof, the
82 surplus shall be paid into the fund hereinafter provided
83 for payment of the principal and interest of such bonds.
84 Such fund may be used for the purchase of any of the
85 outstanding bonds payable from such fund at the market
86 price, but not exceeding the price, if any, at which
87 such bonds shall in the same year be redeemable, and
88 all bonds redeemed or purchased shall forthwith be
89 cancelled and shall not again be issued.

90 Prior to the preparation of definitive bonds, the gov-
91 erning boards may under like restrictions issue tem-
92 porary bonds with or without coupons, exchangeable
93 for definitive bonds upon the issuance of the latter. Such
94 revenue bonds may be issued without any other pro-
95 ceedings or the happening of any other conditions and
96 things than those proceedings, conditions and things

97 which are specified and required by this article or by
98 the constitution of the state.

§18-23-17. Agreements with trustees for bondholders.

1 The governing boards may enter into an agreement
2 or agreements with any trust company or with any bank
3 having the powers of a trust company, either within
4 or outside of the state, as trustee for the holders of the
5 bonds issued hereunder, setting forth therein such duties
6 of the state and of the governing boards in respect of the
7 acquisition, construction, erection, improvement, main-
8 tenance, operation, repair and insurance of the dor-
9 mitories, homes or refectories, the conservation and
10 application of all moneys, the insurance of moneys on
11 hand or on deposit, and the rights and remedies of the
12 trustee and the holders of the bonds, as may be agreed
13 on with the original purchasers of such bonds, and in-
14 cluding therein provisions restricting the individual
15 right of action of bondholders as is customary in trust
16 agreements respecting bonds and debentures of corpo-
17 rations, protecting and enforcing the rights and remedies
18 of the trustee and the bondholders, and providing for
19 approval by the original purchasers of the bonds, of the
20 appointment of consulting engineers and of the security
21 given by those who contract to make improvements,
22 and by any bank or trust company in which the pro-
23 ceeds of bonds or rents, fees or charges shall be de-
24 posited, and for approval by the consulting engineers
25 of all contracts for improvements. All expenses incurred
26 in carrying out such agreement may be treated as a
27 part of the cost of maintenance, operation and repair of
28 the dormitories, homes or refectories affected by the
29 agreement. Any such agreement entered into by the
30 governing boards shall be binding in all respects on
31 such governing boards from time to time in accordance
32 with its terms and all the provisions thereof shall be
33 enforceable by appropriate proceedings at law or in
34 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,

2 operate, manage and control the fiscal affairs of such
3 dormitories, homes or refectories, fix the rates of rents,
4 fees or charges and establish rules and regulations for
5 the use and operation of such dormitories, homes or re-
6 fectories, for the welfare of the students or teachers,
7 and may make and enter into all contracts or agree-
8 ments necessary and incidental to the performance of
9 their duties and the execution of their powers under this
10 article.

**§18-23-19. Payment of principal and interest of construction
bonds from revenues of dormitories, homes and
refectories; redemption of bonds.**

1 Whenever bonds are issued for the construction, erec-
2 tion or equipment of dormitories, homes or refectories, or
3 for the improvement or equipment of existing dormi-
4 tories, homes or refectories, or for any or all of such
5 purposes, as joint or several projects, for which a single
6 or several issues of bonds may be issued within the dis-
7 cretion of the governing boards, rents, fees and charges
8 shall be fixed, charged and collected in connection with
9 the use or occupancy of, or service to be thereby ren-
10 dered and furnished by, such dormitories, homes or re-
11 fectories, and shall be so fixed or adjusted, in respect
12 of the aggregate of rents, fees and charges from the
13 dormitories, homes or refectories so constructed, erected,
14 improved or equipped by means of or with the proceeds
15 of a single issue of bonds, as to provide a fund sufficient
16 to pay the principal and interest of each such issue of
17 bonds and to provide an additional fund to pay the cost
18 of maintaining, repairing, operating and insuring such
19 dormitories, homes or refectories. Whenever bonds are
20 issued to finance, at any one time, the construction and
21 erection of dormitories, homes or refectories together
22 with additions or extensions to an existing dormitory,
23 home or refectory for students or teachers at state edu-
24 cational institutions, as a single construction project, the
25 revenues derivable from both such dormitories, homes
26 or refectories and such additions or extensions to an
27 existing dormitory, home or refectory, as constructed
28 from the proceeds of a single issue of bonds, as a single

29 construction project, may be pledged to provide a fund
30 sufficient to pay the principal and interest of such single
31 issue of bonds and to provide an additional fund to pay
32 the cost of maintaining, repairing, operating and insur-
33 ing such dormitories, homes or refectories, and such
34 additions or extensions to an existing dormitory, home
35 or refectory. The rents, fees and charges from the dormi-
36 tories, homes or refectories for which a single issue of
37 bonds is issued, except such part thereof as may be
38 necessary to pay such cost of maintaining, repairing,
39 operating and insuring during any period in which such
40 cost is not otherwise provided for (during which period
41 the rents, fees and charges may be reduced accordingly),
42 shall be transmitted each month to the state sinking
43 fund commission and by it placed in a special fund which
44 is hereby pledged to and charged with the payment of
45 the principal of such bonds and the interest thereon, and
46 to the redemption or repurchase of such bonds, such
47 special fund to be a fund for all such bonds without dis-
48 tinction or priority of one over another. The moneys in
49 such special fund, less a reserve for payment of interest,
50 if not used by the sinking fund commission, within a
51 reasonable time for the purchase of bonds for cancella-
52 tion at a price not exceeding the market price and not
53 exceeding the redemption price, shall be applied to the
54 redemption by lot of any bonds which by their terms
55 are then redeemable, at the redemption price then appli-
56 cable: *Provided, however,* That if said revenue bonds
57 are sold to and purchased by the United States of Amer-
58 ica or any federal or public agency or department created
59 under and by virtue of the laws of the United States of
60 America, then at the option of the United States of
61 America or such federal or public agency or depart-
62 ment in lieu of such moneys being transmitted to the
63 sinking fund commission and by it placed in a special
64 fund, the rents, fees and charges from the dormitories,
65 homes or refectories for which a single issue of bonds is
66 issued, except such part thereof as may be necessary to
67 pay such cost of maintaining, repairing, operating and
68 insuring as provided aforesaid, may be transmitted and
69 paid to a trustee designated and named by the United

70 States of America or such federal or public agency or
71 department in its agreement and contract with the appro-
72 priate governing board, for the payment of the principal
73 of such bonds and the interest thereon, under such terms
74 and conditions as may be agreed upon.

§18-23-20. When dormitories, homes or refectories become property of state.

1 When the particular bonds for any dormitory or dormi-
2 tories, home or homes, refectory or refectories, and the
3 interest on such bonds, shall have been paid, or a suffi-
4 cient amount has been provided for their payment and
5 shall continue to be held for that purpose, the said dormi-
6 tories, homes or refectories shall thereafter be exclusively
7 the property of the state of West Virginia, and thereafter
8 the rents, fees and charges collected for the use or occu-
9 pancy of, or service rendered and furnished by, such
10 dormitories, homes or refectories shall be paid into the
11 state treasury as provided by the provisions of section
12 two, article two, chapter twelve of this code, as amended,
13 and used and expended for the benefit of the institution
14 where collected.

§18-23-21. State debt not to be incurred for dormitories, homes or refectories; federal and private assistance; provisions separable.

1 Nothing in these sections dealing with dormitories,
2 homes or refectories shall be so construed or interpreted
3 as to authorize or permit the incurring of state debt of
4 any kind or nature as contemplated by the constitution
5 of this state in relation to the state debt. The dormitories,
6 homes or refectories herein are of the character de-
7 scribed as self-liquidating projects under the laws of
8 the United States.

9 Any governing board authorized to issue bonds under
10 the provisions of this article is authorized and em-
11 powered to accept loans or grants or temporary advances
12 for the purpose of paying part or all of the cost of con-
13 struction of the dormitories, homes or refectories and
14 the other purposes herein authorized, from the United

15 States of America or such federal or public agency or
16 department of the United States or any private agency,
17 corporation or individual, which temporary advances
18 may be repaid out of the proceeds of the bonds au-
19 thorized to be issued under the provisions of this ar-
20 ticle and to enter into the necessary contracts and
21 agreements to carry out the purposes hereof with the
22 United States of America or such federal or public
23 agency or department of the United States, or with
24 any private agency, corporation or individual: *Pro-*
25 *vided, however,* That if such bonds are not sold to
26 and purchased by the United States of America or
27 any such federal or public agency or department, then
28 the governing board shall advertise such bonds for
29 sale, on sealed bids, which advertisement shall be pub-
30 lished as a Class II legal advertisement in compli-
31 ance with the provisions of article three, chapter fifty-
32 nine of this code, and the publication area for such
33 publication shall be the state. Such advertisement shall
34 be so published within the fourteen consecutive days
35 next preceding the date fixed for the reception of bids.
36 Such advertisement shall also be published in a finan-
37 cial paper published either in the city of New York,
38 in the state of New York, or the city of Chicago, in
39 the state of Illinois. The governing board may reject
40 any and all bids. If the bonds be not sold pursuant to
41 such advertisement, they may, within sixty days after
42 the date advertised for the reception of bids, be sold
43 by the governing board at private sale, but no private
44 sale shall be made at a price less than the highest bid
45 which shall have been received pursuant to such adver-
46 tisement. If not sold, such bonds shall be readvertised
47 in the manner herein provided.

48 The provisions and parts of this section are separable
49 and are not matters of mutual essential inducement,
50 and it is the intention to confer the whole or any part
51 of the powers herein provided for, and if any of the
52 sections or provisions, or parts thereof, are for any
53 reason illegal or invalid, it is the intention that the re-
54 maining sections and provisions or parts thereof shall
55 remain in full force and effect.

§18-23-22. Sections regarded as supplementary.

1 Sections thirteen to twenty-four, inclusive, of this
2 article, shall be deemed to provide an additional and
3 alternative method for the doing of the things authorized
4 hereby and shall be regarded as supplementary and
5 additional to powers conferred by other laws: *Provided,*
6 *however,* That when any revenue bonds are issued
7 hereunder for the purposes provided by sections thir-
8 teen to twenty-four, inclusive, of this article, for the
9 benefit of any particular state educational institution,
10 no dormitories, homes or refectories shall thereafter be
11 constructed, built or erected at such state educational
12 institution until the appropriate governing board shall,
13 by investigating and hearing had thereon, under such
14 rules as it may prescribe, determine that there is an
15 imperative public need for the construction, building or
16 erection of such dormitories, homes or refectories, and
17 that their construction, building or erection and sub-
18 sequent maintenance or operation will not materially
19 injure the revenues of and from any dormitories, homes
20 or refectories constructed, built, erected, maintained or
21 operated at such state educational institution under the
22 provisions of sections thirteen to twenty-four, inclusive,
23 of this article.

§18-23-23. Approval of dormitories, homes or refectories.

1 It shall not be necessary to secure from any officer
2 or board not named in sections thirteen to twenty-four,
3 inclusive, of this article, any approval or consent or
4 any certificate or finding, or to hold any election, or to
5 take any proceedings whatever, either for the acquisition,
6 construction or erection of such dormitories, homes or
7 refectories, or the improvement thereof, or their main-
8 tenance, operation, repair or insurance, or for the is-
9 suance of bonds hereunder, except such as are prescribed
10 in the sections herein named or are required by the
11 constitution of the state.

§18-23-24. Liberal construction.

1 Sections thirteen to twenty-four, inclusive, of this
2 article, being necessary for the health, welfare and con-

3 venience of the students and teachers at the various state
4 educational institutions, shall be liberally construed to
5 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.
- §18-24-10. Book stores.
- §18-24-11. Joint establishment and operation of two-year branch colleges by governmental bodies.
- §18-24-12. Authority of educational institutions to provide special services and programs; collection and disposition of fees therefor.
- §18-24-13. Disposition of funds in state treasury.

**§18-24-1. Enrollment, tuition and other fees at educational
institutions; refund of fees.**

1 The governing boards of state educational institutions
2 shall fix enrollment, tuition, and other fees for each
3 semester or school term for the different classes or cate-
4 gories of students enrolling at the state educational insti-
5 tutions, and may include among such fees any one or
6 more of the following: (1) Health service fees; (2) in-
7 firmary fees; (3) student activities, recreational, athletic
8 and extracurricular fees; and (4) graduate center fees,
9 and branch college fees, or either, if the establishment
10 and operation of graduate centers or branch colleges are
11 otherwise authorized by law. All fees collected under
12 (1), (2) and (3) shall be paid into special funds and
13 shall be used only for the purposes for which the fees
14 are collected; and all fees collected at any graduate
15 center or at any branch college shall be paid into special

16 funds and shall be used solely for the maintenance and
17 operation of the graduate center or branch college at
18 which they were collected: *Provided, however, That*
19 *except in the case of graduate center fees or branch*
20 *college fees, the minimum tuition fee for full-time resi-*
21 *dent students shall be twenty-five dollars per semester*
22 *and the minimum tuition fee for full-time nonresident*
23 *students shall be one hundred seventy-five dollars per*
24 *semester at all state institutions of higher education*
25 *except West Virginia University: And provided further,*
26 *That the minimum tuition fee for full-time resident stu-*
27 *dents at West Virginia University shall be forty dollars*
28 *per semester and the minimum tuition fee for full-time*
29 *nonresident students at West Virginia University shall*
30 *be two hundred five dollars per semester: And provided*
31 *further, That except for graduate center fees, branch*
32 *college fees, and the student union fees hereinafter au-*
33 *thorized, the maximum fees to be collected under this*
34 *section for resident students shall not exceed two hun-*
35 *dred dollars per semester; and for nonresident students,*
36 *five hundred dollars per semester. The schedule of all*
37 *fees, and any changes therein, shall be entered in the*
38 *minutes of the meeting of the governing board, and the*
39 *governing board shall file with the state auditor and*
40 *director of the budget division a certified copy of such*
41 *schedule and changes.*

42 In addition to the fees mentioned in the preceding
43 paragraph, the governing board of any state educational
44 institution may impose and collect a student union build-
45 ing fee. All such building fees collected at the institution
46 shall be paid into a special student union building fund
47 for such institution, which is hereby created in the state
48 treasury, and shall be used only for the construction,
49 operation, and maintenance of a student union building
50 or a combination student union and dining hall building
51 or for the renovation of an existing structure for use as
52 a student union building or a combination student union
53 and dining hall building or for the payment of the prin-
54 cipal of and interest on any bonds issued to finance part
55 or all of the construction of a student union building

56 or a combination student union and dining hall building
57 or the renovation of an existing structure for use as a
58 student union building or a combination student union
59 and dining hall building, all as more fully provided in
60 section six of this article. Any moneys in such funds
61 not immediately needed for such purposes may be in-
62 vested in any such bonds or other securities as are now
63 or may hereafter be authorized as proper investments
64 for state funds.

65 Refund, as an erroneous payment, may be made of
66 any such fees, upon the voluntary or involuntary with-
67 drawal from classes of any student, until eight weeks
68 of the school semester or term have expired, but no
69 refund may be made thereafter.

§18-24-2. Scholarships—Undergraduate schools.

1 Scholarships entitling recipients to waiver of enroll-
2 ment, tuition, registration, and other fees, heretofore
3 established by the governing boards of state educational
4 institutions, may be continued and other such scholar-
5 ships may be established from time to time by the
6 governing boards, subject to the following conditions
7 and limitations:

8 (1) No state educational institution shall have in
9 effect at any time such scholarships in a number which
10 exceeds five percent of the maximum number of full-
11 time students registered at any time during the immedi-
12 ately preceding academic year.

13 (2) Each such scholarship shall entitle the recipient
14 thereof to attend a designated state educational institu-
15 tion without payment of such enrollment, tuition, regis-
16 tration, and other fees as may be prescribed by the
17 governing board of that institution and for a period of
18 time not to exceed eight semesters of undergraduate
19 study.

20 (3) The governing boards shall make rules governing
21 the award of such scholarships, the issuance and can-
22 cellation of certificates entitling the recipients to the
23 benefits thereof, the use of such scholarships by the
24 recipients, and the rights and duties of the recipients in

25 respect to such scholarships. Such rules shall not be
26 inconsistent with the provisions of this section.

27 (4) The awarding of such scholarships shall be enter-
28 ed in the minutes of the meetings of the governing
29 board, and the governing board shall file with the state
30 auditor and the director of the budget division a certified
31 copy of the rules governing the award of such scholar-
32 ships and of a list of the names of the recipients thereof.

§18-24-3. Same—Professional and graduate schools.

1 In addition to the scholarships heretofore authorized
2 for undergraduate study by the provisions of section
3 two of this article, the governing board of West Virginia
4 University is hereby authorized and empowered to estab-
5 lish from time to time scholarships for study in the school
6 of medicine, the school of dentistry, the college of law, and
7 the graduate school, entitling the recipients to waiver of
8 enrollment, tuition, registration, and other fees, subject to
9 the following conditions and limitations:

10 (1) The number of such scholarships in effect at any
11 one time shall not exceed six for each class in the school
12 of medicine, five for each class in the school of dentistry,
13 four for each class in the college of law, and four for
14 graduate students in social work. Such scholarships
15 may be for a period of time not to exceed eight semesters
16 of study in medicine and dentistry, six semesters of
17 study in law, and five semesters of study in graduate
18 social work.

19 (2) Each such scholarship shall entitle the recipient
20 to waiver of such enrollment, tuition, registration and
21 other fees as may be prescribed by the board.

22 (3) The board shall make rules governing the award
23 of such scholarships, the issuance and cancellation of
24 certificates entitling the recipients to the benefits thereof,
25 the use of such scholarships by the recipients, and the
26 rights and duties of the recipients in respect to such
27 scholarships. Such rules shall not be inconsistent with
28 the provisions of this section.

29 (4) The awarding of such scholarships shall be
30 entered in the minutes of the meeting of the board, and

31 the board shall file with the state auditor and the direc-
32 tor of the budget division a certified copy of the rules
33 governing the award of such scholarships and a list
34 of the names of the recipients thereof.

***§18-24-4. Collection, disposition and use of additional registra-
tion fee; creation of special capital improvements
fund; revenue bonds.**

1 In addition to all other fees imposed by the governing
2 boards of state institutions of higher education, there
3 is hereby imposed and the governing board of each state
4 institution of higher education is hereby directed to pro-
5 vide for the collection of an additional registration fee
6 from all students in the amounts as hereinafter pro-
7 vided.

8 For full-time students at each state institution of higher
9 education, the additional registration fee shall be fifty
10 dollars per semester. The governing boards shall have
11 authority to increase such additional registration fee
12 at any institution of higher education under their re-
13 spective control for students who are nonresidents of
14 this state. For all part-time students and for all sum-
15 mer school students, the respective governing boards
16 shall impose and collect such fee in proportion to, but
17 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).

18 The fee imposed by this section shall be in addition
19 to the maximum fees allowed to be collected under the
20 provisions of section one of this article and shall not
21 be limited thereby. Refunds of such fee may be made
22 in the same manner as any other fee collected at state
23 institutions of higher education.

24 There is hereby created in the state treasury a special
25 capital improvements fund, to be expended by the gov-
26 erning board of West Virginia University for the bene-
27 fit of West Virginia University and Potomac State Col-
28 lege of West Virginia University, as provided in this
29 section. On and after the first day of July, one thou-
30 sand nine hundred sixty-three, there shall be paid into
31 such special fund all proceeds of the additional regis-
32 tration fees collected from students at West Virginia
33 University and at Potomac State College.

34 There is hereby created in the state treasury a second
35 special capital improvements fund, to be expended
36 by the governing board for the benefit of all other
37 state institutions of higher education, as provided in this
38 section. On and after the first day of July, one thousand
39 nine hundred sixty-three, there shall be paid into such
40 special fund all proceeds of the additional registration
41 fees collected from students at such institutions.

42 The respective boards may make expenditures from
43 such special capital improvements funds at the various
44 state institutions of higher education under their con-
45 trol to finance in whole or in part, together with any
46 federal, state or other grants or contributions, any one
47 or more of the following purposes: (1) The acquisition
48 of land or any rights or interest therein, (2) the con-
49 struction or acquisition of new buildings, (3) the ren-
50 ovation or construction of additions to existing build-
51 ings, (4) the acquisition of furnishings and equipment
52 for any such buildings, and (5) the construction or ac-
53 quisition of any other capital improvements or capital
54 educational facilities at such state institutions of higher
55 education, including any roads, utilities or other prop-
56 erties, real or personal, or for other purposes necessary,
57 appurtenant or incidental to the construction, acquisi-
58 tion, financing and placing in operation of such build-

59 ings, capital improvements or capital educational facil-
60 ities.

61 The respective boards, at their discretion, may use
62 the moneys in such special capital improvements funds
63 to finance the costs of the above purposes on a cash
64 basis, or may from time to time issue revenue bonds of
65 the state as provided in this section to finance all or
66 part of such purposes and pledge all or any part of the
67 moneys in such special funds for the payment of the
68 principal of and interest on such revenue bonds, and for
69 reserves therefor. Any pledge of such special funds
70 for such revenue bonds shall be a prior and superior
71 charge on such special funds over the use of any of the
72 moneys in such funds to pay for the cost of any of such
73 purposes on a cash basis: *Provided*, That any expen-
74 ditures from such special funds, other than for the re-
75 tirement of revenue bonds, may only be made by the
76 governing boards to meet the cost of a predetermined
77 capital improvements program for one or more of
78 the state institutions of higher education under their
79 control, in such order of priority as shall have been
80 agreed upon by the respective boards and presented
81 to the governor for inclusion in the annual budget
82 bill, and only with the approval of the Legislature
83 as indicated by direct appropriation for the pur-
84 pose.

85 Such revenue bonds may be authorized and issued
86 from time to time by the respective boards to finance
87 in whole or in part the purposes provided in this sec-
88 tion in an aggregate principal amount not exceeding
89 the amount which the respective boards shall determine
90 can be paid as to both principal and interest and rea-
91 sonable margins for a reserve therefor from the moneys
92 in such special funds.

93 The issuance of such revenue bonds shall be autho-
94 rized by a resolution adopted by the respective board,
95 and such revenue bonds shall bear such date or dates,
96 mature at such time or times not exceeding forty years
97 from their respective dates; be in such form either coupon
98 or registered, with such exchangeability and interchange-
99 ability privileges; be payable in such medium of payment

100 and at such place or places, within or without the state; be
101 subject to such terms of prior redemption at such prices
102 not exceeding one hundred five per centum of the prin-
103 cipal amount thereof; and shall have such other terms and
104 provisions as such respective board shall determine. Such
105 revenue bonds shall be signed by the governor and by the
106 president of the respective board authorizing the issuance
107 thereof, under the great seal of the state, attested by
108 the secretary of state, and the coupons attached thereto
109 shall bear the facsimile signature of the president of
110 such respective board. Such revenue bonds shall be
111 sold in such manner as the respective board may deter-
112 mine to be for the best interests of the state.

113 Such respective board may enter into trust agreements
114 with banks or trust companies, within or without the
115 state, and in such trust agreements or the resolutions au-
116 thorizing the issuance of such bonds may enter into valid
117 and legally binding covenants with the holders of such
118 revenue bonds as to the custody, safeguarding and dis-
119 position of the proceeds of such revenue bonds, the
120 moneys in such special funds, sinking funds, reserve
121 funds, or any other moneys or funds; as to the rank and
122 priority, if any, of different issues of revenue bonds by
123 the same board under the provisions of this section; as
124 to the maintenance or revision of the amounts of such
125 additional registration fees, and the terms and condi-
126 tions, if any, under which such additional registration
127 fees may be reduced; and as to any other matters or
128 provisions which are deemed necessary and advisable
129 by such respective board in the best interests of the state
130 and to enhance the marketability of such revenue bonds.

131 After the issuance of any of such revenue bonds, the
132 additional registration fees at the state institutions of
133 higher education under the control of the board which
134 issued the bonds shall not be reduced as long as any of
135 such revenue bonds are outstanding and unpaid except
136 under such terms, provisions and conditions as shall be
137 contained in the resolution, trust agreement or other
138 proceedings under which such revenue bonds were is-
139 sued.

140 Such revenue bonds shall be and constitute negotiable
141 instruments under the law merchant and the negotiable
142 instruments law of the state; shall, together with the
143 interest thereon, be exempt from all taxation by the
144 state of West Virginia, or by any county, school district,
145 municipality or political subdivision thereof; and such
146 revenue bonds shall not be deemed to be obligations or
147 debts of the state, and the credit or taxing power of the
148 state shall not be pledged therefor, but such revenue
149 bonds shall be payable only from the revenue pledged
150 therefor as provided in this section.

§18-24-5. Authority to excuse students in certain educational programs from payment of enrollment fees.

1 Whenever the cost of any institute, workshop, special
2 course, or other educational program is wholly financed
3 by a grant from any federal agency or from any foundation, corporation, or other association or person, except
4 for indirect costs of administration and other overhead
5 expenses, such as the cost of providing classrooms and
6 other facilities, the governing board of the state educational institution administering such program shall
7 have the authority to excuse all students enrolled in
8 such program from the payment of tuition, registration
9 and other enrollment fees.
10
11

§18-24-6. Disposition and use of student union fees; issuance of revenue bonds.

1 Wherever the term "student union building" is used
2 in this section the same shall mean a student union
3 building or a combination student union building and
4 dining hall building; and wherever the term "building
5 fund" is used in this section the same shall mean the
6 respective special student union building funds created
7 as provided in section one of this article for each state
8 educational institution which has imposed student union
9 fees pursuant to section one of this article, to be
10 expended by the governing boards for the benefit of the
11 state educational institutions under their control.

12 The respective boards may make expenditures from
13 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 proper-
26 ties, 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.

35 The respective boards, at their discretion, may use the
36 moneys in such building funds to finance the costs of
37 the above purposes on a cash basis, or may from time
38 to time issue revenue bonds of the state as provided
39 in this section to finance all or part of such purposes
40 and pledge all or any part of the moneys in such building
41 funds for the payment of the principal of and interest
42 on such revenue bonds, and for reserves therefor. Any
43 pledge of such building funds for such revenue bonds
44 shall be a prior and superior charge on such special
45 funds over the use of any of the moneys in such funds
46 to pay for the cost of any of such purposes on a cash
47 basis, or for the payment of the cost of operation and
48 maintenance, or any part thereof, of such student union
49 buildings, under such terms and conditions as shall
50 be provided in the proceedings which authorized the
51 issuance of such revenue bonds.

52 Such revenue bonds may be authorized and issued
53 from time to time by the respective boards to finance

54 in whole or in part the purposes at any state educational
55 institution under their control provided for in this sec-
56 tion in an aggregate principal amount not exceeding
57 the amount which the respective boards shall determine
58 can be paid as to both principal and interest and reason-
59 able margins for a reserve therefor from the moneys in
60 such building funds.

61 The issuance of such revenue bonds shall be autho-
62 rized by a resolution adopted by the respective board,
63 and such revenue bonds shall bear such date or dates,
64 mature at such time or times not exceeding forty years
65 from their respective dates; bear interest at such rate
66 or rates not exceeding five per centum per annum;
67 be in such form either coupon or registered, with such
68 exchangeability and interchangeability privileges; be
69 payable in such medium of payment and at such place
70 or places, within or without the state; be subject to
71 such terms of prior redemption at such prices not
72 exceeding one hundred five per centum of the principal
73 amount thereof; and shall have such other terms and
74 provisions as such respective board shall determine.
75 Such revenue bonds shall be signed by the governor and
76 by the president of the respective board authorizing the
77 issuance thereof, under the great seal of the state,
78 attested by the secretary of state, and the coupons
79 attached thereto shall bear the facsimile signature of
80 the president of such respective board. Such revenue
81 bonds shall be sold in such manner as the respective
82 board may determine to be for the best interests of
83 the state, such sale to be made at a price not lower
84 than a price which will show a net return of not more
85 than six per centum per annum to the purchaser upon
86 the amount paid therefor computed to the stated maturity
87 dates of such revenue bonds without regard to any right
88 of prior redemption.

89 Such respective boards may enter into trust agree-
90 ments with banks or trust companies, within or without
91 the state, and in such trust agreements or the resolutions
92 authorizing the issuance of such bonds may enter into
93 valid and legally binding covenants with the holders

94 of such revenue bonds as to the custody, safeguarding
95 and disposition of the proceeds of such revenue bonds,
96 the moneys in such building funds, sinking funds, re-
97 serve funds, or any other moneys or funds; as to the
98 rank and priority, if any, of different issues of revenue
99 bonds issued by the same board for the same educational
100 institution under the provisions of this section; as
101 to the maintenance or revision of the amounts of such
102 student union fees, and the terms and conditions, if
103 any, under which any of such student union fees may
104 be reduced; and as to any other matters or provisions
105 which are deemed necessary and advisable by such
106 respective board in the best interests of the state and to
107 enhance the marketability of such revenue bonds.

108 Any revenues or income derived from the operation
109 of such student union buildings may, in the discretion
110 of the respective boards, be used to pay the cost of
111 the operation and maintenance of such student union
112 buildings, or for the debt service on any bonds issued
113 pursuant to this section or pursuant to any other law.

114 After the issuance of any of such revenue bonds, the
115 student union fees at the state educational institution
116 for which such revenue bonds were issued shall not be
117 reduced as long as any of such revenue bonds are out-
118 standing and unpaid except under such terms, provi-
119 sions and conditions as shall be contained in the reso-
120 lution, trust agreement or other proceedings under which
121 such revenue bonds were issued.

122 Such revenue bonds shall be and constitute negotiable
123 instruments under the law merchant and the negotiable
124 instruments law of the state, shall, together with the
125 interest thereon, be exempt from all taxation by the
126 state of West Virginia, or by any county, school district,
127 municipality or political subdivision thereof; and such
128 revenue bonds shall not be deemed to be obligations or
129 debts of the state, and the credit or taxing power of
130 the state shall not be pledged therefor, but such revenue
131 bonds shall be payable only from the student union
132 fees pledged therefor as provided in this section.

133 The provisions of this section shall constitute an
134 additional, alternative and complete authority for the
135 exercise of the powers and the issuance of the bonds
136 provided for in this section, but shall not prevent said
137 respective boards from exercising similar or related
138 powers or issuing bonds therefor under any other law
139 or laws, but such respective boards, in exercising the
140 powers and issuing the bonds provided for in this sec-
141 tion, shall only be required to comply with the provisions
142 of this section and shall not be required to comply with
143 or be subject to the provisions of any other law or laws.

§18-24-7. Fees and money derived from athletic contests.

1 The directors of athletics at state educational institu-
2 tions may fix and charge admission fees to athletic con-
3 tests at state educational institutions and may enter into
4 contracts, spend and receive money under such contracts
5 for the student athletic teams of state educational insti-
6 tutions to contest with other athletic teams inside or out-
7 side the state.

8 All money derived from such fees and under such con-
9 tracts shall be used to defray the cost of maintaining the
10 athletic department and athletic program of such insti-
11 tutions. The operation of training camps and training
12 tables and providing room accommodations for partici-
13 pants in the athletic program of such institutions shall be
14 recognized and considered as a proper part of such main-
15 tenance, but the specific mention of training camps and
16 training tables and providing room accommodations shall
17 not be construed or understood to limit in any way the
18 general power and authority otherwise granted and con-
19 ferred by this section.

§18-24-8. Student activity fees.

1 The president of any state educational institution may
2 authorize the collection of fees from students for the
3 support of extracurricular activities of the students, and
4 after authorizing the collection of such fees, the president
5 shall file with the state auditor and state budget director
6 a certified detailed statement of the fees authorized to
7 be collected and the purpose for which they are to be
8 spent.

§18-24-9. Fees from operation of dormitories, faculty homes, dining halls, and cafeterias.

1 The governing board of each state educational institu-
2 tion shall fix the fees to be charged students and faculty
3 members for rooms, board and meals at the dormitories,
4 faculty homes, dining halls, and cafeterias operated by
5 the board at the institution. Such fees shall be com-
6 mensurate with the complete cost of such services.

7 All fees collected for such services shall be used first
8 to pay the operating and maintenance costs of the dormi-
9 tories, faculty homes, dining halls, and cafeterias and to
10 meet interest, principal, and sinking fund requirements
11 due on any outstanding revenue bonds for which such
12 receipts may have been pledged as security. Any such
13 receipts not needed for these purposes may be expended
14 by the governing board to defray the costs in whole or
15 in part for the construction of any such facility.

§18-24-10. Book stores.

1 The governing board of each state educational institu-
2 tion shall have the authority to establish and operate
3 a book store at the institution. The book store shall be
4 operated for the use of the institution itself, including
5 each of its schools and departments, in making purchases
6 of books, stationery and other school and office supplies
7 generally carried in college stores, and for the benefit
8 of students and faculty members in purchasing such
9 products for their own use, but no sales shall be made
10 to the general public. The prices to be charged the in-
11 stitution, the students and the faculty for such products
12 shall be fixed by the governing board, shall not be less
13 than the prices fixed by any fair trade agreements, and
14 shall in all cases include in addition to the purchase
15 price paid by the book store a sufficient handling charge
16 to cover all expenses incurred for personal and other
17 services, supplies and equipment, storage, and other
18 operating expenses, to the end that the prices charged
19 shall be commensurate with the total cost to the state
20 of operating the book store.

21 All moneys derived from the operation of the store
22 shall be paid into a special revenue fund as provided in
23 section two, article two, chapter twelve of this code.
24 The governing board shall, subject to the approval of
25 the governor, fix and from time to time change the
26 amount of the revolving fund necessary for the proper
27 and efficient operation of each book store. Whenever at
28 the end of any fiscal year the unencumbered balance in
29 the book store special revenue fund shall exceed the
30 amount of the revolving fund so established, the excess
31 shall be transferred by the state auditor to the general
32 revenue fund and become a part of the general revenue
33 of the state.

34 Moneys derived from the operation of the book store
35 shall be used first to replenish the stock of goods and
36 to pay the costs of operating and maintaining the store.
37 From any balance in the Marshall University book store
38 fund not needed for operation and maintenance and re-
39 plenishing the stock of goods, the governing board of
40 that institution shall have authority to expend a sum not
41 to exceed two hundred thousand dollars for the con-
42 struction of quarters to house the book store in the uni-
43 versity center at Marshall University. Until such quarters
44 for housing the book store are completed, the governing
45 board of Marshall University and the governor shall take
46 this authorization into account in fixing the amount of
47 the revolving fund for the Marshall University book store.

**§18-24-11. Joint establishment and operation of two-year
branch colleges by governmental bodies.**

1 Any county board of education, county court, municipal
2 corporation, or any two of them, may jointly establish
3 with an approved educational institution, an approved
4 two-year branch college offering transfer, terminal, tech-
5 nical and adult vocational programs. The respective
6 governmental bodies operating such a two-year terminal
7 branch and community college may provide by agree-
8 ment among themselves all matters connected with such
9 programs, subject to the approval of the state board of
10 education, and determine what items of cost and ex-
11 pense 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 insti-
2 tution shall have authority to provide special services
3 and special programs at such institutions and may fix
4 and collect special fees or charges therefor. Such special
5 services and special programs may include any one or
6 more of the following:

7 (1) The conduct of music camps and band, orchestra,
8 or voice clinics for secondary school students or other
9 youth groups, summer tutoring programs for primary
10 and secondary school students, speech therapy clinics and
11 services, educational and psychological testing programs,
12 student guidance programs, and statistical studies and
13 calculations by electronic computer service.

14 (2) Rental of lockers or other storage facilities and
15 the maintenance and operation of parking facilities for
16 use by students, faculty, staff, and visitors.

17 (3) Rental of musical recordings, educational films,
18 slides, and other audiovisual aids.

19 (4) Microfilming or other mechanical reproduction
20 of records and noncopyrighted library reference materials.

21 (5) Institutes, conferences, workshops, postgraduate
22 and refresher noncredit courses, and any other special
23 program or special service customarily provided by insti-
24 tutions of higher education.

25 (6) Motor pools, consisting of motor vehicles for the
26 use of their employees when carrying on the business
27 and affairs of the institutions.

28 All fees or charges collected for any such special ser-
29 vices or programs shall be paid into a special fund and
30 shall be expended solely for the maintenance, operation,
31 and support of such services and programs.

32 Whenever any such special service is provided by one
33 school, division or department of an educational institu-
34 tion for the benefit of any other school, division or depart-
35 ment in the same institution, the cost shall be paid by
36 the school, division or department requesting the service

37 and shall be deposited and expended as provided above.
38 Whenever a motor pool is provided by the governing
39 board of a state educational institution, such board may
40 charge any school, college, department or division of such
41 institution for which a vehicle is used a reasonable
42 amount for such use, which amount shall be paid by such
43 school, college, department or division and shall be
44 deposited and expended as above provided.

§18-24-13. Disposition of funds in state treasury.

1 All funds in the state treasury heretofore collected
2 from any of the sources defined in the foregoing sections
3 shall remain in the state treasury and those funds and
4 any such additional funds collected hereafter may be ex-
5 pended 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.

1 A county board of education, the teachers retirement
2 board, the West Virginia board of education and the board
3 of regents and their agencies may provide by written
4 agreement between any such board or agency and any
5 teacher or other employee, to reduce the cash salary
6 payable to such teacher or other employee, and, in con-
7 sideration thereof, to pay an amount equal to the amount
8 of such reduction to an insurance company licensed to
9 do business in this state as premiums on an annuity con-
10 tract owned by such teacher or other employee, which
11 annuity contract shall be in such form and upon such
12 terms as will qualify the payments thereon for tax de-
13 ferment under the United States Internal Revenue Code,
14 or to pay an amount equal to the amount of such reduction
15 as voluntary deposits to the teachers retirement board
16 as provided by section eighteen, article seven-a, chapter
17 eighteen of this code. The amount of such reduction
18 shall not exceed the amount excludable from income
19 under section 403(b) of the United States Internal Reve-
20 nue Code, and amendments and successor provisions
21 thereto, and shall be considered a part of the teacher's

22 or employee's salary for all purposes other than federal
23 and state income tax.

24 The purchase of such tax sheltered annuity for a teacher
25 or other employee by a board of education, the teachers
26 retirement board, the West Virginia board of education
27 and the board of regents and their agencies shall impose
28 no liability nor responsibility whatsoever on said boards
29 or members thereof except to show that the payments
30 have been remitted for the purposes for which deducted.

CHAPTER 140

(Senate Bill No. 181—By Mr. McCourt and Mr. McKown)

[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

1. General Provisions.
2. School Personnel.
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-1-2. Repeal of inconsistent provisions.
§18A-1-3. Constitutionality and severability.

§18A-1-1. Definitions.

1 The definitions contained in section one, article one of
2 chapter eighteen shall be applicable to this chapter. In
3 addition, the following words used in this chapter and in
4 any proceedings pursuant thereto shall, unless the con-
5 text clearly indicates a different meaning, be construed
6 as follows:

7 a. "School personnel" shall mean all personnel employ-
8 ed by a county board of education whether employed on
9 a regular full-time basis, an hourly basis or otherwise.
10 School personnel shall be comprised of three categories:
11 Professional personnel, auxiliary personnel and service
12 personnel.

13 b. "Professional personnel" shall mean persons who
14 meet the certification and/or licensing requirements of the
15 state, and shall include the professional educator and
16 other professional employees.

17 c. "Professional educator" shall be synonymous with
18 and shall have the same meaning as "teacher" as defined
19 in section one, article one, chapter eighteen of this code.
20 Professional educators shall be classified as:

21 (1) "Classroom teacher": The professional educator
22 who has direct instructional or counseling relationship
23 with pupils, spending the majority of his time in this
24 capacity.

25 (2) "Principal": The professional educator whose
26 duties relate to the instructional program but whose major
27 time is devoted to responsibility for the whole of the
28 school and the teachers and other personnel therein.

29 (3) "Supervisor": The professional educator who,
30 whether by this or other appropriate title, is responsible
31 for working primarily in the field with professional and/
32 or other personnel in instructional and other school im-
33 provement.

34 (4) "Central office administrator": The superintend-
35 ent, associate superintendent, assistant superintendent,
36 and other professional educators, whether by these or
37 other appropriate titles, who are charged with the admin-
38 istering and supervising of the whole or some assigned

39 part of the total program of the county-wide school sys-
40 tem.

41 d. "Other professional employee" shall mean that per-
42 son from another profession who is properly licensed and
43 is employed to serve the public schools.

44 e. "Auxiliary personnel" shall mean those persons
45 selected and trained for teacher-aide classifications such
46 as monitor aide, clerical aide, classroom aide, general aide.

47 f. "Service personnel" shall mean those who serve the
48 school or schools as a whole, in a nonprofessional capacity,
49 including such areas as secretarial, custodial, mainte-
50 nance, transportation, school lunch.

§18A-1-2. Repeal of inconsistent provisions.

1 The provisions of any articles or parts of articles, of the
2 code of West Virginia, one thousand nine hundred thirty-
3 one, as amended, which are inconsistent with the provi-
4 sions of this chapter, are hereby repealed to the extent
5 of such inconsistency.

§18A-1-3. Constitutionality and severability.

1 If any provision of this chapter or the application there-
2 of to any person or circumstances shall be held to be
3 unconstitutional and invalid, such unconstitutionality and
4 invalidity shall not affect any one of the provisions or
5 applications of the chapter which can be given effect
6 without the invalid provisions or applications; and to this
7 end the provisions of this chapter are separable. The
8 Legislature hereby declares that it would have passed the
9 remaining parts of this chapter if it had known that such
10 other part or parts thereof would be declared unconstitu-
11 tional and invalid.

ARTICLE 2. SCHOOL PERSONNEL.

§18A-2-1. Employment in general.

§18A-2-2. Employment of teachers; contracts; how terminated; dis-
missal for lack of need; released time; failure of teacher
to perform contract or violation thereof.

§18A-2-3. Employment of substitute teachers.

§18A-2-4. Employment of auxiliary personnel.

§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
2 by the board only upon nomination and recommendation
3 of the superintendent. In case the board refuses to
4 employ any or all of the persons nominated, the super-
5 intendent shall nominate others and submit the same
6 to the board at such time as the board may direct. All
7 personnel so nominated and recommended for employ-
8 ment and for subsequent assignment shall meet the cer-
9 tification, licensing, training, and other eligibility classi-
10 fications as may be required by provisions of this chapter
11 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 there-
of.**

1 Before entering upon their duties, all teachers shall
2 execute a contract with their boards of education, which
3 contract shall state the salary to be paid and shall be
4 in the form prescribed by the state superintendent of
5 schools. Every such contract shall be signed by the
6 teacher and by the president and secretary of the board
7 of education, and when so signed shall be filed, together
8 with the certificate of the teacher, by the secretary of
9 the office of the board.

10 A teacher's contract, under this section, shall be for
11 a term of not less than one nor more than three years;
12 and if, after three years of such employment, the teacher
13 who holds a professional certificate, based on at least
14 a bachelor's degree, has met the qualifications for the
15 same, and the board of education enter into a new con-
16 tract of employment, it shall be a continuing contract:
17 *Provided*, That any teacher holding a valid certificate
18 with less than a bachelor's degree who is employed in
19 a county beyond the said three year probationary period
20 shall upon qualifying for said professional certificate

21 based upon a bachelor's degree, if reemployed, be granted
22 continuing contract status. The continuing contract of
23 any teacher shall remain in full force and effect except
24 as modified by mutual consent of the school board and
25 the teacher, unless and until terminated (1) by a ma-
26 jority vote of the full membership of the board before
27 April first of the then current year, after written notice,
28 served upon the teacher, return receipt requested, stating
29 cause or causes, and an opportunity to be heard at a
30 meeting of the board prior to the board's action thereon,
31 or (2) by written resignation of the teacher before
32 that date. Such termination shall take effect at the close
33 of the school year in which the contract is so terminated:
34 *Provided, however,* That the contract may be terminated
35 at any time by mutual consent of the school board and
36 the teacher, and that this section shall not affect the
37 powers of the school board to suspend or dismiss a prin-
38 cipal or teacher pursuant to section eight of this article:
39 *Provided further,* That a continuing contract for any
40 teacher holding a certificate valid for more than one
41 year and in full force and effect during the school year
42 one thousand nine hundred sixty-two and one thousand
43 nine hundred sixty-three shall remain in full force and
44 effect: *And provided further,* That a continuing contract
45 shall not operate to prevent a teacher's dismissal based
46 upon the lack of need for the teacher's services pursuant
47 to the provisions of law relating to the allocation of
48 teachers and pupil-teacher ratios. But in case of such
49 dismissal, the teachers so dismissed shall be placed upon
50 a preferred list in the order of their length of service
51 with that board, and no teacher shall be employed by
52 the board until each qualified teacher upon the preferred
53 list, in order, shall have been offered the opportunity
54 for reemployment: *Provided,* That he has not accepted
55 a teaching position elsewhere. Such reemployment shall
56 be upon a teacher's preexisting continuing contract and
57 shall have the same effect as though the contract had
58 been suspended during the time the teacher was not
59 employed.

— 60 In the assignment of position or duties of a teacher
61 under said continuing contract, the board shall have

62 authority to provide for released time of a teacher for
63 any special professional or governmental assignment
64 without jeopardizing the contractual rights of such
65 teacher or any other rights, privileges, or benefits under
66 the provisions of this chapter.

67 Any teacher who fails to fulfill his contract with the
68 board, unless prevented from so doing by personal illness
69 or other just cause, or unless released from such contract
70 by the board, or who violates any lawful provision there-
71 of, shall be disqualified to teach in any other public
72 school in the state for a period of the next ensuing
73 school year, and the state department of education or
74 board may hold all papers and credentials of such teacher
75 on file for a period of one year for such violation: *Pro-*
76 *vided, however,* That marriage of a teacher shall not
77 be considered a failure to fulfill, or violation of, the
78 contract.

§18A-2-3. Employment of substitute teachers.

1 The county superintendent, subject to approval of the
2 county board, shall have authority to employ and assign
3 substitute teachers to any of the following duties: (a) To
4 fill the temporary absence of any teacher or an unexpired
5 school term made vacant by resignation, death, suspen-
6 sion or dismissal; (b) to fill a teaching position of a regu-
7 lar teacher on leave of absence; and (c) to perform the
8 instructional services of any teacher who is authorized by
9 law to be absent from class without loss of pay, providing
10 such absence is approved by the board of education in
11 accordance with the law. Such substitute shall be a duly
12 certified teacher.

§18A-2-4. Employment of auxiliary personnel.

1 The board is authorized to employ auxiliary personnel
2 for the purpose of assisting professional personnel in such
3 duties and services as the board may approve. Before enter-
4 ing upon their duties such personnel shall execute with
5 the board a written contract which may be in letter form
6 and shall state the classification and terms of work, the
7 employment period and pay, and shall certify that said
8 employment has been made a matter of minute record.

9 The letter shall provide space for an acceptance provision
10 and shall be signed and returned to the board by the em-
11 ployee, or otherwise he shall forfeit his right to employ-
12 ment. Such personnel shall meet such criteria and guide-
13 lines as the state board may establish. Under such regula-
14 tion and policy as may be established by the county board,
15 this personnel shall work under the direction of the
16 principal and teachers to whom assigned.

§18A-2-5. Employment of service personnel.

1 The board is authorized to employ such service per-
2 sonnel as is deemed necessary for meeting the needs of
3 the county school system. Before entering upon their
4 duties such personnel shall execute with the board a
5 written contract which may be in letter form and shall
6 state the classification and terms of work, the employ-
7 ment period and pay, and shall certify that said employ-
8 ment has been made a matter of minute record. The letter
9 shall provide space for an acceptance provision and shall
10 be signed and returned to the board by the employee, or
11 otherwise he shall forfeit his right to employment.

§18A-2-6. Termination of employment of auxiliary and service personnel.

1 After three years of acceptable employment each aux-
2 iliary and service personnel, at the end of his contractual
3 period of employment, shall be notified in writing on or
4 before the first day of May in the year in which such
5 employment shall terminate if he is not to be reemployed
6 for the ensuing year. Such notice shall be by certified
7 mail, return receipt requested, and the employee shall
8 have the right of a hearing before the board, if requested,
9 before final action is taken by the board upon the termina-
10 tion of such employment.

§18A-2-7. Assignment, transfer, promotion, demotion, suspension and recommendation of dismissal of school personnel by superintendent.

1 The superintendent, subject only to approval of the
2 board, shall have authority to assign, transfer, promote,
3 demote or suspend school personnel and to recommend
4 their dismissal pursuant to provisions of this chapter:

5 *Provided*, That the superintendent at a meeting of the
6 board on or before the first Monday in May, shall furnish
7 in writing to the board a list of teachers and other em-
8 ployees to be considered for transfer and subsequent
9 assignment for the next ensuing school year. All other
10 teachers and employees not so listed shall be considered
11 as reassigned to the positions or jobs held at the time of
12 this meeting. The list of those recommended for transfer
13 shall be included in the minute record of such meeting
14 and all those so listed shall be notified in writing, which
15 notice shall be delivered in writing, by certified mail, re-
16 turn receipt requested, to such persons' last known ad-
17 dresses within ten days following said board meeting,
18 of their having been so recommended for transfer and
19 subsequent assignment. The superintendent's authority to
20 suspend school personnel shall be temporary only pend-
21 ing a hearing upon charges filed by the superintendent
22 with the board of education, and such period of suspen-
23 sion shall not exceed thirty days unless extended by order
24 of the board.

§18A-2-8. Suspension and dismissal of school personnel by board.

1 Notwithstanding any other provisions of law, a board
2 may suspend or dismiss any person in its employment at
3 any time for: Immorality, incompetency, cruelty, insub-
4 ordination, intemperance or wilful neglect of duty, but
5 the charges shall be stated in writing and the employee
6 so affected shall be given an opportunity to be heard by
7 the board upon not less than ten days' written notice,
8 which charges and notice shall be served upon the em-
9 ployee within five days of the presentation of the charges
10 to the board. The hearing may be held at the next regular
11 meeting of the board or at a special meeting called for
12 that purpose; and in any case when the board is not unan-
13 imous in its decision to suspend or dismiss, the per-
14 son so suspended or dismissed shall have the right of
15 appeal to the state superintendent of schools.

ARTICLE 3. TRAINING, CERTIFICATION, LICENSING.

§18A-3-1. Teacher certification; required; expiration; qualifications;
certification of aliens.

§18A-3-2. Authority of state superintendent to issue certificates; kinds of certificates.

§18A-3-3. Renewal of certificates; permanent certification.

§18A-3-4. Validity of present certificates.

§18A-3-5. Validity of certificates held by members of armed forces.

§18A-3-6. Grounds for revocation of certificates; recalling certificates for correction.

§18A-3-7. Certificate fees.

§18A-3-1. Teacher certification; required; expiration; qualifications; certification of aliens.

1 Any professional educator, as defined in article one of
2 this chapter, who is employed within the public school
3 system of the state shall hold a valid teaching certificate
4 licensing him to teach in the public schools in the spe-
5 cializations and grade levels as shown on his certificate
6 for the period of his employment. If a teacher is employed
7 in good faith on the anticipation that he is eligible for a
8 certificate and it is later determined that he was not
9 eligible, the state superintendent of schools may authorize
10 payment by the county board of education to the teacher
11 for a time not exceeding three school months or the
12 date of notification of his ineligibility, whichever shall
13 occur first. All certificates shall expire on June thirtieth
14 of the last year of their validity irrespective of the date of
15 issuance. A certificate to teach shall not be granted to any
16 person who is not a citizen of the United States, is not of
17 good moral character and physically, mentally and
18 emotionally qualified to perform the duties of a teacher
19 and who has not attained the age of eighteen years on or
20 before the first day of October of the year in which his
21 certificate is issued; except, that an exchange teacher
22 from a foreign country, or an alien person who meets
23 the requirements to teach and who has filed a declaration
24 of intention to become a naturalized citizen, may be grant-
25 ed a permit to teach within the public schools of the
26 state.

§18A-3-2. Authority of state superintendent to issue certificates; kinds of certificates.

1 The state superintendent of free schools shall have
2 authority to issue certificates valid in the public schools

3 of the state in accordance with standards and require-
4 ments approved by the state board of education. Certifi-
5 cates authorized to be issued include:

6 (1) *Professional teaching certificate.*

7 In accordance with state board regulations and an ap-
8 proved program completed by the applicant, a profes-
9 sional certificate for teaching in the public schools may be
10 issued to a person who has completed the requirements
11 for a bachelor's degree from an accredited institution of
12 higher education. The certificate shall be endorsed to
13 indicate the grade level or levels, or areas of specializa-
14 tion in which the person is licensed to teach or to serve
15 in the public schools. The initial professional certificate
16 shall be issued provisionally and for a period of three
17 years. This certificate may be converted to a professional
18 certificate valid for five years, or renewed subject to the
19 regulations of the state board.

20 (2) *Professional administrative certificate.*

21 In accordance with an approved program completed and
22 state board regulations, a professional administrative
23 certificate, endorsed for serving in the public schools, may
24 be issued to a person who has completed requirements for
25 a master's degree in an institution of higher education ac-
26 credited to offer a master's degree. Beginning September
27 one, one thousand nine hundred seventy, the initial pro-
28 fessional administrative certificate shall be issued pro-
29 visionally for a period of three years. This certificate may
30 be converted to a professional administrative certificate
31 valid for five years or renewed, subject to the regulations
32 of the state board.

33 (3) *Other certificates; permits.*

34 Other certificates and permits may be issued, subject to
35 the approval of the state board, to persons who do not
36 qualify for the professional certificate. Such certificates or
37 permits shall not be given permanent status and persons
38 holding such shall meet renewal requirements provided
39 by law and by regulation, unless the state board declares
40 certain of these certificates to be the equivalent of the
41 professional certificate.

§18A-3-3. Renewal of certificates; permanent certification.

1 Until the person qualifies for a permanent certificate,
2 any professional or first class certificate based upon a
3 bachelor's degree shall be renewable provided the holder:
4 (1) Files application on a prescribed form with the state
5 department of education; (2) presents an official tran-
6 script of six semester hours of approved credit, as may
7 be prescribed by the state board: *Provided*, That such
8 renewal is completed after the beginning of the period
9 of validity of the certificate to be renewed and within
10 the five-year period immediately preceding the date of
11 application for renewal; and (3) submits a recommenda-
12 tion based on successful teaching experience from the
13 county superintendent of schools of the county in which
14 he last taught or resides.

15 The holder of a professional certificate, valid for five
16 years, shall have his certificate made permanent upon
17 meeting either of the following requirements: (1) Com-
18 pletion of the third renewal, in accordance with the pro-
19 visions set forth in (2) above; (2) after five years of
20 service in the public schools, presentation of a transcript
21 showing the completion of requirements for a master's
22 degree from an institution of higher education accredited
23 to offer the master's degree and in a program relevant to
24 the public school program or completes the fifth year of
25 training leading to a bachelor's degree in library science
26 from a school fully approved by the American library
27 association. In either event the person must file applica-
28 tion on a prescribed form with the state department of
29 education and must submit a recommendation from the
30 county superintendent of schools of the county in which
31 he last taught or resides.

32 All certificates and permits, other than the professional
33 certificate, shall be renewed in accordance with state
34 board regulations.

35 If the applicant seeking renewal has cause to believe
36 that his county superintendent refuses to give a recom-
37 mendation without just cause, he shall have the right, in
38 such case, to appeal to the state superintendent of schools
39 whose responsibility it shall be to investigate the matter

40 and issue a certificate if, in his opinion, the county super-
41 intendent's recommendation was withheld arbitrarily.

42 A person who has reached the age of sixty and holds a
43 renewable certificate, as provided in this section, need
44 not present renewal credit but shall meet all other re-
45 newal requirements.

§18A-3-4. Validity of present certificates.

1 Nothing in this article shall be construed or interpreted
2 in such way as to invalidate or in any manner change or
3 shorten the validity period of certificates, including grade-
4 level teaching rights, in force on the effective date of this
5 act, nor the right to renew or make permanent such
6 certificates.

§18A-3-5. Validity of certificates held by members of armed forces.

1 A certificate held by a member of the armed forces of
2 the United States shall have the period of validity ex-
3 tended to June thirtieth of the year following his or her
4 separation from active duty or honorable discharge pro-
5 vided the certificate was valid at the time of entry into
6 the armed forces.

§18A-3-6. Grounds for revocation of certificates; recalling certificates for correction.

1 The state superintendent may, after ten days' notice
2 and upon proper evidence, revoke the certificates of any
3 teacher for drunkenness, untruthfulness, immorality, or
4 for any physical, mental or moral defect which would
5 render him unfit for the proper performance of his duties
6 as a teacher, or for any neglect of duty or refusal to per-
7 form the same, or for using fraudulent, unapproved, or
8 insufficient credit, or for any other cause which would
9 have justified the withholding of a certificate when the
10 same was issued.

11 It shall be the duty of any county superintendent who
12 knows of any immorality or neglect of duty on the part
13 of any teacher to report the same, together with all the
14 facts and evidence, to the state superintendent for such
15 action as in his judgment may be proper.

16 If a certificate has been granted through an error, over-
17 sight, or misinformation, the state superintendent of
18 schools shall have authority to recall the certificate and
19 make such corrections as will conform to the require-
20 ments of law and the state board of education.

§18A-3-7. Certificate fees.

1 The fee for the issuance or renewal of any certificate, if
2 applicable, shall be established by the state board of
3 education.

ARTICLE 4. SALARIES, WAGES, AND OTHER BENEFITS.

§18A-4-1. Definitions.

§18A-4-2. State minimum salary schedule.

§18A-4-3. Salary increments for principals.

§18A-4-4. Responsibility of state board.

§18A-4-5. Authority of county boards.

§18A-4-6. Change in classification.

§18A-5-7. Substitute teachers.

§18A-4-8. Minimum pay for service personnel.

§18A-4-9. Payment of teachers and other employees; withholdings.

§18A-4-10. Personal leave for illness and other causes.

§18A-4-11. Group insurance.

§18A-4-12. Tax sheltered annuities for teachers and other employees.

§18A-4-13. Compliance with this article.

§18A-4-1. Definitions.

1 For the purpose of this section, salaries shall be de-
2 fined as: (a) "basic salaries" which shall mean the
3 salaries paid to teachers with zero years of experience
4 and in accordance with the classification of certification
5 and of training of said teachers; and (b) "advanced sal-
6 aries" which shall mean the basic salary plus an experi-
7 ence increment based on the allowable years of experience
8 of the respective teachers in accordance with the sched-
9 ule established herein for the applicable classification
10 of certification and of training of said teachers. "Classi-
11 fication of certification" means the class or type of cer-
12 tificate issued by the state superintendent of schools
13 under the statutory provisions of this chapter. "Classi-
14 fication of training" means the number of collegiate or
15 graduate hours necessary to meet the requirements stipu-
16 lated in the definitions set forth in the next paragraph
17 in items (2) to (10) inclusive.

18 The column heads of the state minimum salary sched-
19 ule, set forth in section two, are defined as follows:

20 (1) "Years of experience" means the number of years
21 the teacher has been employed in the teaching profession,
22 including active work in educational positions other than
23 the public schools, and service in the armed forces of
24 the United States if the teacher were under contract
25 to teach at the time of his induction. For the purpose
26 of section two of this article, the teacher's experience
27 shall be limited to that allowed under his training classi-
28 fication as found in the minimum salary schedule.

29 (2) "Fourth class" means all certificates previously
30 identified as (a) "certificates secured by examination,"
31 (b) "other first grade certificates."

32 (3) "Third class" means all certificates previously
33 identified as (a) "standard normal certificates" and (b)
34 "third class temporary (sixty-four semester hours) cer-
35 tificates."

36 (4) "Second class" means all certificates previously
37 identified as "second class temporary certificates based
38 upon the required ninety-six hours of college work."

39 (5) "B. A." means a bachelor's degree, from an ac-
40 credited institution of higher education, which has been
41 issued to, or for which the requirements for such have
42 been met by, a person who qualifies for or holds a pro-
43 fessional certificate or its equivalent.

44 (6) "B. A. + 15" means a bachelor's degree as defined
45 above plus fifteen hours of graduate work, from an ac-
46 credited institution of higher education certified to do
47 graduate work, in an approved planned program at the
48 graduate level which requirements have been met by a
49 person who qualifies for or holds a professional certificate
50 or its equivalent.

51 (7) "M. A." means a master's degree, earned in an in-
52 stitution of higher education approved to do graduate
53 work, which has been issued to, or the requirements for
54 such have been met by, a person who qualifies for or
55 holds a professional certificate or its equivalent.

56 (8) "M. A. + 15" means the above-defined master's de-
57 gree plus fifteen hours of graduate work, earned in an in-

stitution 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.

STATE MINIMUM SALARY SCHEDULE

(1) Years Exp.	(2) 4th Class	(3) 3rd Class	(4) 2nd Class	(5) B.A.	(6) B.A. +15	(7) M.A.	(8) M.A. +15	(9) M.A. +30	(10) Doctor- ate
0	\$3670	\$4170	\$4370	\$5320	\$5570	\$5820	\$6070	\$6320	\$6570
1	3790	4290	4490	5440	5690	5940	6190	6440	6690
2	3910	4410	4610	5560	5810	6060	6310	6560	6810
3	4030	4530	4730	5680	5930	6180	6430	6680	6930
4	4150	4650	4850	5800	6050	6300	6550	6800	7050
5	4270	4770	4970	5920	6170	6420	6670	6920	7170
6	4390	4890	5090	6040	6290	6540	6790	7040	7290
7		5010	5210	6160	6410	6660	6910	7160	7410
8		5130	5330	6280	6530	6780	7030	7280	7530
9			5450	6400	6650	6900	7150	7400	7650
10			5570	6520	6770	7020	7270	7520	7770
11				6640	6890	7140	7390	7640	7890
12				6760	7010	7260	7510	7760	8010
13				6880	7130	7380	7630	7880	8130
14						7500	7750	8000	8250
15						7620	7870	8120	8370
16						7740	7990	8240	8490
17								8360	8610
18								8480	8730
19								8600	8850

§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

5 the fiscal year commencing on the first day of July, one
6 thousand nine hundred sixty-nine:

7	Bachelor's Degree			
	No. of	or Lesser	Master's	Principal's
8	Teachers	Certification	Degree	Certificate
9	2	\$ 5.50	\$ 5.75	\$10.00
10	3	7.25	7.75	12.00
11	4	9.00	10.00	14.00
12	5	11.00	12.25	16.50
13	6	13.25	14.75	19.00
14	7	15.00	16.75	21.00
15	8	16.75	19.00	23.00
16	9	18.50	21.00	25.25
17	10	20.50	23.00	27.25
18	11	22.00	25.25	29.50
19	12	23.50	27.25	31.50
20	13	25.00	29.50	33.50
21	14	26.50	31.50	35.75
22	15	28.00	33.50	37.75
23	16	28.50	34.25	38.50
24	17	29.00	34.75	39.00
25	18	29.75	35.50	39.50
26	19	30.25	36.00	40.25
27	20 or more	31.00	36.50	40.75

§18A-4-4. Responsibility of state board.

1 The state board of education shall establish the mini-
2 mum salary schedule for teachers where specialized train-
3 ing may be required for vocational, technical, and adult
4 education, and such other permits as may be authorized
5 by said board.

6 No teacher holding a valid professional certificate shall
7 have his salary reduced as a result of being assigned out
8 of his teaching field by the superintendent, with the ap-
9 proval of the county board, under any authorization or
10 regulation of the state board.

§18A-4-5. Authority of county boards.

1 County boards of education in fixing the salaries of
2 teachers shall use as a minimum the salaries established
3 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.

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.

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.

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,

5 article nine-a of chapter eighteen, shall be used to employ,
6 to adjust, and/or to increase the pay of service personnel:
7 *Provided*, That fifty percent of the increase for supporting
8 services for the school year one thousand nine hundred
9 sixty-nine—one thousand nine hundred seventy shall be
10 used to provide a pay increase for all service personnel.

§18A-4-9. Payment of teachers and other employees; withholdings.

1 Teachers and all other employees whose salaries or
2 wages are payable out of the school current fund shall
3 be paid for their services by orders drawn upon the sheriff
4 or treasurer and duly signed by the president and secretary
5 of the board in accordance with the following
6 provisions: Notwithstanding any other provisions of this
7 chapter and chapter eighteen, the number of pays to be
8 made during the school year to the various classes of
9 employees shall be determined by the board: *Provided*,
10 That the sum of such pays for any employee does not
11 exceed the equivalent of an annual salary based upon
12 twelve calendar months. In the event a teacher or other
13 employee is not paid the full salary or wage earned in
14 the fiscal year in which the work is performed, the unpaid
15 amount may be paid during July and August of
16 the following fiscal year. Adjustments for time loss due
17 to absence may be made in the next pay check following
18 such time loss.

19 The board may withhold the pay of any teacher or
20 employee until he has made the reports required by the
21 board or the state superintendent.

§18A-4-10. Personal leave for illness and other causes.

1 At the beginning of his employment term, any full-time
2 employee of a county board of education shall be entitled
3 annually to at least one and one-half days personal leave
4 for each employment month or major fraction thereof
5 in the employee's employment term. Unused leave shall
6 be accumulative to a total of sixty days and shall be
7 transferable within the state. A change in job assignment
8 during the school year shall in no way affect the employee's
9 rights or benefits.

10 A regular full-time employee who is absent from as-
11 signed duties due to accident, sickness, death in the im-
12 mediate family, or other cause authorized or approved by
13 the board, shall be paid his full salary from his regular
14 budgeted salary appropriation during the period which he
15 is absent, but not to exceed the total amount of leave to
16 which he is entitled. Where the cause for leave had its
17 origin prior to the beginning of the employment term, the
18 employee shall be paid for time lost after the start of the
19 employment term.

20 The board may establish reasonable regulations for re-
21 porting and verification of absence for causes; and if any
22 error in reporting absences should occur it shall have
23 authority to make necessary salary adjustments in the
24 next pay after the employee has returned to duty or in
25 the final pay if the absence should occur during the last
26 month of his employment term. When such allowable
27 absence does not directly affect the instruction of the
28 pupils or when a substitute employee may not be required
29 because of the nature of the work and the duration of
30 the cause for the allowable absence of the regular em-
31 ployee, the administration, subject to board approval, may
32 use its discretion as to the need for a substitute where
33 limited absence may prevail. Any board of education
34 shall have authority to supplement such leave provisions
35 in any manner it may deem advisable.

36 If funds in any fiscal year, including transfers, are in-
37 sufficient to pay the full cost of substitutes for meeting the
38 provisions of this section, the remainder shall be paid on
39 or before the thirty-first day of August from the budget
40 of the next fiscal year.

§18A-4-11. Group insurance.

1 Whenever a majority of the full-time instructional and
2 administrative employees of a county or state board of
3 education, or a majority of the full-time nonteaching em-
4 ployees of such board shall indicate in writing to the
5 board of education that it has adopted a group plan or
6 plans of insurance for life, health and accident, hospital-
7 ization or surgery insurance, or death benefit plan on a
8 group basis, and such majority has selected a licensed in-

9 surance company or companies duly licensed to do busi-
10 ness in this state to write or provide for any one or more
11 of such group insurance, or death benefit coverages, the
12 board shall make proper periodical premium deductions
13 from the regular salary of any such employee as specified
14 in a written assignment furnished it by each such em-
15 ployee subscribing thereto, and pay the aggregate of such
16 salary deductions over to the insurance company or com-
17 panies or voluntary association so selected. Only those
18 companies whose plan or plans receive the majority vote
19 shall have the privilege of such deductions.

§18A-4-12. Tax sheltered annuities for teachers and other employees.

1 For the purpose of this section when an employee shall
2 have attained the age of eighteen years, the said employee
3 may be eligible to participate in the defined group plans.
4 A county board of education, the teachers retirement
5 board, the West Virginia board of education and the
6 board of regents of West Virginia and their agencies
7 may provide by written agreement between any such
8 board or agency and any teacher or other employee,
9 to reduce the cash salary payable to such teacher or other
10 employee, and, in consideration thereof, to pay an amount
11 equal to the amount of such reduction to an insurance
12 company licensed to do business in this state as premiums
13 on an annuity contract owned by such teacher or other
14 employee, which annuity contract shall be in such form
15 and upon such terms as will qualify the payments thereon
16 for tax deferment under the United States Internal Reve-
17 nue Code, or to pay an amount equal to the amount of
18 such reduction as voluntary deposits to the teachers re-
19 tirement board as provided by section eighteen, article
20 seven-a, chapter eighteen of this code. The amount of
21 such reduction shall not exceed the amount excludible
22 from income under section 403 (b) of the United States
23 Internal Revenue Code, and amendments and successor
24 provisions thereto, and shall be considered a part of the
25 teacher's or employee's salary for all purposes other than
26 federal and state income tax.

27 The purchase of such tax sheltered annuity for a
28 teacher or other employee by a board of education, the
29 teachers retirement board, the West Virginia board of
30 education and the board of regents of West Virginia
31 and their agencies shall impose no liability nor responsi-
32 bility whatsoever on said boards or members thereof
33 except to show that the payments have been remitted
34 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 ex-
 pulsion 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-5-4. Educational meetings.

§18A-5-5. Records; reports by professional and other personnel.

§18A-5-6. School census.

§18A-5-7. Oath required of teachers.

**§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
2 guardian in exercising authority over the school, and
3 shall have control of all pupils enrolled in the school
4 from the time they reach the school until they have
5 returned to their respective homes, except that where
6 transportation of pupils is provided, the driver in charge
7 of the school bus or other mode of transportation shall
8 exercise such authority and control over the children
9 while they are in transit to and from the school. Sub-
10 ject to the rules of the state board of education, the
11 teacher shall exclude from the school any pupil or pupils
12 known to have or suspected of having any infectious
13 disease, or any pupil or pupils who have been exposed
14 to such disease, and shall immediately notify the proper
15 health officer, or medical inspector, of such exclusion.
16 Any pupil so excluded shall not be readmitted to the

17 school until such pupil has complied with all the require-
18 ments of the rules governing such cases, or has presented
19 a certificate of health signed by the medical inspector
20 or other proper health officer. The teacher shall have
21 authority to suspend any pupil guilty of disorderly, re-
22 fractory, indecent or immoral conduct, and the district
23 board of education may expel or exclude any such pupil if,
24 on investigation, the conduct of such pupil is found to
25 be detrimental to the progress and the general conduct
26 of the school.

27 For the purpose of this section: (1) "Pupil" shall
28 include any child, youth, or adult who is enrolled in
29 any instructional program or activity conducted under
30 board authorization and within the facilities of or in
31 connection with any program under public school di-
32 rection: *Provided*, That in the case of adults the pupil-
33 teacher relationship shall terminate when the pupil
34 leaves the school or other place of instruction or activity;
35 (2) "teacher" shall include principals, regular teachers,
36 substitute teachers, student teachers, teacher aides and
37 other school employees or persons assigned responsibility
38 for directing or supervising instructional programs or
39 board-approved activities.

40 Teachers shall exercise such other authority and per-
41 form such other duties as may be prescribed for them
42 by law or by the rules of the state board of education
43 not inconsistent with the provisions of this chapter and
44 chapter eighteen.

**§18A-5-2. Holidays; closing of schools; time lost because of
such; special Saturday classes.**

1 Schools shall not be kept open on any Saturday nor
2 on the following days which are designated as legal
3 school holidays, namely: Independence Day, Labor Day,
4 Veterans Day, Thanksgiving Day, Christmas Day, New
5 Year's Day, Memorial Day, and any day on which a
6 primary election, general election, or special election is
7 held throughout the state or school district and any
8 day appointed and set apart by the president or the
9 governor as a holiday of special observance by the people
10 of the state. When any such holiday falls within the

11 employment term, it shall be considered as a day of
12 the employment term and the full-time school personnel
13 shall receive his pay for same. When any of the above
14 designated holidays, except a special election, falls on
15 Saturday, the schools shall be closed on the preceding
16 Friday; when any such falls on Sunday, the schools shall
17 be closed on the following Monday.

18 Special classes may be conducted on Saturdays, pro-
19 vided they are conducted on a voluntary basis, for pupils
20 and by teachers and service personnel, and that such
21 teachers and service personnel shall be remunerated in
22 ratio to the regularly contracted pay.

23 Any school or schools may be closed by proper authori-
24 ties on account of the prevalence of contagious disease,
25 conditions of weather or any other calamitous cause over
26 which the board has no control. Under any or all of the
27 above provisions, the time lost by the closing of schools
28 shall be counted as taught and as meeting a part of the
29 requirements of the minimum term of one hundred and
30 eighty days of instruction. The teacher shall receive
31 pay the same as if school were in session. Insofar as
32 funds are available or can be made available during the
33 school year, the board may extend the employment term
34 for the purpose of making up time that might affect the
35 instructional term.

36 In addition to any other provisions of this chapter,
37 the board is further authorized to provide in its annual
38 budget for meetings, workshops, vacation time and/or
39 other holidays through extended employment of person-
40 nel at the same rate of pay.

§18A-5-3. Exemption from jury service.

1 Notwithstanding any other provision of law, profes-
2 sional personnel and other persons actively engaged in
3 school work in this state shall be required to serve on any
4 jury during the period of his contract with a board of
5 education unless excused therefrom by judge of the court.
6 In the case of service on a jury the board shall pay the
7 difference between that allowed for such jury service
8 and the amount of salary due the person for such period
9 of time.

§18A-5-4. Educational meetings.

1 A county board of education may approve the at-
2 tendance of any or all teachers at educational conven-
3 tions, conferences, or other professional meetings of
4 teachers on school days when in the judgment of the
5 superintendent it is necessary or desirable. Attendance at
6 such meetings may be substituted for an equal amount
7 of teaching and teachers so attending shall not suffer loss
8 of pay. Further, the board is authorized to pay all or any
9 part of expenses of any personnel whom it may designate
10 to represent it at any such professional or educational
11 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
2 employed by a board of education shall keep such records
3 and shall make such reports as may be required by the
4 state superintendent of schools, and such records shall be
5 kept and such reports shall be made according to the
6 forms and blanks prescribed and furnished by the state
7 superintendent. Teachers shall also keep such other rec-
8 ords and make such other reports as may be required by
9 the board of education employing them.

§18A-5-6. School census.

1 A school census of youths from birth through twenty
2 years of age as of September first of the year in which
3 taken, or of such ages as otherwise may locally be deter-
4 mined and of mentally and physically handicapped per-
5 sons of all ages, may be made as directed by a county
6 board of education. The school census may be taken by
7 the teachers or as otherwise directed by the county board
8 of education. Teachers taking the school census shall be
9 entitled to use school hours not to exceed a total of one
10 school day, and shall be compensated for such time as for
11 time taught.

12 The state superintendent of schools shall have authority
13 to require a statewide enumeration by the counties at such
14 times as he may direct and may establish the procedures
15 therefor.

16 In order that the census record may be as currently ac-
17 curate as possible, and a reliable source of reference
18 through the school year, it shall be the duty of each
19 county superintendent of schools to establish and ad-
20 minister through the office of the county director of school
21 attendance a system of cumulative census records which
22 may be prescribed by the state superintendent of schools.

§18A-5-7. Oath required of teachers.

1 Every teacher shall, at the time of signing his contract
2 to teach, take an oath to support the constitution of the
3 United States and the constitution of the state of West
4 Virginia, and to honestly demean himself in the teaching
5 profession and to the best of his ability execute his posi-
6 tion of teacher. Such oath shall be printed on the contract
7 form prescribed by the state superintendent.

ARTICLE 6. COUNTY RETIREMENT FUND.

§18A-6-1. Retirement fund for school employees.

1 Boards of education shall have authority to establish
2 and maintain a teachers retirement fund for both teachers
3 and nonteaching employees of their districts. The ad-
4 ministration of such funds shall be in accordance with
5 the rules and regulations of the state board of education
6 relating thereto.

CHAPTER 141

(Senate Bill No. 330—By Mr. McCourt)

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

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
2 boards of state institutions of higher education, there is
3 hereby imposed and the governing board of each state
4 institution of higher education is hereby directed to pro-
5 vide for the collection of an additional registration fee
6 from all students in the amounts as hereinafter provided.

7 For full-time students at each state institution of higher
8 education, the additional registration fee shall be fifty
9 dollars per semester. The board of governors of West
10 Virginia University and the West Virginia board of edu-
11 cation shall have authority to increase such additional
12 registration fee at any institution of higher education
13 under their respective control for students who are non-
14 residents of this state. For all part-time students and
15 for all summer school students, the respective governing
16 boards shall impose and collect such fee in proportion to,
17 but not exceeding, that paid by full-time students.

18 The fee imposed by this section shall be in addition to
19 the maximum fees allowed to be collected under the pro-
20 visions of section one of this article and shall not be
21 limited thereby. Refunds of such fee may be made in the
22 same manner as any other fee collected at state institu-
23 tions of higher education.

24 There is hereby created in the state treasury a special
25 capital improvements fund, to be expended by the board
26 of governors of West Virginia University for the benefit
27 of West Virginia University and Potomac State College
28 of West Virginia University, as provided in this section.
29 On and after the first day of July, one thousand nine hun-

*See Clerk's note to §18-24-4, Chapter 139.

30 dred sixty-three, there shall be paid into such special
31 fund all proceeds of the additional registration fees col-
32 lected from students at West Virginia University and at
33 Potomac State College.

34 There is hereby created in the state treasury a special
35 capital improvements fund, to be expended by the West
36 Virginia board of education for the benefit of the state
37 institutions of higher education under its control, as pro-
38 vided in this section. On and after the first day of July,
39 one thousand nine hundred sixty-three, there shall be
40 paid into such special fund all proceeds of the additional
41 registration fees collected from students at such institu-
42 tions.

43 The respective boards may make expenditures from
44 such special capital improvements funds at the various
45 state institutions of higher education under their control
46 to finance in whole or in part, together with any federal,
47 state or other grants or contributions, any one or more
48 of the following purposes: (1) The acquisition of land
49 or any rights or interest therein. (2) The construction or
50 acquisition of new buildings. (3) The renovation or con-
51 struction of additions to existing buildings. (4) The ac-
52 quisition of furnishings and equipment for any such build-
53 ings. (5) The construction or acquisition of any other
54 capital improvements or capital educational facilities at
55 such state institutions of higher education, including any
56 roads, utilities or other properties, real or personal, or
57 for other purposes necessary, appurtenant or incidental
58 to the construction, acquisition, financing and placing in
59 operation of such buildings, capital improvements or
60 capital educational facilities.

61 The respective boards, at their discretion, may use the
62 moneys in such special capital improvements funds to
63 finance the costs of the above purposes on a cash basis,
64 or may from time to time issue revenue bonds of the
65 state as provided in this section to finance all or part of
66 such purposes and pledge all or any part of the moneys
67 in such special funds for the payment of the principal of
68 and interest on such revenue bonds, and for reserves
69 therefor. Any pledge of such special funds for such

70 revenue bonds shall be a prior and superior charge on
71 such special funds over the use of any of the moneys in
72 such funds to pay for the cost of any of such purposes on
73 a cash basis: *Provided*, That any expenditures from such
74 special funds, other than for the retirement of revenue
75 bonds, may only be made by the board of governors of
76 West Virginia University and the West Virginia board
77 of education to meet the cost of a predetermined capital
78 improvements program for one or more of the state insti-
79 tutions of higher education under their control, in such
80 order of priority as shall have been agreed upon by the
81 respective boards and presented to the board of public
82 works for inclusion in the annual budget bill, and only
83 with the approval of the Legislature as indicated by direct
84 appropriation for the purpose.

85 Such revenue bonds may be authorized and issued from
86 time to time by the respective boards to finance in whole
87 or in part the purposes provided in this section in an
88 aggregate principal amount not exceeding the amount
89 which the respective boards shall determine can be paid
90 as to both principal and interest and reasonable margins
91 for a reserve therefor from the moneys in such special
92 funds.

93 The issuance of such revenue bonds shall be authorized
94 by a resolution adopted by the respective board, and
95 such revenue bonds shall bear such date or dates, mature
96 at such time or times not exceeding forty years from
97 their respective dates; be in such form either coupon or
98 registered, with such exchangeability and interchange-
99 ability privileges; be payable in such medium of payment
100 and at such place or places, within or without the state;
101 be subject to such terms of prior redemption at such
102 prices not exceeding one hundred five per centum of the
103 principal amount thereof; and shall have such other terms
104 and provisions as such respective board shall determine.
105 Such revenue bonds shall be signed by the governor and
106 by the president of the respective board authorizing the
107 issuance thereof, under the great seal of the state, attested
108 by the secretary of state, and the coupons attached thereto
109 shall bear the facsimile signature of the president of

110 such respective board. Such revenue bonds shall be sold
111 in such manner as the respective board may determine
112 to be for the best interests of the state.

113 Such respective board may enter into trust agreements
114 with banks or trust companies, within or without the
115 state, and in such trust agreements or the resolutions
116 authorizing the issuance of such bonds may enter into
117 valid and legally binding covenants with the holders of
118 such revenue bonds as to the custody, safeguarding and
119 disposition of the proceeds of such revenue bonds, the
120 moneys in such special funds, sinking funds, reserve
121 funds, or any other moneys or funds; as to the rank and
122 priority, if any, of different issues of revenue bonds by
123 the same board under the provisions of this section; as
124 to the maintenance or revision of the amounts of such
125 additional registration fees, and the terms and conditions,
126 if any, under which such additional registration fees may
127 be reduced; and as to any other matters or provisions
128 which are deemed necessary and advisable by such re-
129 spective board in the best interests of the state and to
130 enhance the marketability of such revenue bonds.

131 After the issuance of any of such revenue bonds, the
132 additional registration fees at the state institutions of
133 higher education under the control of the board which
134 issued the bonds shall not be reduced as long as any of
135 such revenue bonds are outstanding and unpaid except
136 under such terms, provisions and conditions as shall be
137 contained in the resolution, trust agreement or other pro-
138 ceedings under which such revenue bonds were issued.

139 Such revenue bonds shall be and constitute negotiable
140 instruments under the law merchant and the Uniform
141 Commercial Code of the state; shall, together with the
142 interest thereon, be exempt from all taxation by the state
143 of West Virginia, or by any county, school district,
144 municipality or political subdivision thereof; and such
145 revenue bonds shall not be deemed to be obligations or
146 debts of the state, and the credit or taxing power of the
147 state shall not be pledged therefor, but such revenue
148 bonds shall be payable only from the revenue pledged
149 therefor as provided in this section.

CHAPTER 142

(House Bill No. 897—By Mr. Wilson and Mr. Lister)

[Passed March 3, 1969; in effect July 1, 1969. Approved by the Governor.]

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
2 is in active federal service, the governor is hereby au-
3 thorized to organize and maintain within this state during
4 such period, under such regulations as the secretary of
5 defense of the United States may prescribe for dis-
6 cipline in training, such military forces as the governor
7 may deem necessary to defend this state. Such forces
8 shall be composed of officers commissioned or assigned,
9 and such able-bodied male citizens of the state as shall
10 volunteer for service therein, supplemented, if neces-
11 sary, by men of the reserve militia enrolled by draft
12 or otherwise as provided by law. Such forces shall be
13 additional to and distinct from the national guard and
14 shall be known as the "West Virginia state guard:"
15 *Provided*, That any funds appropriated by the Legisla-
16 ture to the adjutant general for the organization, ad-
17 ministration, training and supply of the organized militia
18 may be expended for such purposes with respect to the
19 West Virginia state guard. Such forces shall be uni-
20 formed.

CHAPTER 143

(Com. Sub. for Senate Bill No. 164—By Mr. Carrigan)

[Passed March 4, 1969; in effect April 1, 1969. Approved by the Governor.]

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.

§11-15-2. Definitions.

§11-15-3a. Temporary additional definitions, additional exemptions and replacement exemptions.

§11-15-9. Exemptions.

§11-15-31. Severability.

§11-15-1a. Legislative findings.

1 The Legislature hereby finds and declares that it is
2 the intent of the Legislature that the consumers sales tax
3 imposed by the provisions of article fifteen and the use tax
4 imposed by the provisions of article fifteen-a, chapter
5 eleven of the code of West Virginia, one thousand nine
6 hundred thirty-one, as amended, be complementary laws
7 and wherever possible be construed and applied to accom-
8 plish such intent as to the imposition, administration and
9 collection of such taxes.

§11-15-2. Definitions.

1 For the purpose of this article:

2 (1) "Persons" shall mean any individual, partnership,
3 association, corporation, municipal corporation, guardian,
4 trustee, committee, executor or administrator;

5 (2) "Tax commissioner" shall mean the state tax
6 commissioner;

7 (3) "Gross proceeds" shall mean the amount received
8 in money, credits, property or other consideration from
9 sales and services within this state, without deduction
10 on account of the cost of property sold, amounts paid
11 for interest or discounts or other expenses whatsoever.
12 Losses shall not be deducted, but any credit or refund
13 made for goods returned may be deducted;

14 (4) "Sale," "sales" or "selling" shall include any transfer
15 of the possession or ownership of tangible personal prop-
16 erty for a consideration, including a lease or rental, when
17 the transfer or delivery is made in the ordinary course of
18 the transferor's business and is made to the transferee or
19 his agent for consumption or use or any other purpose;

20 (5) "Vendor" shall mean any person engaged in this
21 state in furnishing services taxed by this article or making
22 sales of tangible personal property;

23 (6) "Ultimate consumer" or "consumer" shall mean
24 a person who uses or consumes services or personal
25 property;

26 (7) "Business" shall include all activities engaged in
27 or caused to be engaged in with the object of gain or
28 economic benefit, direct or indirect, and all activities of
29 the state and its political subdivisions which involve
30 sales of tangible personal property or the rendering of
31 services when those service activities compete with or
32 may compete with the activities of other persons;

33 (8) "Tax" shall include all taxes, interest and penal-
34 ties levied hereunder;

35 (9) "Service" or "selected service" shall include all
36 nonprofessional activities engaged in for other persons
37 for a consideration, which involve the rendering of a
38 service as distinguished from the sale of tangible per-
39 sonal property, but shall not include personal services
40 or the services rendered by an employee to his employer
41 or any service rendered for resale;

42 (10) "Purchaser" shall mean a person who purchases
43 tangible personal property or a service taxed by this
44 article;

45 (11) "Personal service" shall include those:

46 (a) Compensated by the payment of wages in
47 the ordinary course of employment;

48 (b) Rendered to the person of an individual
49 without, at the same time, selling tangible personal
50 property, such as nursing, barbering, shoe shining, mani-
51 curing and similar services;

52 (12) "Taxpayer" shall mean any person liable for
53 the tax imposed by this article;

54 (13) "Drugs" shall include all sales of drugs or ap-
55 pliances to a purchaser, upon prescription of a physician
56 or dentist and any other professional person licensed to
57 prescribe.

**§11-15-3a. Temporary additional definitions, additional ex-
emptions and replacement exemptions.**

1 For the purpose of providing additional revenue for a
2 one-year period only (April 1, 1969 through March 31,
3 1970) the provisions of this section shall, effective April
4 one, one thousand nine hundred sixty-nine, replace and
5 stand in lieu of, or be in addition to, as hereinafter indi-
6 cated, the provisions of sections two and nine of this
7 article for such period, but not thereafter, and shall
8 expire at midnight, March thirty-one, one thousand nine
9 hundred seventy.

10 The following definitions are to be read as if set forth
11 with and in addition to the definitions contained in sec-
12 tion two of this article:

13 (14) "Raw materials" shall mean materials which are
14 partially or wholly consumed or become a component part
15 or the whole of a marketable product. Raw materials
16 shall also include the following property and/or services
17 and as limited, apply to the following specified businesses:

18 (a) Coal used and consumed in the generation of elec-
19 tric energy;

20 (b) Poles, wires and cables purchased and used by a

21 person engaged in the business of transmitting and/or
22 distributing electrical energy;

23 (c) Central office communication equipment, station
24 connections and equipment and services connected with
25 the installation thereof, poles, wires and cables purchased
26 and used by persons engaged in the business of com-
27 munication;

28 (d) Meters, pipes, pumps, and chemicals purchased
29 and used by a person engaged in the business of supply-
30 ing water and purchases of materials and services by
31 water and sewage disposal plants owned by municipalities
32 and public service districts;

33 (e) Sales of materials and services used and consumed
34 by municipally owned electric power plants which gen-
35 erate and/or distribute electrical energy;

36 (f) Sales of meters, pipes and compressors used and
37 consumed by persons engaged in the business of selling
38 oil, liquified or natural gas;

39 (g) Materials and services furnished by a contractor
40 which are incorporated into the marketable product and
41 transferred to a purchaser; the term "marketable prod-
42 uct" shall include any partially or wholly completed
43 project or permanent improvement to real property by a
44 contractor;

45 (h) Materials and services purchased and wholly con-
46 sumed and/or rendered wholly nonusable or nonre-
47 coverable by persons engaged in the business of produc-
48 ing coal or other natural resources;

49 (i) Sales of materials and/or services which are par-
50 tially or wholly consumed or become a component part
51 or the whole of a marketable product, in the process of
52 manufacturing, including containers, caps and labels, but
53 not repair services on machinery and equipment;

54 (j) Purchases of tangible personal property to be used
55 by a transportation company or person as or in rolling
56 stock.

57 (15) "Contractor" shall mean a person who sells or
58 furnishes services, or both materials and services, in
59 the fulfillment of a contract for the construction, altera-

60 tion, repair, decoration or improvement of a new or exist-
61 ing building or structure, or any part thereof, or for the
62 alteration, improvement or development of real property.

63 (16) "A transportation company" shall mean a person
64 engaged in the transportation of persons or property for
65 a consideration and subject to the control of the public
66 service commission or the interstate commerce com-
67 mission.

68 The following exemptions are to be read with and as
69 if set forth with the exemptions in section nine of this
70 article and are intended to replace and stand in lieu of
71 the same numbered subdivisions therein or be in addition
72 to such exemptions contained therein:

73 Subdivisions:

74 (6) Sales of property or services to churches and bona
75 fide charitable organizations who make no charge what-
76 ever for the services they render: *Provided, however,*
77 That the exemption herein granted shall apply only to
78 services, machinery, supplies and materials directly used
79 or consumed in the organizations named above;

80 (8) Sales of tangible personal property and services
81 rendered for use or consumption in connection with the
82 commercial production of an agricultural product the
83 ultimate sale of which will be subject to the tax imposed
84 by this article: *Provided, however,* That sales of tangible
85 personal property and services to be used or consumed
86 in the construction of or permanent improvement of real
87 property shall not be exempt;

88 (9) Sales of tangible personal property and/or services
89 for the purpose of resale in the form of tangible personal
90 property and/or services;

91 (14) Sales of raw materials;

92 (15) Sales of raw materials and services, or services,
93 only, by a contractor, under contracts entered into on or
94 after the first day of April, one thousand nine hundred
95 sixty-nine;

96 (16) Sales of tangible personal property or services
97 for the acquisition, construction, development and
98 maintenance of water pollution control facilities and air
99 pollution control facilities;

100 (17) Transportation charges separately stated.

§11-15-9. Exemptions.

1 The following sales and services shall be exempt:

2 (1) Sales of gasoline, taxable under article fourteen,
3 chapter eleven of the code, one thousand nine hundred
4 thirty-one;

5 (2) Sales of gas, steam and water delivered to con-
6 sumers through mains or pipes, and sales of electricity;

7 (3) Sales of textbooks required to be used in any of
8 the schools of this state;

9 (4) Sales of property or services to the state, its in-
10 stitutions or subdivisions, and to the United States,
11 including agencies of federal, state or local governments
12 for distribution in public welfare or relief work;

13 (5) Sales of motor vehicles which are titled by the
14 department of motor vehicles which are subject to the
15 tax imposed by section four, article three, chapter seven-
16 teen-a of the code;

17 (6) Sales of property or services to churches and
18 bona fide charitable organizations who make no charge
19 whatever for the services they render or to persons
20 engaged in this state in the business of contracting,
21 manufacturing, transportation, transmission, communica-
22 tion, or in the production of natural resources: *Provided,*
23 *however,* That the exemption herein granted shall apply
24 only to services, machinery, supplies and materials di-
25 rectly used or consumed in the businesses or organiza-
26 tions named above;

27 (7) An isolated transaction in which any tangible
28 personal property is sold, transferred, offered for sale,
29 or delivered by the owner thereof or by his representa-
30 tive for the owner's account, such sale, transfer, offer
31 for sale or delivery not being made in the ordinary
32 course of repeated and successive transactions of like
33 character by such owner or on his account by such repre-
34 sentative;

35 (8) Sales of tangible personal property and services
36 rendered for use or consumption in connection with the

37 conduct of the business of selling tangible personal
38 property to consumers or dispensing a service subject
39 to tax under this article and sales of tangible personal
40 property and services rendered for use or consumption
41 in connection with the commercial production of an
42 agricultural product the ultimate sale of which will be
43 subject to the tax imposed by this article: *Provided,*
44 *however,* That sales of tangible personal property and
45 services to be used or consumed in the construction of
46 or permanent improvement of real property shall not be
47 exempt;

48 (9) Sales of tangible personal property for the pur-
49 pose of resale in the form of tangible personal property;

50 (10) Sales of property or services to nationally char-
51 tered fraternal or social organizations for the sole purpose
52 of free distribution in public welfare or relief work;

53 (11) Sales and services, fire fighting, or station house
54 equipment, including construction and automotive, made
55 to any volunteer fire department organized and in-
56 corporated under the laws of the state of West Virginia;

57 (12) Sales of newspapers when delivered to con-
58 sumers by route carriers;

59 (13) Sales of drugs dispensed upon prescription.

§11-15-31. Severability.

1 If any of the provisions of this article are held invalid,
2 such invalidation shall not affect other provisions which
3 can be given effect without the invalid provision and to
4 this end the provisions of this article are declared to be
5 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-1. Definitions.

§11-15A-1a. Legislative findings.

§11-15A-3. Exemptions.

§11-15A-1. Definitions.

1 The following words, terms, and phrases, when used
2 in this article, have the meanings ascribed to them in
3 this section, except where the context clearly indicates
4 a different meaning:

5 (1) "Person" includes any individual, firm, copart-
6 nership, joint adventure, association, corporation, estate,
7 trust, business trust, receiver, or any other group
8 or combination acting as a unit and the plural as well
9 as the singular number.

10 (2) "Use" means and includes the exercise by any
11 person of any right or power over tangible personal prop-
12 erty incident to the ownership of that property or by
13 any transaction in which possession of tangible personal
14 property is acquired for a consideration, including any
15 lease, rental or conditional sale of tangible personal
16 property.

17 (3) "Purchase" means any transfer, exchange or bar-
18 ter, conditional or otherwise, in any manner or by any
19 means whatsoever, for a consideration.

20 (4) "Purchase price" means the total amount for which
21 tangible personal property is sold, valued in money,

22 whether paid in money or otherwise; provided that cash
23 discounts allowed and taken on sales shall not be included.

24 (5) "Tangible personal property" means tangible
25 goods, wares, and merchandise when furnished or deliv-
26 ered within this state to consumers or users within this
27 state.

28 (6) "Retailer" means and includes every person en-
29 gaged in the business of selling tangible personal prop-
30 erty for use within the meaning of this article: *Provided,*
31 *however,* That when in the opinion of the tax commis-
32 sioner it is necessary for the efficient administration of
33 this article to regard any salesmen, representatives, truck-
34 ers, peddlers or canvassers as the agents of the dealers,
35 distributors, supervisors, employers or persons under
36 whom they operate or from whom they obtain the tangi-
37 ble personal property sold by them, irrespective of
38 whether they are making sales on their own behalf or
39 on behalf of such dealers, distributors, supervisors, em-
40 ployers, or persons, the tax commissioner may so re-
41 gard them and may regard the dealers, distributors, su-
42 pervisors, employers, or persons as retailers for purposes
43 of this article.

44 (7) "Retailer maintaining a place of business in this
45 state" or any like term shall mean and include any re-
46 tailer having or maintaining within this state, directly
47 or by a subsidiary, an office, distribution houses, sales
48 house, warehouse, or other place of business, or any
49 agent operating within this state under the authority of
50 the retailer or its subsidiary, irrespective of whether
51 such place of business or agent is located here perma-
52 nently or temporarily, or whether such retailer or sub-
53 sidiary is admitted to do business within this state pur-
54 suant to section seventy-nine, article one, chapter thirty-
55 one of the code of West Virginia, one thousand nine hun-
56 dred thirty-one.

57 (8) The word "commissioner" means the state tax
58 commissioner.

59 (9) The word "taxpayer" includes any person within
60 the meaning of subdivision one hereof, who is subject to

61 a tax imposed by this article, whether acting for himself
62 or as a fiduciary.

§11-15A-1a. Legislative findings.

1 The Legislature hereby finds and declares that it is the
2 intent of the Legislature that the use tax imposed by the
3 provisions of article fifteen-a and the consumers sales tax
4 imposed by the provisions of article fifteen, chapter
5 eleven of the code of West Virginia, one thousand nine
6 hundred thirty-one, as amended, be complementary laws
7 and wherever possible be construed and applied to ac-
8 complish such intent as to the imposition, administra-
9 tion and collection of such taxes.

§11-15A-3. Exemptions.

1 The use in this state of the following tangible personal
2 property is hereby specifically exempted from the tax
3 imposed by this article:

4 1. All articles of tangible personal property brought
5 into the state of West Virginia by a nonresident individual
6 thereof for his or her use or enjoyment while within the
7 state.

8 2. Tangible personal property, the gross receipts from
9 the sale of which are exempted from the retail sales tax
10 by the terms of sections three-a and nine, article fifteen,
11 chapter eleven of the code of West Virginia, one thousand
12 nine hundred thirty-one.

13 3. Tangible personal property, the gross receipts from
14 the sale of which are derived from the sale of machinery,
15 supplies and materials to contractors, or to persons en-
16 gaged in the business of manufacturing, transportation,
17 transmission, communication or in the production of
18 natural resources in this state: *Provided*, That the exemp-
19 tions granted in this subdivision three are hereby sus-
20 pended, nullified and made inoperative during the period
21 from the first day of April, one thousand nine hundred
22 sixty-nine to midnight of the thirty-first day of March,
23 one thousand nine hundred seventy: *Provided further*,
24 That after midnight of the thirty-first day of March, one
25 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.

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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

7 section, major cigarette manufacturers will be those
8 manufacturers who are among the six companies show-
9 ing the largest taxable cigarette removals during the pre-
10 vious calendar year, as indicated by the records of the
11 tobacco tax branch of the United States Internal Reve-
12 nue Service. This section shall not apply to applications for
13 renewal of licenses provided the applicant is, at the time
14 of applying for renewal, purchasing from at least three
15 of the major cigarette manufacturers.

16 Wholesaler's or subjobber's licenses shall be issued
17 only to persons, except corporations, of good moral char-
18 acter, who are not less than twenty-one years of age. No
19 wholesaler's or subjobber's license shall be issued to any
20 person who has been convicted within the past five years
21 of any offense against the cigarette laws of this state or
22 who has been convicted in this state, or any state of the
23 United States, during the past five years of any offense
24 designated as a felony by such state or the United States,
25 or to a corporation, any of whose officers have been so
26 convicted. The term "conviction" shall include the ad-
27 judication of guilt on a plea of nolo contendere, or the
28 forfeiture of a bond when charged with a crime. The
29 commissioner may refuse to issue any license provided
30 for under this section to any person, firm or corporation
31 whose license under the cigarette law has been sus-
32 pended or revoked or to any corporation, an officer of
33 which has had his cigarette license suspended or revoked,
34 or to any person who is or has been an officer of a cor-
35 poration whose cigarette license has been suspended or
36 revoked.

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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.

1 (a) *Business and occupation tax credit.*—A credit shall
2 be allowed against the tax imposed by section three of
3 this article equal to the amount of the liability of the
4 taxpayer for the taxable year for any tax imposed under
5 article thirteen of chapter eleven of this code: *Provided,*
6 That the amount of such credit shall not exceed the
7 portion of the tax imposed by this article which is
8 attributable to the West Virginia taxable income derived
9 by the taxpayer for the taxable year from the business
10 or occupation with respect to which said tax under
11 article thirteen was imposed. In case the West Virginia
12 taxable income of a taxpayer includes income from a
13 partnership, estate, trust or a corporation electing to
14 be taxed under subchapter S of the Internal Revenue
15 Code of 1954, as amended, a part of any tax liability
16 of the partnership, estate, trust or corporation under
17 said article thirteen shall be allowed to the taxpayer,
18 in computing the credit provided for by this section, in
19 an amount proportionate to the income of such partner-
20 ship, estate, trust or corporation, which is included in
21 the taxpayer's West Virginia taxable income.

22 (b) *Carrier income tax credit.*—A credit shall be al-
23 lowed against the tax imposed by section three of this
24 article equal to the amount of the liability of the tax-
25 payer for the taxable year for any tax imposed on the
26 taxpayer under article twelve-a, chapter eleven of this
27 code: *Provided,* That the amount of such credit shall
28 not exceed the portion of the tax imposed by this article
29 which is attributable to the West Virginia taxable in-
30 come derived by the taxpayer for the taxable year from
31 the activities with respect of which said income tax

32 under article twelve-a was imposed. In case the West
33 Virginia taxable income of a taxpayer includes income
34 from a partnership, estate, trust or a corporation electing
35 to be taxed under subchapter S of the Internal Revenue
36 Code of 1954, as amended, a part of any tax liability
37 of the partnership, estate, trust or corporation under
38 said article twelve-a shall be allowed to the taxpayer,
39 in computing the credit provided for by this section in
40 an amount proportionate to the income of such part-
41 nership, estate, trust or corporation which is included
42 in the taxpayer's West Virginia taxable income.

43 (c) *Cross reference.*—For credit in respect of:

44 (1) Taxes withheld on wages, see section seventy-
45 three,

46 (2) Taxes imposed on a resident by other states, see
47 section twenty,

48 (3) Taxes imposed on a nonresident by the state of
49 his residence, see section forty.

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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.

§11-21-9. Meaning of terms.

1 Any term used in this article shall have the same mean-
2 ing as when used in a comparable context in the laws of

3 the United States relating to income taxes, unless a dif-
4 ferent meaning is clearly required. Any reference in this
5 article to the laws of the United States shall mean
6 the provisions of the Internal Revenue Code of 1954, as
7 amended, and such other provisions of the laws of the
8 United States as relate to the determination of income
9 for federal income tax purposes. All amendments made
10 to the laws of the United States prior to the first day
11 of January, one thousand nine hundred sixty-nine, shall
12 be given effect in determining the taxes imposed by this
13 article for the tax period beginning the first day of
14 January, one thousand nine hundred sixty-nine, and
15 thereafter, but no amendment to the laws of the United
16 States made on or after the first day of January, one
17 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 hundred 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 corpora-
2 tion, or agent or employee thereof, shall, in any manner,
3 or by any means, offer for sale goods, wares or merchan-
4 dise, where the offer includes the voluntary and unsolicit-
5 ed sending of goods, wares or merchandise not actually
6 ordered or requested by the recipient, either orally or in
7 writing. The receipt of any such unsolicited goods, wares
8 or merchandise shall for all purposes be deemed an un-
9 conditional gift to the recipient who may use or dispose
10 of the same in any manner he sees fit without any obliga-
11 tion on his part to the sender.

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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
2 security interests except the following:

3 (a) A security interest in collateral in possession of
4 the secured party under section 9-305 [§46-9-305];

5 (b) A security interest temporarily perfected in instru-
6 ments or documents without delivery under section 9-304
7 [§46-9-304] or in proceeds for a ten-day period under
8 section 9-306 [§46-9-306];

9 (c) A purchase money security interest in farm equip-
10 ment having a purchase price not in excess of \$2500; but
11 filing is required for a fixture under section 9-313 [§46-9-
12 313] or for a motor vehicle required to be licensed;

13 (d) A purchase money security interest in consumer
14 goods; but filing is required for a fixture under section
15 9-313 [§46-9-313] or for a motor vehicle required to be
16 licensed;

17 (e) An assignment of accounts or contract rights
18 which does not alone or in conjunction with other as-
19 signments to the same assignee transfer a significant part
20 of the outstanding accounts or contract rights of the
21 assignor;

22 (f) A security interest of a collecting bank (section
23 4-208) [§46-4-208] or arising under the article on sales
24 (see section 9-113) [§46-9-113] or covered in subsection
25 (3) of this section.

26 (2) If a secured party assigns a perfected security
27 interest, no filing under this article is required in order
28 to continue the perfected status of the security interest
29 against creditors of and transferees from the original
30 debtor.

31 (3) The filing provisions of this article do not apply to
32 a security interest in property subject to a statute

33 (a) of the United States which provides for a national
34 registration or filing of all security interests in such
35 property; or

36 (b) of this state which provides for central filing of,
37 or which requires indication on a certificate of title of,
38 such security interests in such property.

39 (4) A security interest in property covered by a statute
40 described in subsection (3) can be perfected only by
41 registration or filing under that statute or by indication
42 of the security interest on a certificate of title or a dupli-
43 cate thereof by a public official.

44 (5) Part four of this article shall not apply to a se-
45 curity interest in property of any description created
46 by a deed of trust, mortgage or indenture or any sup-
47 plemental deed of trust, mortgage or indenture made
48 by any corporation primarily engaged in the railroad
49 or street railway business, the furnishing of telephone
50 or telegraph service, the transmission of oil, gas or
51 petroleum products by pipeline, or the production, trans-
52 mission or distribution of electricity, steam, gas or water,
53 but such security interest may be perfected in all types
54 of property and interests in property covered by this
55 article by filing such deed of trust, mortgage or inden-
56 ture or supplemental deed of trust, mortgage or inden-
57 ture in the office of the secretary of state. When so filed,
58 such instrument shall remain effective until terminated,
59 without the need for filing a continuation statement,
60 and if a copy of such a deed of trust, mortgage or in-
61 denture or supplemental deed of trust, mortgage or
62 indenture with respect to which financing statements
63 have heretofore been filed in any filing office in this
64 state shall be filed in the office of the secretary of state
65 as provided herein such instrument shall also thereafter
66 remain effective until terminated, without the need for
67 filing a continuation statement. Assignments and re-
68 leases of such instruments may also be filed in the office
69 of the secretary of state. The secretary of state shall
70 be a filing officer for the foregoing purposes.

CHAPTER 150

(Senate Bill No. 80—By Mr. Moreland)

[Passed February 28, 1969; in effect ninety days from passage. Approved by the Governor.]

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.

§5-15-1. Short title.

§5-15-2. Policy.

§5-15-3. Definition.

§5-15-4. Equal right to use public facilities.

§5-15-5. Standard of care to be exercised by and with respect to blind persons.

§5-15-6. Annual proclamation of white cane day.

§5-15-7. Policy of the state on employment of blind persons.

§5-15-8. Interference with rights hereunder; penalties.

§5-15-1. Short title.

1 This article shall be known as the "White Cane Law".

§5-15-2. Policy.

1 It is the policy of this state to encourage and enable
2 blind persons to participate fully in the social and

3 economic life of the state and to engage in remunerative
4 employment.

§5-15-3. Definition.

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.

1 A blind person shall exercise that degree of care for
2 his own safety in any of the places, accommodations or
3 conveyances specified in section four of this article which
4 an ordinarily prudent person so handicapped would exer-
5 cise under similar circumstances.

6 The driver of a vehicle approaching a blind pedestrian
7 who knows, or in the exercise of reasonable care should
8 know, that such pedestrian is blind because such pedes-
9 trian is carrying a cane predominantly white or metallic
10 in color (with or without a red tip) or is using a guide
11 dog or otherwise shall exercise care commensurate with
12 the situation to avoid injuring such pedestrian.

§5-15-6. Annual proclamation of white cane day.

1 Each year the governor shall take suitable public notice
2 of October fifteen as white cane day. He shall issue a
3 proclamation in which he:

4 (a) Comments upon the significance of the white cane;

5 (b) Calls upon the citizens of the state to observe the
6 provisions of the white cane law and to take precautions
7 necessary for the safety of the blind;

8 (c) Reminds the citizens of the state of the policies
9 with respect to the blind herein declared and urges the
10 citizens to cooperate in giving effect to them;

11 (d) Emphasizes the need of the citizens to be aware of
12 the presence of blind persons in the community and to
13 keep safe for the blind the highways, roads, streets, side-
14 walks, walkways, public buildings, public facilities, other
15 public places, places of public accommodation, amuse-
16 ment and resort and other places to which the public is
17 invited, and to offer assistance to blind persons upon ap-
18 propriate occasions.

§5-15-7. Policy of the state on employment of blind persons.

1 It is the policy of this state that blind persons shall be
2 employed in the state service, the service of the political
3 subdivisions of the state, in the public schools and in all
4 other employment supported in whole or in part by public
5 funds on the same terms and conditions as persons with

6 normal sight, unless it is shown that the disability pre-
7 vents the performance of the work involved.

§5-15-8. Interference with rights hereunder; penalties.

1 Any person, firm or corporation, or the agent of
2 any person, firm or corporation, who denies or interferes
3 with admittance to or enjoyment of the places, accom-
4 modations or conveyances specified in section four of this
5 article or otherwise interferes with the rights of a blind
6 person under the provisions of this article shall be guilty
7 of a misdemeanor, and, upon conviction thereof, shall
8 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
2 Legislature, created by it by general law or any concurrent

3 resolution, which has the authority to issue subpoenas or
4 subpoenas duces tecum, no person shall be excused from
5 testifying or from producing documentary or other evi-
6 dence upon the ground that such testimony or evidence
7 may incriminate or tend to incriminate him, if the commit-
8 tee or commission before which he is examined is of the
9 opinion that the ends of justice may be promoted by
10 compelling such testimony or evidence. If, but for this
11 section, the person would have been excused from so testi-
12 fying or from producing such evidence, then if the person
13 is so compelled to testify or produce other evidence and if
14 such testimony or evidence is self-incriminating, such
15 self-incriminating testimony or evidence shall not be used
16 or receivable in evidence against him in any proceeding
17 against him thereafter taking place other than a prosecu-
18 tion for perjury in the giving of such evidence, and the
19 person so compelled to testify or furnish evidence shall
20 not be prosecuted for the offense in regard to which he is
21 so compelled to testify or furnish evidence, and he shall
22 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, relating to annual reports by commissioner, occupational pneumoconiosis board and occupational diseases medical board; black lung; workmen's compensation; occupational diseases, including occupational pneumoconiosis; definitions; 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

1. General Administrative Provisions.
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
2 in each year, the commissioner, the occupational pneumo-
3 coniosis board and the occupational diseases medical
4 board, shall make a report as of the thirtieth day of June
5 addressed to the governor, which shall include a state-
6 ment of the causes of the injuries for which the awards
7 were made, an explanation of the diagnostic techniques
8 used by the respective medical boards and all examining
9 physicians to determine the presence of disease, the extent
10 of impairment attributable thereto, a description of the
11 scientific support for such techniques, and a summary
12 of public and private research relating to problems and
13 prevention of occupational diseases. The report shall
14 include a detailed statement of all disbursements, and the
15 condition of the fund, together with any specific recom-

16 mendations for improvements in the workmen's compen-
17 sation law and for more efficient and responsive adminis-
18 tration thereof, which the commissioner may deem ap-
19 propriate. Copies of all annual reports shall be filed with
20 the secretary of state and shall be made available to the
21 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.
- §23-4-14. Computation of benefits.
- §23-4-15. Application for benefits; report of injuries by employer.
- §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.

1 Subject to the provisions and limitations elsewhere in
2 this chapter set forth, the commissioner shall disburse

3 the workmen's compensation fund to the employees of
4 such employers as are not delinquent in the payment of
5 premiums for the quarter in which the injury occurs,
6 and in case of catastrophe, in addition to the employees
7 next above described, to the employees of employers
8 who have elected, under section nine, article two of this
9 chapter, to make payments into the surplus fund as
10 provided in that section, and which employees shall have
11 received personal injuries in the course of and resulting
12 from their employment in this state, or in temporary
13 employment without the state as provided in section one,
14 article two of this chapter, or to the dependents, if any,
15 of such employees in case death has ensued, according
16 to the provisions hereinafter made; and also for the
17 expenses of the administration of this chapter, as pro-
18 vided in section two, article one of this chapter.

19 For the purposes of this chapter the terms "injury"
20 and "personal injury" shall include occupational pneumo-
21 coniosis and any other occupational disease, as herein-
22 after defined, and the commissioner shall likewise dis-
23 burse the workmen's compensation fund to the employees
24 of such employers as are not delinquent in the payment
25 of premiums for the last quarter in which such em-
26 ployees have been exposed to the hazards of occupa-
27 tional pneumoconiosis or other occupational disease, and
28 have contracted occupational pneumoconiosis or other
29 occupational disease, or have suffered a perceptible aggra-
30 vation of an existing pneumoconiosis, in this state in the
31 course of and resulting from their employment, or to the
32 dependents, if any, of such employees, in case death has
33 ensued, according to the provisions hereinafter made:
34 *Provided*, That compensation shall not be payable for the
35 disease of occupational pneumoconiosis, or death resulting
36 therefrom, unless in the state of West Virginia the em-
37 ployee has been exposed to the hazards of occupational
38 pneumoconiosis over a continuous period of not less than
39 two years during the ten years immediately preceding the
40 date of his last exposure to such hazards. An application
41 for benefits on account of occupational pneumoconiosis
42 shall set forth the name of the employer or employers and
43 the time worked for each, and the commissioner may allo-

44 cate to and divide any charges on account of such claim
45 among the employers by whom the claimant was em-
46 ployed for as much as sixty days during the period of three
47 years immediately preceding the filing of the application.
48 The allocation shall be based upon the time and degree of
49 exposure with each employer.

50 For the purpose of this chapter disability or death
51 resulting from occupational pneumoconiosis, as defined in
52 the immediately succeeding sentence, shall be treated
53 and compensated as an injury by accident.

54 Pneumoconiosis is a disease of the lungs caused by the
55 inhalation of minute particles of dust over a period of
56 time which has produced pinhead or other nodulation or
57 pathological or abnormal physiological change generally
58 accepted by recognized specialists in the field of respira-
59 tory diseases as supporting a diagnosis of pneumoconiosis
60 and which can be identified by X rays or other medical
61 evidence and a pneumoconiosis shall be considered to be
62 an occupational pneumoconiosis when the pneumoconiosis
63 results from causes and conditions arising out of and
64 in the course of the employment. The term "occupational
65 pneumoconiosis" shall include, but shall not be limited
66 to, such diseases as silicosis, anthracosilicosis, coal work-
67 er's pneumoconiosis, commonly known as black lung or
68 miner's asthma, silico-tuberculosis (silicosis accompanied
69 by active tuberculosis of the lungs), coal worker's pneu-
70 moconiosis accompanied by active tuberculosis of the
71 lungs, tuberculo-silicosis, asbestosis, siderosis, anthrax
72 and any and all other dust diseases of the lungs and
73 conditions and diseases caused by occupational pneumo-
74 coniosis which are not specifically designated herein
75 meeting the definition of occupational pneumoconiosis
76 set forth in the immediately preceding sentence.

77 X-ray evidence shall not necessarily be held conclusive
78 insofar as it bears upon the absence or presence of occu-
79 pational pneumoconiosis.

80 For the purpose of this chapter, occupational disease
81 means a disease incurred in the course of and resulting
82 from employment. No ordinary disease of life to which
83 the general public is exposed outside of the employment

84 shall be compensable except when it follows as an incident
85 of occupational disease as defined in this chapter. Except
86 in the case of occupational pneumoconiosis, a disease shall
87 be deemed to have been incurred in the course of or to
88 have resulted from the employment only if it is apparent
89 to the rational mind, upon consideration of all the cir-
90 cumstances (1) that there is a direct causal connection
91 between the conditions under which work is performed
92 and the occupational disease, (2) that it can be seen to
93 have followed as a natural incident of the work as a result
94 of the exposure occasioned by the nature of the employ-
95 ment, (3) that it can be fairly traced to the employment
96 as the proximate cause, (4) that it does not come from a
97 hazard to which workmen would have been equally ex-
98 posed outside of the employment, (5) that it is incidental
99 to the character of the business and not independent of
100 the relation of employer and employee, and (6) that it
101 must appear to have had its origin in a risk connected
102 with the employment and to have flowed from that source
103 as a natural consequence, though it need not have been
104 foreseen or expected before its contraction.

105 Except in the case of silicosis, no award shall be made
106 under the provisions of this chapter for any occupational
107 disease contracted prior to the first day of July, one
108 thousand nine hundred forty-nine. An employee shall
109 be deemed to have contracted an occupational disease
110 within the meaning of this paragraph if the disease or
111 condition has developed to such an extent that it can
112 be diagnosed as an occupational disease.

**§23-4-2. Disbursement where injury is self-inflicted or inten-
tionally caused by employer; rules and safety ap-
pliances; "wilful self-exposure" defined.**

1 Notwithstanding anything hereinbefore or hereinafter
2 contained, no employee or dependent of any employee
3 shall be entitled to receive any sum from the workmen's
4 compensation fund, or to direct compensation from any
5 employer making the election and receiving the permis-
6 sion mentioned in section nine, article two of this chapter,
7 or otherwise under the provisions of this chapter, on ac-

8 count of any personal injury to or death to any employee
9 caused by a self-inflicted injury, wilful misconduct, wil-
10 ful disobedience to such rules and regulations as may
11 be adopted by the employer and approved by the com-
12 missioner of labor or director of the department of
13 mines, and which rules and regulations have been and
14 are kept posted in conspicuous places in and about the
15 work, wilful self-exposure in case of occupational pneu-
16 moconiosis or other occupational disease, as defined
17 herein, or the intoxication of such employee, or the failure
18 of such employee to use or make use of any protective
19 or safety appliance or appliances prescribed by the com-
20 missioner and furnished by the employer for the use
21 of or applicable to such employee. For the purpose of
22 this chapter, the commissioner may cooperate with the
23 state department of mines and the state department of
24 labor in promoting general safety programs and in form-
25 ulating rules and regulations to govern hazardous em-
26 ployments. If injury or death result to any employee
27 from the deliberate intention of his employer to produce
28 such injury or death, the employee, the widow, widower,
29 child or dependent of the employee shall have the priv-
30 ilege to take under this chapter, and shall also have
31 cause of action against the employer, as if this chapter
32 had not been enacted, for any excess of damages over
33 the amount received or receivable under this chapter.

34 As used in this section the term "wilful self-exposure"
35 causing the contraction of the disease of occupational
36 pneumoconiosis or other occupational disease shall also
37 include: (1) Failure or omission on the part of an em-
38 ployee truthfully to state to the best of his knowledge,
39 in answer to inquiry made by the employer, the place,
40 duration and nature of previous employment; (2) failure
41 or omission on the part of an employee truthfully to
42 furnish, to the best of his knowledge, in answer to an
43 inquiry made by the employer, full information as to
44 the previous state of his health, as to exposure to lung
45 diseases, to any other occupational disease, or to any
46 condition likely to cause an occupational disease, and
47 as to any special medical attention that he may have
48 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.

1 The commissioner shall establish, and alter from time
2 to time as he may determine to be appropriate, a sched-
3 ule of the maximum reasonable amounts to be paid to
4 physicians, surgeons, hospitals or other persons, firms or
5 corporations for the rendering of treatment to injured
6 employees under this chapter. Except in the case of
7 occupational pneumoconiosis, the commissioner shall
8 disburse and pay from the fund for such personal in-
9 juries to such employees as may be entitled thereto
10 hereunder as follows:

11 (a) Such sums for medicines, medical, surgical,
12 dental and hospital treatment, crutches, artificial limbs
13 and such other and additional approved mechanical ap-
14 pliances and devices, as may be reasonably required and
15 as are, in the case of medical, surgical, dental or hos-
16 pital treatment only, within the maximum amount
17 provided for by schedule established by the commis-
18 sioner as aforesaid, but not as to any one injured em-
19 ployee in excess of three thousand dollars: *Provided,*
20 That in special cases where the treatment required, in
21 the opinion of competent medical authority, is such as to
22 necessitate an expenditure in excess of said sum of three
23 thousand dollars, the commissioner may pay out of any
24 available funds such additional sum as may be necessary,
25 but such additional sum shall not be charged to the
26 account of the employer.

27 (b) Payment for such medicine, medical, surgical,
28 dental and hospital treatment, crutches, artificial limbs
29 and such other and additional approved mechanical
30 appliances and devices authorized under subdivision (a)
31 hereof may be made to the injured employee, or to the
32 person, firm or corporation who or which has rendered
33 such treatment or furnished any of the items specified
34 above, or who has advanced payment for same, as the
35 commissioner may deem proper, but no such payments
36 or disbursements shall be made or awarded by him un-

37 less duly verified statements on forms prescribed by the
38 commissioner shall be filed with the commissioner
39 within six months after the cessation of such treatment
40 or the delivery of such appliances: *Provided, however,*
41 That no payment hereunder shall be made unless such
42 verified statement shows no charge for or with respect
43 to such treatment or for or with respect to any of the
44 items specified above has been or will be made against
45 the injured employee or any other person, firm or cor-
46 poration, and when an employee covered under the pro-
47 visions of this chapter is injured in the course of and
48 as a result of his employment and is accepted for medi-
49 cal, surgical, dental or hospital treatment, the person,
50 firm or corporation rendering such treatment is hereby
51 prohibited from making any charge or charges therefor
52 or with respect thereto against the injured employee
53 or any other person, firm or corporation which would
54 result in a total charge for the treatment rendered in
55 excess of the maximum amount set forth therefor in
56 the commissioner's schedule established as aforesaid.

57 (c) No employer shall enter into any contracts with
58 any hospital, its physicians, officers, agents or em-
59 ployees to render medical, dental or hospital service or
60 to give medical or surgical attention therein to any
61 employee for injury compensable within the purview
62 of this chapter, and no employer shall permit or require
63 any employee to contribute, directly or indirectly, to any
64 fund for the payment of such medical, surgical, dental
65 or hospital service within such hospital for such com-
66 pensable injury. Any employer violating this section
67 shall be liable in damages to his or its employees and
68 shall not avail himself of any of the common-law de-
69 fenses mentioned in section eight, article two of this
70 chapter, and any employer or hospital or agent or em-
71 ployee thereof violating the provisions of this section
72 shall be guilty of a misdemeanor, and, upon conviction
73 thereof, shall be sentenced to pay a fine not exceeding
74 one thousand dollars or undergo imprisonment not ex-
75 ceeding one year, or both.

76 (d) When an injury has been reported to the com-
77 missioner by the employer without protest, the commis-

78 sioner may pay, or order an employer who or which
79 made the election and who or which received the per-
80 mission mentioned in section nine, article two of this
81 chapter to pay, within the maximum amount provided
82 by schedule established by the commissioner as afore-
83 said, bills for medical or hospital services without re-
84 quiring the injured employee to file an application for
85 benefits.

§23-4-4. Funeral expenses.

1 In case the personal injury causes death, and disability
2 is continuous from the date of such injury to date of
3 death, reasonable funeral expenses, not to exceed seven
4 hundred fifty dollars, shall be paid from the fund, pay-
5 ment to be made to the persons who have furnished the
6 services and supplies, or to the persons who have ad-
7 vanced payment for same, as the commissioner may deem
8 proper, in addition to such award as may be made to the
9 employee's dependents.

§23-4-6. Classification of disability benefits.

1 Where compensation is due an employee under the
2 provisions of this chapter for a personal injury, such
3 compensation shall be as provided in the following sched-
4 ule:

5 (a) The expressions "average weekly wage earnings,
6 wherever earned, of the injured employee, at the date
7 of injury" and "average weekly wage in West Virginia,"
8 as used in this chapter, shall have the meaning and shall
9 be computed as set forth in section fourteen of this ar-
10 ticle.

11 (b) If the injury causes temporary total disability,
12 the employee shall receive during the continuance there-
13 of weekly benefits as follows: On and after July one,
14 one thousand nine hundred sixty-nine, and through June
15 thirty, one thousand nine hundred seventy, inclusive, the
16 employee shall receive a minimum of twenty-six dollars
17 per week and a maximum weekly benefit to be com-
18 puted on the basis of sixty-six and two-thirds percent of
19 the average weekly earnings, wherever earned, of the in-

20 injured 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 maxi-
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

60 two-thirds percent of the average weekly earnings, wher-
61 ever earned, of the injured employee, at the date of in-
62 jury, not to exceed forty-five percent of the average
63 weekly wage in West Virginia, during the remainder
64 of life.

65 On and after July one, one thousand nine hundred
66 seventy, for a disability of eighty-five percent to one
67 hundred percent, inclusive, sixty-six and two-thirds per-
68 cent of the average weekly earnings, wherever earned,
69 of the injured employee, at the date of injury, not to
70 exceed fifty percent of the average weekly wage in West
71 Virginia, during the remainder of life.

72 (e) If the injury results in the total loss by severance
73 of any of the members named in this subdivision, the
74 percentage of disability shall be determined in accord-
75 ance with the following table, and award made as pro-
76 vided in subdivision (d) of this section:

77 The loss of a great toe shall be considered a ten per-
78 cent disability.

79 The loss of a great toe (one phalanx) shall be con-
80 sidered a five percent disability.

81 The loss of other toes shall be considered a four per-
82 cent disability.

83 The loss of other toes (one phalanx) shall be considered
84 a two percent disability.

85 The loss of all toes shall be considered a twenty-five
86 percent disability.

87 The loss of fore part of foot shall be considered a thirty
88 percent disability.

89 The loss of foot shall be considered a thirty-five per-
90 cent disability.

91 The loss of a leg shall be considered a forty-five per-
92 cent disability.

93 The loss of thigh shall be considered a fifty percent
94 disability.

95 The loss of thigh at hip joint shall be considered a
96 sixty percent disability.

97 The loss of a little or fourth finger (one phalanx) shall
98 be considered a three percent disability.

99 The loss of little or fourth finger shall be considered a
100 five percent disability.

101 The loss of ring or third finger (one phalanx) shall be
102 considered a three percent disability.

103 The loss of ring or third finger shall be considered a
104 five percent disability.

105 The loss of middle or second finger (one phalanx) shall
106 be considered a three percent disability.

107 The loss of middle or second finger shall be considered
108 a seven percent disability.

109 The loss of index or first finger (one phalanx) shall
110 be considered a six percent disability.

111 The loss of index or first finger shall be considered a
112 ten percent disability.

113 The loss of thumb (one phalanx) shall be considered a
114 twelve percent disability.

115 The loss of thumb shall be considered a twenty percent
116 disability.

117 The loss of thumb and index finger shall be considered
118 a thirty-two percent disability.

119 The loss of index and middle finger shall be considered
120 a twenty percent disability.

121 The loss of middle and ring finger shall be considered
122 a fifteen percent disability.

123 The loss of ring and little finger shall be considered a
124 ten percent disability.

125 The loss of thumb, index and middle finger shall be
126 considered a forty percent disability.

127 The loss of index, middle and ring finger shall be con-
128 sidered a thirty percent disability.

129 The loss of middle, ring and little finger shall be con-
130 sidered a twenty percent disability.

131 The loss of four fingers shall be considered a thirty-two
132 percent disability.

133 The loss of hand shall be considered a fifty percent
134 disability.

135 The loss of forearm shall be considered a fifty-five per-
136 cent disability.

137 The loss of arm shall be considered a sixty percent
138 disability.

139 The total and irrecoverable loss of the sight of one eye
140 shall be considered a thirty-three percent disability.

141 For the partial loss of vision in one, or both eyes, the
142 percentage of disability shall be determined by the com-
143 missioner, using as a basis the total loss of one eye.

144 The total and irrecoverable loss of the hearing of one
145 ear shall be considered a fifteen percent disability, and
146 the injured employee shall be entitled to compensation
147 for a period of sixty weeks. The total and irrecoverable
148 loss of the hearing of both ears shall be considered a
149 forty-five percent disability, and the injured employee
150 shall be entitled to compensation for a period of one
151 hundred eighty weeks.

152 For the partial loss of hearing in one, or both ears,
153 the percentage of disability shall be determined by the
154 commissioner, using as a basis the total loss of hearing in
155 both ears.

156 (f) Should a claimant to whom has been made a
157 permanent partial award of from one percent to eighty-
158 four percent, both inclusive, die from sickness or non-
159 compensable injury, the unpaid balance of such award
160 shall be paid to claimant's dependents as defined in this
161 chapter, if any; such payment to be made in the same
162 installments that would have been paid to claimant if
163 living: *Provided, however,* That no payment shall be
164 made to any widow of such claimant after her remarriage,
165 and that this liability shall not accrue to the estate of
166 such claimant and shall not be subject to any debts of,
167 or charges against, such estate.

168 (g) The award for permanent disabilities intermediate
169 to those fixed by the foregoing schedule and permanent
170 disability of from one percent to eighty-four percent
171 shall be in the same proportion and shall be computed
172 and allowed by the commissioner.

173 (h) The percentage of all permanent disabilities other
174 than those enumerated in subdivisions (d), (e), (f) and
175 (g) of this section shall be determined by the commis-
176 sioner, and award made in accordance with the provisions
177 of subdivision (d).

178 (i) Compensation payable under any subdivision of
179 this section shall be limited as follows: Not to exceed
180 the maximum weekly benefit specified in subdivision (b)
181 of this section, nor to be less than a minimum of twenty-
182 six dollars a week.

183 (j) Where an injury results in temporary total dis-
184 ability for which compensation is awarded under sub-
185 division (b) of this section and such injury is later de-
186 termined permanent partial disability under subdivision
187 (d), the amount of compensation so paid in excess of
188 ten weeks shall be considered as payment of the compen-
189 sation payable for such injury in accordance with the
190 schedule in subdivision (d): *Provided*, That in cases
191 where the amount of permanent partial disability is spe-
192 cifically provided for under subdivision (e) of this sec-
193 tion, payments made under subdivision (b) shall not be
194 considered as payment of the compensation for such in-
195 jury. Compensation, either total temporary or perma-
196 nent partial, under this section shall be payable only
197 to the injured employee and the right thereto shall not
198 vest in his or her estate, except that any unpaid compen-
199 sation which would have been paid or payable to the
200 employee up to the time of his death, if he had lived,
201 shall be paid to the dependents of such injured employee
202 if there be such dependents at the time of death.

203 (k) The following permanent disabilities shall be con-
204 clusively presumed to be total in character:

205 Loss of both eyes or the sight thereof.

206 Loss of both hands or the use thereof.

207 Loss of both feet or the use thereof.

208 Loss of one hand and one foot or the use thereof.

209 In all other cases permanent disability shall be deter-
210 mined by the commissioner in accordance with the facts
211 in the case, and award made in accordance with the pro-
212 visions 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
2 due to occupational pneumoconiosis, as defined in section
3 one of this article, the percentage of permanent dis-
4 ability shall be determined by the commissioner in ac-
5 cordance with the facts in the case and with the advice
6 and recommendation of the occupational pneumoconiosis
7 board. Compensation shall be paid therefor in the same
8 manner and at the same rate as is provided for perma-
9 nent disability under the provisions of subdivisions (d),
10 (f), (g), (h) and (i) of the preceding section of this
11 article.

12 Impairment of the employee's ability to function nor-
13 mally or to undergo normal prolonged exertion when
14 compared with an average man of his age and like gen-
15 eral physical condition may be considered in the determi-
16 nation of the employee's disability from occupational
17 pneumoconiosis.

18 If the employee dies from occupational pneumoconiosis
19 within ten years from the date of his last exposure to
20 such disease, the benefits shall be in the amounts and to
21 the persons provided for in section ten of this article; as
22 to such benefits sections eleven to fourteen, inclusive, of
23 this article shall apply.

24 In cases of permanent disability or death due to occu-
25 pational pneumoconiosis, as defined in section one of this
26 article, accompanied by active tuberculosis of the lungs,
27 compensation shall be payable as for disability or death
28 due to occupational pneumoconiosis alone.

29 The provisions of section sixteen, article four and sec-
30 tions one-a, one-b, one-c and one-d, article five of this
31 chapter providing for the further adjustment of claims
32 shall be applicable to the claim of any claimant who re-
33 ceives a permanent partial disability award for occupa-
34 tional pneumoconiosis.

§23-4-8. Physical examination of claimant.

1 The commissioner shall have authority, after due
2 notice to the employer and claimant, whenever in his
3 opinion it shall be necessary, to order a claimant of
4 compensation for a personal injury other than occupa-
5 tional pneumoconiosis or other occupational disease to
6 appear for examination before a medical examiner or
7 examiners selected by the commissioner; and the claim-
8 ant and employer, respectively, shall each have the right
9 to select a physician of his or its own choosing and at
10 his or its own expense to participate in such examina-
11 tion. The claimant and employer shall, respectively,
12 be furnished with a copy of the report of examination
13 made by the medical examiner or examiners selected
14 by the commissioner. The respective physicians selected
15 by the claimant and employer shall have the right to
16 concur in any report made by the medical examiner or
17 examiners selected by the commissioner, or each may
18 file with the commissioner a separate report, which
19 separate report shall be considered by the commissioner
20 in passing upon the claim. If the compensation claimed
21 is for occupational pneumoconiosis, the commissioner
22 shall have the power, after due notice to the employer,
23 and whenever in his opinion it shall be necessary, to
24 order a claimant to appear for examination before the
25 occupational pneumoconiosis board hereinafter provided.
26 If the compensation claimed is for an occupational disease
27 other than occupational pneumoconiosis, the commis-
28 sioner shall have the power, after due notice to the
29 employer, and whenever in his opinion it shall be neces-
30 sary, to order a claimant to appear for examination be-
31 fore the occupational diseases medical board hereinafter
32 provided. In any case the claimant shall be entitled
33 to reasonable traveling and other expenses necessarily
34 incurred by him in obeying such order, which shall be
35 paid out of the amount allowed under this chapter for
36 medical, surgical, dental and hospital treatment.

37 Where the claimant is required to undergo a medical
38 examination or examinations by a physician or physi-
39 cians selected by the employer, in addition to the reason-
40 able traveling and other expenses, not to exceed the

41 expenses paid when a claimant is examined by a physician
42 or physicians selected by the commissioner, such claim-
43 ant shall be reimbursed by the employer for loss of
44 wages necessarily incurred by him in connection with
45 such examination or examinations.

§23-4-8a. Occupational pneumoconiosis board—Created; term of office; duties; remuneration.

1 The medical board created by the former provisions
2 of this section and known as the "Silicosis Medical
3 Board" shall continue in existence but on and after the
4 effective date of this act shall be known and designated
5 as the "Occupational Pneumoconiosis Board." Such medi-
6 cal board shall consist of three licensed physicians, who
7 shall be appointed by the commissioner. No person shall
8 be appointed as a member of such board, or as a consul-
9 tant thereto, who has not by special study or experience,
10 or both, acquired special knowledge of pulmonary dis-
11 eases. All members of the occupational pneumoconiosis
12 board shall be physicians of good professional stand-
13 ing, admitted to practice medicine and surgery in this
14 state, and one of them shall be a roentgenologist. One
15 of the board shall be designated annually as chairman
16 by the commissioner. The term of office of each member
17 of such board shall be six years. The three members
18 of the existing board, as redesignated herein, in office
19 on the effective date of this act shall continue to serve
20 until their terms expire and until their successors have
21 been appointed and have qualified. Any member of the
22 board may be appointed to any number of terms. The
23 function of the board shall be to determine all medical
24 questions relating to cases of compensation for occu-
25 pational pneumoconiosis under the direction and super-
26 vision of the commissioner. The commissioner, from time
27 to time, shall fix the per diem salary, computed on the
28 basis of actual time devoted to the discharge of their
29 duties, to be paid each member of such board, and they
30 shall also be entitled to reasonable and necessary travel-
31 ing and other expenses incurred while actually engaged
32 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-
9 inations, 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.

1 (a) The occupational pneumoconiosis board, as soon
2 as practicable, after it has completed its investigation,
3 shall make its written report, to the commissioner, of its
4 findings and conclusions on every medical question in
5 controversy, and the commissioner shall send one copy
6 thereof to the employee or claimant and one copy to the
7 employer, and the board shall also return to and file with
8 the commissioner all the evidence, as well as all state-
9 ments under oath, if any, of the persons who appeared
10 before it on behalf of the employee or claimant, or em-
11 ployer, and also all medical reports and X-ray examina-
12 tions produced by or on behalf of the employee or claim-
13 ant, or employer.

14 (b) If it can be shown that the claimant or deceased
15 employee has been exposed to the hazard of inhaling
16 minute particles of dust in the course of and resulting
17 from his employment for a period of ten years during
18 the fifteen years immediately preceding the date of his
19 last exposure to such hazard and that such claimant or
20 deceased employee has sustained a medically diagnos-
21 able disease of the lungs consistent with a diagnosis of
22 occupational pneumoconiosis, then it shall be presumed
23 that such claimant or deceased employee is suffering
24 from occupational pneumoconiosis which arose out of
25 and in the course of his employment. This presumption
26 shall not be conclusive.

27 (c) The findings and conclusions of the board shall
28 set forth, among other things, the following:

29 (1) Whether or not the claimant or the deceased em-
30 ployee has contracted occupational pneumoconiosis, and
31 if so, the percentage of permanent disability resulting
32 therefrom.

33 (2) Whether or not the exposure in the employment
34 was sufficient to have caused the claimant's or deceased
35 employee's pneumoconiosis or to have perceptibly ag-
36 gravated 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.

**§23-4-8d. Occupational diseases medical board—Created; qual-
ifications; term of office; duties; remunerations.**

1 There shall be a medical board, known as the "Occupational Diseases Medical Board," which shall consist of
2 three licensed physicians to be appointed by the commis-
3 sioner. No person shall be appointed as a member of such
4 board, or as a consultant thereto, who has not by special
5 study or experience, or both, acquired special knowledge
6 of occupational diseases. All members of the board shall
7

8 be physicians of good professional standing, admitted to
9 practice medicine and surgery in this state. One of the
10 board shall be designated annually as chairman by the
11 commissioner. The term of office of each member of such
12 board shall be six years. The function of the board shall
13 be to determine all medical questions relating to cases of
14 compensation for occupational diseases other than occupa-
15 tional pneumoconiosis, under the direction and super-
16 vision of the commissioner. The commissioner from time
17 to time, shall fix the per diem salary, computed on the
18 basis of actual time devoted to the discharge of their
19 duties, to be paid the members of such board, and they
20 shall also be entitled to reasonable and necessary travel-
21 ing and other expenses incurred while actually engaged
22 in the performance of their duties.

23 In the event the board shall deem it desirable, it may
24 appoint a physician or physicians of good professional
25 standing, admitted to practice medicine and surgery in
26 this state, to conduct such clinical, physical and X-ray
27 examinations of claimants as may in the opinion of the
28 board be necessary. Such examiner or examiners shall
29 prepare a written report setting forth their findings with
30 respect to all medical questions involved in the claim;
31 copies of such report shall be furnished the employee and
32 employer and filed with the board, together with a copy
33 of all hospital records, laboratory findings, X rays or
34 other evidence considered by such examiner or examiners;
35 such records and reports shall then be considered by the
36 board in passing upon the medical issues involved in the
37 claim. Any such examiners shall be paid such fees and
38 expenses as may be prescribed by the commissioner.

§23-4-8e. Same—Procedure; autopsy.

1 The occupational diseases medical board, upon refer-
2 ence to it by the commissioner of a case involving an
3 occupational disease other than occupational pneumo-
4 coniosis, shall notify the employee, or in case he is dead,
5 the claimant, and the employer, to appear before such
6 board, or before an examiner or examiners appointed by
7 it, at the time and place stated in the notice. If the
8 employee be living, he shall appear at the time and place

9 specified and submit to such examination, including clinical and X-ray examinations, as the board may require. If a physician licensed to practice medicine in the state shall make affidavit that the employee is physically unable to appear at the time and place designated by the board, such board shall, on notice to the proper parties, change the place and time as may reasonably facilitate the hearing or examination of the employee. The employee, or in case he is dead, the claimant, and the employer shall also produce as evidence for the board, or for any examiner appointed by it, all reports of medical and X-ray examinations which may be in their respective possession or control, showing the past or present condition of the employee. If the employee be dead, the notice of the board shall further require that the claimant produce necessary consents and permits so that an autopsy may be performed, if the board shall so direct. When in the opinion of the board an autopsy is deemed necessary accurately and scientifically to ascertain and determine the cause of death, such autopsy examination shall be ordered by the board, which shall designate a duly licensed physician, a pathologist, or such other specialists as may be deemed necessary by the board, to make such examination and tests to determine the cause of death and certify his or their written findings, in triplicate, to the board, which findings shall be public records. In the event that a claimant for compensation for such death refuses to consent and permit such autopsy to be made, all rights for compensation shall thereupon be forfeited.

38 The employee, or if he be dead, the claimant, and the employer, shall be entitled to be present at all examinations conducted by the board, or by any examiner appointed by it, and to be represented by attorneys and 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

7 pneumoconiosis or from any other occupational disease
8 within ten years from the date of the last exposure to
9 the hazards of occupational pneumoconiosis or to the
10 other particular occupational hazard involved, as the case
11 may be, the benefits shall be in the amounts and to the
12 persons as follows:

13 (a) If there be no dependents, the disbursements
14 shall be limited to the expense provided for in sections
15 three and four of this article.

16 (b) If the deceased employee leaves a dependent
17 widow or invalid widower, the payment shall be one
18 hundred ten dollars a month until death or remarriage
19 of such widow or widower, and in addition thirty-five
20 dollars a month for each child under eighteen years of
21 age, to be paid until such child reaches such age, or where
22 such child after reaching eighteen years of age con-
23 tinues as a full-time student in an accredited high school,
24 college, university, business or trade school, to be paid
25 until such child reaches the age of twenty-two years, or,
26 if an invalid child, forty dollars a month, to continue as
27 long as such child remains an invalid: *Provided, how-*
28 *ever,* That if such widow or invalid widower shall re-
29 marry within ten years from the date of the death of
30 such employee, such widow or widower shall be paid at
31 the time of remarriage twenty percent of the amount
32 that would be due for the period remaining between the
33 date of such remarriage and the end of ten years from
34 the date of death of such employee, and such widow or
35 widower shall be advised in writing by the commissioner
36 of his or her rights under this proviso at the time of mak-
37 ing the original award: *Provided, further,* That if upon
38 investigation and hearing, as provided in article five of
39 this chapter, it shall be ascertained that such widow or
40 widower is living with a man or woman, as the case may
41 be, as man and wife and not married, or that the widow
42 is living a life of prostitution, the commissioner shall
43 stop the payments of the benefits herein provided to such
44 widow or widower.

45 If the deceased employee be a widow or widower and
46 leaves a child or children under the age of eighteen years,
47 the payments shall be forty-five dollars a month to each

48 child until he or she reaches the age of eighteen years,
49 or where such child after reaching eighteen years of age
50 continues as a full-time student in an accredited high
51 school, college, university, business or trade school to be
52 paid until such child reaches the age of twenty-two years.

53 In all awards of compensation to children, unless other-
54 wise provided herein, the award shall be until they reach
55 the age of eighteen years or until their death prior
56 thereto.

57 (c) If the deceased employee leaves no dependent
58 widow or widower and leaves a wholly dependent father
59 or mother, he or she shall be paid the sum of eighty dol-
60 lars a month, payments to continue until death, and if
61 there be no widow or widower and both the father and
62 mother are wholly dependent, then a joint award shall
63 be made to the father and mother in the sum of eighty
64 dollars a month until death.

65 Upon the death of either the father or mother in any
66 case in which a joint award has been made to them, the
67 full award of eighty dollars a month shall be paid to the
68 survivor until his or her death.

69 (d) If the deceased employee leaves no dependent
70 widow or widower or wholly dependent father or mother
71 but there are other wholly dependent persons, as defined
72 in subdivision (f) of this section, the payment shall
73 be sixty-five dollars a month, to continue for six years
74 after the death of the deceased, except as otherwise pro-
75 vided herein.

76 (e) If the deceased employee leaves no dependent
77 widow or widower, child under eighteen years of age,
78 or wholly dependent person, but there are partially de-
79 pendent persons at the time of death, the payment shall
80 be thirty-five dollars a month, to continue for such por-
81 tion of the period of six years after the death, as the com-
82 missioner may determine, but no such partially depend-
83 ent person shall receive compensation payments as a re-
84 sult of the death of more than one employee.

85 Compensation under subdivisions (b), (c), (d) and (e)
86 hereof shall, except as may be specifically provided to
87 the contrary therein, cease upon the death of the depend-

88 ent, and the right thereto shall not vest in his or her
89 estate.

90 (f) Dependent, as used in this chapter, shall mean a
91 widow, invalid widower, child under eighteen years of
92 age, or under twenty-two years of age when a full-time
93 student as provided herein, invalid child or posthumous
94 child, who, at the time of the injury causing death, is de-
95 pendent in whole or in part for his or her support upon
96 the earnings of the employee; also the following persons
97 who are and continue to be residents of the United States
98 or its territorial possessions: Stepchild under eighteen
99 years of age, or under twenty-two years of age when a
100 full-time student as provided herein, child under eighteen
101 years of age legally adopted prior to the injury causing
102 death, or under twenty-two years of age when a full-
103 time student as provided herein, father, mother, grand-
104 father or grandmother, who at the time of the injury
105 causing death, is dependent in whole or in part for his
106 or her support upon the earnings of the employee; and
107 invalid brother or sister wholly dependent for his or her
108 support upon the earnings of the employee at the time
109 of the injury causing death.

§23-4-14. Computation of benefits.

1 The average weekly wage earnings, wherever earned,
2 of the injured person at the date of injury, and the
3 average weekly wage in West Virginia as determined
4 by the commissioner of employment security, in effect
5 at the date of injury, shall be taken as the basis upon
6 which to compute the benefits.

7 In cases involving occupational pneumoconiosis or
8 other occupational diseases, the "date of injury" shall
9 be the date of the last exposure to the hazards of occu-
10 pational pneumoconiosis or other occupational dis-
11 eases.

12 In computing benefits payable on account of occu-
13 pational pneumoconiosis, the commissioner shall deduct
14 the amount of all prior workmen's compensation benefits
15 paid to the same claimant on account of silicosis, but a
16 prior silicosis award shall not, in any event, preclude an

17 award for occupational pneumoconiosis otherwise pay-
18 able under this article.

19 The expression "average weekly wage earnings, wher-
20 ever earned, of the injured person, at the date of injury,"
21 within the meaning of this chapter, shall be two months,
22 six or twelve months immediately preceding the date
23 of the injury.

24 The expression "average weekly wage in West Vir-
25 ginia," within the meaning of this chapter, shall be the
26 average weekly wage in West Virginia as determined
27 by the commissioner of employment security in accor-
28 dance with the provisions of sections ten and eleven,
29 article six, chapter twenty-one-a of the code of West
30 Virginia, one thousand nine hundred thirty-one, as
31 amended, and other applicable provisions of said chap-
32 ter twenty-one-a.

**§23-4-15. Application for benefits; report of injuries by
employer.**

1 To entitle any employee or dependent of a deceased
2 employee to compensation under this chapter, other than
3 for occupational pneumoconiosis or other occupational
4 disease, the application therefor must be made on the
5 form or forms prescribed by the commissioner and filed
6 in the office of the commissioner within one year from
7 and after the injury or death, as the case may be, and
8 all proofs of dependency in fatal cases must likewise be
9 filed with the commissioner within one year from and
10 after the death. In case the employee is mentally or
11 physically incapable of filing such application, it may
12 be filed by his attorney or by a member of his family.
13 It shall be the duty of every employer to report to the
14 commissioner every injury sustained by any person in
15 his employ. Such report shall be on forms prescribed
16 by the commissioner and shall be made within sixty
17 days from the date the employer first receives knowledge
18 of such injury.

19 To entitle any employee to compensation for occu-
20 pational pneumoconiosis under the provisions hereof, the
21 application therefor must be made on the form or forms
22 prescribed by the commissioner and filed in the office

23 of the commissioner within three years from and after
24 the last day of the last continuous period of sixty days
25 or more during which the employee was exposed to
26 the hazards of occupational pneumoconiosis, or, in the
27 case of death, the application shall be filed as aforesaid
28 by the dependent of such employee within one year
29 from and after such employee's death.

30 To entitle any employee to compensation for occu-
31 pational disease other than occupational pneumoconiosis
32 under the provisions hereof, the application therefor must
33 be made on the form or forms prescribed by the com-
34 missioner and filed in the office of the commissioner
35 within three years from and after the day on which
36 the employee was last exposed to the particular occu-
37 pational hazard involved, or, in the case of death, the
38 application shall be filed as aforesaid by the dependent
39 of such employee within one year from and after such
40 employee's death.

**§23-4-15b. Determination of nonmedical questions by com-
missioner—Claims for occupational pneumo-
coniosis; hearing.**

1 If a claim for occupational pneumoconiosis benefits be
2 filed by an employee, the commissioner shall determine
3 whether the claimant was exposed to the hazards of oc-
4 cupational pneumoconiosis for a continuous period of
5 not less than sixty days while in the employ of the
6 employer within three years prior to the filing of his
7 claim, whether in the state of West Virginia the claimant
8 was exposed to such hazard over a continuous period of
9 not less than two years during the ten immediately
10 preceding the date of his last exposure thereto and
11 whether the claimant was exposed to such hazard over
12 a period of not less than ten years during the fifteen
13 years immediately preceding the date of his last ex-
14 posure thereto. If a claim for occupational pneumocon-
15 iosis benefits be filed by a dependent of a deceased
16 employee, the commissioner shall determine whether
17 the deceased employee was exposed to the hazards of
18 occupational pneumoconiosis for a continuous period of
19 not less than sixty days while in the employ of the

20 employer within ten years prior to the filing of the
21 claim, whether in the state of West Virginia the de-
22 ceased employee was exposed to such hazard over a
23 continuous period of not less than two years during
24 the ten years immediately preceding the date of his
25 last exposure thereto and whether the claimant was
26 exposed to such hazard over a period of not less than
27 ten years during the fifteen years immediately preceding
28 the date of his last exposure thereto. The commissioner
29 shall also determine such other nonmedical facts as
30 may in his opinion be pertinent to a decision on the
31 validity of the claim.

32 The commissioner shall give each interested party
33 notice in writing of his findings with respect to all such
34 nonmedical facts and such findings shall be subject to
35 objection and hearing as provided in section one, article
36 five of this chapter.

**§23-4-15c. Same—Hearing on claim for occupational diseases
other than occupational pneumoconiosis.**

1 On the hearing of a claim for compensation for an
2 occupational disease other than occupational pneumoco-
3 niosis, the commissioner shall hear, determine and file
4 findings covering, but not limited to, the following non-
5 medical questions:

6 (a) Whether the employee was in fact, within three
7 years prior to the filing of his claim, in the employ of
8 the employer, and, if so, the duration of such employment
9 and whether or not such employment was subject to the
10 provisions hereof.

11 (b) The occupation or occupations, process or pro-
12 cesses, in which the employee was engaged during such
13 employment and the approximate periods of work in each
14 such occupation or process.

15 (c) The employments, previous and subsequent to the
16 employment out of which the claim arose, the duration
17 thereof and the exposure therein to the hazard causing
18 the occupational disease.

19 (d) Whether the last injurious exposure to the hazard
20 causing occupational disease in the employment with the

21 employer occurred within three years prior to the filing
22 of the claim, and if the employee is no longer in the
23 service of the employer, the date upon which such em-
24 ployee ceased so to work; and, if the employee has died,
25 the date and place of such death, and the place of inter-
26 ment of the body.

27 The parties may in writing waive the hearing required
28 by this section, in which case the commissioner shall
29 determine the nonmedical facts listed above, and such
30 other nonmedical facts as may in his opinion be pertinent
31 to a decision on the validity of the claim.

32 The commissioner shall give each interested party
33 notice in writing of his findings with respect to all such
34 nonmedical facts, and such findings shall be subject to
35 objection and hearing as provided in section one, article
36 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.

1 In addition to any and all authority and power hereto-
2 fore granted to the county court of Berkeley county with
3 respect to the expenditure of unexpended sums and sur-
4 pluses such county court is hereby authorized and em-
5 powered to use fifteen thousand dollars of unexpended
6 sums and surpluses, presently or hereafter existing, in
7 the general fund or in any special fund of said county, for

8 the purpose of paying for the expenses of the Berkeley
9 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
2 within the said county of Cabell, concurrent with the
3 circuit court, of all matters and causes arising out of or
4 pertaining to annulment of marriages, separate maintenance suits, divorce, alimony, the custody and maintenance
5 of children of litigants and the adjudication of property
6 rights arising out of the same, and all other matters and
7 causes coming within the purview of chapter forty-eight
8 of the code of West Virginia, one thousand nine hundred
9 thirty-one, and all amendments and reenactments thereof
10 concerning domestic relations, habeas corpus proceedings
11 involving the award and custody of children under
12

13 the age of twenty-one years; of all matters and causes
14 coming within the purview of chapter forty-nine of the
15 code of West Virginia, one thousand nine hundred thirty-
16 one, as enacted by chapter one, acts of the Legislature
17 of West Virginia, one thousand nine hundred thirty-
18 six, and of all amendments and reenactments thereof,
19 commonly known as the child welfare law; of all mat-
20 ters and causes coming within the purview of chapter
21 eighteen of the code of West Virginia, one thousand nine
22 hundred thirty-one, and all amendments and reenact-
23 ments thereof, commonly called the general school law;
24 of all matters and causes coming within the purview of
25 chapter forty-eight of the code of West Virginia, one
26 thousand nine hundred thirty-one, and of all amendments
27 and reenactments thereof, commonly known as the re-
28 ciprocal dependency law; of all matters and causes com-
29 ing within the purview of chapter forty-eight of the code
30 of West Virginia, one thousand nine hundred thirty-one,
31 and all amendments and reenactments thereof, commonly
32 known as the adoption law; and of all matters and causes
33 coming within the purview of chapter forty-eight of the
34 code of West Virginia, one thousand nine hundred thirty-
35 one, and of all amendments and reenactments thereof,
36 commonly known as the change of name law; and of all
37 matters and causes coming within the purview of chap-
38 ter forty-eight of the code of West Virginia, one thou-
39 sand nine hundred thirty-one, and of all amendments and
40 reenactments thereof, commonly known as the mainten-
41 ance of illegitimate children law; and of all matters and
42 causes coming within the purview of chapter forty-four,
43 article ten, section fourteen of the code of West Virginia,
44 one thousand nine hundred thirty-one, and of all amend-
45 ments and reenactments thereof, commonly known as
46 the approval of the compromising of infants' claims for
47 damages; and of all matters and causes coming within
48 the purview of chapter forty-eight, article one, section
49 six-c of the code of West Virginia, one thousand nine
50 hundred thirty-one, and of all amendments and reenact-
51 ments thereof, commonly known as the issuance of mar-
52 riage license in case of emergency or extraordinary cir-
53 cumstances; and of all matters and causes coming within

54 the purview of chapter thirty-seven of the code of West
55 Virginia, one thousand nine hundred thirty-one, and of
56 all amendments and reenactments thereof, commonly
57 known as the approval of the sale, lease or mortgage of
58 infants' lands, and of all matters and causes coming
59 within the purview of all other or future acts of the
60 Legislature touching the subject matter of any and all
61 said laws and acts, and the amendments and reenact-
62 ments thereof, and of the common law of said state relat-
63 ing to the subject matter thereof. Independently of any
64 of the foregoing matters, the said domestic relations
65 court shall also have and is hereby given what was here-
66 tofore recognized as general equity jurisdiction concur-
67 rent with the circuit court, excepting in cases involving
68 the enforcement of criminal laws and labor disputes, and
69 excepting cases where it shall appear from the pleadings
70 that matter or thing in controversy exceeds in value the
71 sum of three hundred fifty thousand dollars. The pro-
72 ceedings and modes of procedure and power and juris-
73 diction conferred by law upon the circuit court or the
74 common pleas court in any and all of said matters and
75 causes are hereby conferred upon and shall be exercised
76 by said domestic relations court.

77 The court is authorized and empowered to appoint and
78 discharge one chief probation officer at a yearly salary
79 of eight thousand seven hundred fifty dollars and a pro-
80 bation officer at a yearly salary of eight thousand five
81 hundred dollars, which said salaries shall be paid by the
82 county court monthly, and in addition thereto the said
83 county court shall reimburse the said probation officers
84 of their necessary expenses actually incurred monthly
85 in the performance of official duties including an allow-
86 ance of ten cents per mile for their automobile driven
87 in the performance of official duties. The court is fur-
88 ther authorized and empowered to appoint and discharge
89 such medical, clerical and secretarial assistance as shall
90 enable it to discharge all of the duties required of it
91 under the provisions of this act and the general laws of
92 the state and such person or persons shall be paid by the
93 county court monthly upon the written approval of the
94 judge of the said court.

CHAPTER 155

(House Bill No. 809—By Mr. Griffith
and Mr. Brenda)

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

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 autho-
- 2 rized and empowered by order entered of record, to create
- 3 a board of trustees for the purpose of establishing, im-
- 4 proving, maintaining, administering and managing a
- 5 children's shelter in Hancock county.

§2. Name of home.

1 The home created hereby shall be designated the Han-
2 cock county children's home.

§3. Board of trustees—Duties.

1 The board of trustees created by the county court
2 authorized by this act shall be known as the Hancock
3 county children's home board of trustees. The board of
4 trustees shall provide, maintain, administer and manage
5 at the expense of Hancock county, a suitable home or
6 place for a children's shelter.

§4. Same—Appointment; terms; vacancies.

1 There is hereby created a board of trustees of the
2 children's shelter in Hancock county, hereinafter re-
3 ferred to as the board of trustees which shall be com-
4 posed of nine members. Three members of the board of
5 trustees shall be the commissioners of the county court
6 of Hancock county and six remaining members shall be
7 two residents from each of the three magisterial dis-
8 tricts in Hancock county, to be appointed by the county
9 court of Hancock county. The terms of office for each
10 of the six members shall be six years; and shall continue
11 to be in rotation as they have been in the past; also
12 all present members shall serve out their respective
13 terms. Should any appointed member remove his resi-
14 dence from the magisterial district from which he is
15 appointed, his office shall be deemed vacated. The county
16 court shall fill all vacancies that may arise from time
17 to time for the unexpired terms. All appointments of
18 trustees shall be made upon recommendation of the board
19 of trustees. No more than three of the noncounty court
20 members of the board shall belong to the same political
21 party.

§5. Same—Powers and duties; rules and regulations; budget.

1 The board of trustees shall be responsible to the county
2 court of Hancock county for the performance of its
3 duties. The members of the board of trustees shall serve
4 without compensation except such as may be fixed by
5 the board from time to time for the secretary and trea-

6 surer and approved by the county court; the board of
7 trustees shall formulate policy and adopt administrative
8 procedures; they shall provide for the employment and
9 shall have the power to remove and fix the compensation
10 of such persons as in its opinion may be necessary for
11 the operation, maintenance, administration and manage-
12 ment of the property under its control, subject, however,
13 to the prior approval of the county court to all of the
14 foregoing and to the appropriation of funds for such
15 purposes. The power and authority to manage and
16 control shall include the power to make rules and reg-
17 ulations and to enforce such rules and regulations as
18 may be necessary for the management of said home.
19 The board shall prepare and submit to the county court
20 an annual budget for the operation of the home. No
21 expenditure in excess of said budget shall be made by
22 the board of trustees without prior approval by the county
23 court.

§6. Same—Appointment of superintendent and personnel; compensation.

1 It shall be the duty of the board of trustees to appoint
2 a superintendent to take charge of the home and chil-
3 dren, together with other adequate personnel, and gen-
4 erally to maintain order and discipline among the children
5 so committed into their keeping. The salary or com-
6 pensation to be paid to said superintendent and the
7 personnel of said home shall be fixed by the board of
8 trustees and certified to the county court as one of the
9 expenses of maintaining said home, with prior written
10 approval of the county court.

§7. Same—Officers; meetings.

1 (a) The officers of the said board shall be a chairman,
2 who shall be the president of the county court, a vice
3 chairman, who shall be a nonmember of the county
4 court, a secretary and a treasurer both of whom shall be
5 nonmembers of the county court.

6 (b) The treasurer shall furnish bond every year with
7 surety approved by the county court for a sum set by

8 the county court which shall be a minimum of one half
9 of the annual budget for the operation of the shelter.

10 (c) The board of trustees shall have the authority
11 to fix the time and place of their meetings: *Provided,*
12 *however,* That the board shall hold at least one meeting
13 every month. Special meetings may be called when
14 desired. Five members present at a meeting shall con-
15 stitute a quorum. No member may vote by proxy. The
16 chairman shall preside at all meetings and may vote
17 only in case of a tie. In the absence of the chairman,
18 the vice chairman of the board shall be the presiding
19 officer; if both chairman and vice chairman are absent,
20 then, the board, if a quorum is present, may elect a pre-
21 siding officer for the meeting to be held.

22 (d) All meetings of the board of trustees shall be
23 held in accordance with Robert's Rules of parliamentary
24 procedure except where otherwise provided herein.

§8. Hancock county children's shelter fund; special funds.

1 (a) The county court of Hancock county is hereby
2 authorized and empowered to create and maintain a
3 fund to be known and designated as the "Hancock County
4 Children's Shelter Fund". In addition to the authority
5 to transfer certain surpluses from its various funds here-
6 tofore given to the Hancock county court by legislative
7 enactment, the county court of Hancock county is hereby
8 authorized and empowered to transfer all funds not used
9 by the various departments and administrative divi-
10 sions, for which funds have been and will in the future
11 be lawfully appropriated by the said county court of
12 Hancock county, to the said children's shelter fund. Said
13 transfer may be effected only on the last day of each
14 fiscal year. The said fund shall be in the custody of the
15 sheriff of Hancock county who shall be ex officio the
16 treasurer for said board and who shall be liable on his
17 official bond to the board and shall account to the board
18 annually therefor in like manner as he accounts for other
19 public moneys.

20 The county court is hereby authorized and empowered
21 to levy annually as it does for all other county funds,

22 for the purpose of maintenance, making improvements,
23 additions, purchase of additional buildings and facilities,
24 installation and construction and improvement of recre-
25 ational facilities, to, for, and in behalf of said children's
26 shelter.

27 (b) The board of trustees is hereby authorized and
28 empowered to create, establish and maintain a fund to
29 be designated as the "Board of Trustees Children's Shel-
30 ter Fund". This fund shall be under the control and
31 custody of and administered by the said board. No money
32 raised by taxation or by transfer of funds raised by tax-
33 ation shall be deposited in this fund. Only money raised
34 by or received from any source or method or means
35 other than by taxation or by transfer of funds created
36 by taxation shall be deposited in the said fund. All dis-
37 bursements from the said fund in the custody and control
38 of the board of trustees shall be on authorization of the
39 said board recorded in the minutes of the said board
40 and on voucher signed by the chairman of the said board
41 and the treasurer thereof.

42 All record books of the board of trustees shall be avail-
43 able to the public for inspection at the office of the clerk
44 of the county court of Hancock county during regular
45 hours of business on the last five days of each calendar
46 month, and at no time while said books are in the office
47 of the said clerk shall anyone be permitted to remove
48 them therefrom.

49 (c) The board of trustees is further authorized and
50 empowered to create, establish and maintain a fund to
51 be designated as the "Hancock County Children's Home
52 Education Fund". No money raised by taxation or by
53 transfer of funds raised by taxation shall be deposited
54 in this fund. Said fund shall be used exclusively for
55 educational purposes for the children of said shelter
56 both before and after graduation from high school, in-
57 cluding trade school and college expenses, in order to
58 prepare said children to properly maintain and support
59 themselves. All disbursements from said fund shall be
60 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

22 for the purpose of maintenance, making improvements,
23 additions, purchase of additional buildings and facilities,
24 installation and construction and improvement of recre-
25 ational facilities, to, for, and in behalf of said children's
26 shelter.

27 (b) The board of trustees is hereby authorized and
28 empowered to create, establish and maintain a fund to
29 be designated as the "Board of Trustees Children's Shel-
30 ter Fund". This fund shall be under the control and
31 custody of and administered by the said board. No money
32 raised by taxation or by transfer of funds raised by tax-
33 ation shall be deposited in this fund. Only money raised
34 by or received from any source or method or means
35 other than by taxation or by transfer of funds created
36 by taxation shall be deposited in the said fund. All dis-
37 bursements from the said fund in the custody and control
38 of the board of trustees shall be on authorization of the
39 said board recorded in the minutes of the said board
40 and on voucher signed by the chairman of the said board
41 and the treasurer thereof.

42 All record books of the board of trustees shall be avail-
43 able to the public for inspection at the office of the clerk
44 of the county court of Hancock county during regular
45 hours of business on the last five days of each calendar
46 month, and at no time while said books are in the office
47 of the said clerk shall anyone be permitted to remove
48 them therefrom.

49 (c) The board of trustees is further authorized and
50 empowered to create, establish and maintain a fund to
51 be designated as the "Hancock County Children's Home
52 Education Fund". No money raised by taxation or by
53 transfer of funds raised by taxation shall be deposited
54 in this fund. Said fund shall be used exclusively for
55 educational purposes for the children of said shelter
56 both before and after graduation from high school, in-
57 cluding trade school and college expenses, in order to
58 prepare said children to properly maintain and support
59 themselves. All disbursements from said fund shall be
60 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

5 state, and who shall discharge such secretarial duties as
 6 may be assigned to him by the judge; said law assistant,
 7 while acting as such, shall not engage in the practice of
 8 law, but shall devote his time to the duties of his office,
 9 and may be removed and his successor appointed at any
 10 time by the judge. Said law assistant shall receive a
 11 salary of twelve thousand dollars per year payable month-
 12 ly, and the county court of Kanawha county shall an-
 13 nually, at its levy session, provide for the payment out
 14 of general county funds the amount of the salary so
 15 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 adding 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 reporter.

1 In order to insure that records of trials in such court
 2 may be promptly prepared so as to enable convicted
 3 persons to seek judicial review, without at the same time

4 delaying the trial of other cases pending in such court,
5 the judge of such court is hereby authorized, subject to
6 the limits of available funds, to appoint, in accordance
7 with the provisions of section one, article seven, chapter
8 fifty-one of the code of West Virginia, one thousand nine
9 hundred thirty-one, as amended, more than one official
10 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.

1 Chapter one hundred sixty-four, acts of the Legislature,
2 regular session, one thousand nine hundred thirty-nine,
3 is hereby repealed, and the public library of Marion
4 county is hereby authorized to transfer its funds and
5 other assets to the Marion county library effective with
6 its organization under the provisions of article one, chap-
7 ter ten of the code of West Virginia, one thousand nine
8 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
2 county to provide all record and other books and sta-
3 tionery, postage, and supplies that may be necessary
4 for said court. Likewise a seal for said court shall be
5 provided and full faith and credit shall be given to the
6 records of the court and certificates of its judge or clerk
7 in like manner and with the same effect as if the same
8 were records of the circuit court similarly authenticated.
9 The county court of Marshall county shall likewise fur-
10 nish such rooms, furniture and equipment for the proper
11 conduct and administration of said court and shall,
12 through annual levy and appropriations, make provision
13 for the payment for all such rooms, supplies and equip-
14 ment. It shall be the duty of the county court of Mar-

15 shall county to pay the salary of a full-time secretary
16 in the office of the judge of said court, to be appointed
17 by said judge, whose compensation shall be determined
18 by the judge, and by the county court.

§14. Probation officer same as circuit court.

1 The probation officer for the circuit court shall also
2 be and act as the probation officer for the common pleas
3 court for which he shall receive no additional compen-
4 sation. The judge may appoint a juvenile probation offi-
5 cer to supervise all juveniles placed on probation by the
6 court. For his services such probation officer shall be
7 paid an annual salary, to be determined by the judge
8 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.]

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.

§1. Expenditure of county funds authorized.

1 The county court of Mason county shall have authority
2 to make provisions in its budget and to expend county

3 funds, on lands owned or hereafter acquired by the county
4 court for the improvement, maintenance and equipment
5 of a Four-H and youth camp to be used for educational
6 and recreational purposes.

§2. Mason county Four-H and youth camp board; appointment and duties.

1 There is hereby created a board of Four-H and youth
2 camp commissioners to be known as the "Mason County
3 Four-H and Youth Camp Board." The board shall con-
4 sist of five members and shall be a body corporate. The
5 members of the board shall be appointed by the county
6 court of Mason county as hereinafter provided. The
7 board shall have control, management and supervision
8 of the camp and its use.

9 All members of the board shall be residents and quali-
10 fied voters of Mason county.

11 Before serving as a member of the "Mason County
12 Four-H and Youth Camp Board" each member shall take
13 and subscribe an oath that he will faithfully perform
14 his duties as a member of the board. Such oath shall be
15 administered by the clerk of the county court of Mason
16 county.

§3. Organization meeting of the board.

1 The first meeting of the board shall be held at the
2 time and place to be designated by the county court,
3 within thirty days after the effective date of this act.
4 Thereafter, regular meetings shall be held as prescribed
5 by rules adopted by the board. Special meetings may be
6 held at any time as prescribed by such rules, or when
7 called by the president or any three members of the
8 board. The board shall elect from its members a presi-
9 dent and a secretary. The president shall preside as
10 chairman of the meetings and shall not vote upon any
11 matter except in case of a tie. A majority of the members
12 shall constitute a quorum for the transaction of business.

13 The secretary shall keep, or cause to be kept, a record
14 of all receipts and expenditures of the board. Such record
15 shall be submitted to the county court at least every six
16 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
2 such persons as may be approved by the county court.
3 No expenditure shall be made for any purposes under
4 this act, except upon written recommendation of the
5 board.

§5. Estimates of expenditures; limitations.

1 The Four-H and youth camp board may each year, prior
2 to the levy term of county court, submit to the court a
3 detailed estimate of the amount needed for any of the
4 purposes enumerated in section one of this act. In mak-
5 ing its levy estimate, the court may provide for all, or
6 any portion, of the funds needed by the board for such
7 purposes.

§6. Additional funds.

1 The county court of Mason county may, from time to
2 time, authorize the Four-H and youth camp board to
3 expend moneys for the purposes of this act in addition to
4 county funds, but before any such expenditures are
5 authorized to be made by the board, the limit of such
6 expenditures shall be fixed by the court. Neither the
7 court nor the county shall, in any event, be liable for any
8 expenditures made or indebtedness incurred by the board.
9 The board is authorized to solicit and receive donations
10 and gifts for use and maintenance of the camp.

C

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.
- §9. Severability.

§1. Created; joint support by board of education and county court.

1 There is hereby created a public library, which shall
2 be known as the "Raleigh County Public Library," which
3 shall be supported by the board of education of the
4 county of Raleigh and the county court of Raleigh county,
5 as a joint endeavor of the two governing authorities in
6 the manner hereinafter prescribed.

§2. Board of directors; appointment, terms, meetings, powers and duties generally; officers; bylaws, rules and regulations.

1 There shall be a board of five directors, who shall
2 serve without compensation. Before the first day of July,
3 one thousand nine hundred sixty-nine, the board of
4 education of the county of Raleigh shall appoint two
5 members of the said board of directors, appointing one
6 person for a term of one year, and one person for a term
7 of three years; the county court of Raleigh county shall
8 appoint two members of the said board of directors,
9 appointing one person for a term of two years, and one
10 person for a term of four years; and the city of Beckley
11 shall appoint one member of the said board of directors
12 for a term of five years. Said initial terms of office shall

13 commence July first, one thousand nine hundred sixty-
14 nine. Each successor member of said board of directors
15 shall be appointed by that governing authority which
16 shall have appointed the predecessor member, and each
17 such successor member shall be appointed for a term of
18 five years each, except that any person appointed to
19 fill a vacancy occurring before the expiration of the term
20 vacated shall serve only for the unexpired term. A
21 member shall be eligible for reappointment. The govern-
22 ing authority which appointed any member may remove
23 such member for cause. There shall be an annual meet-
24 ing of the board of directors on the second Friday in
25 July in each year, and a monthly meeting on the day in
26 each month which the board may designate in its bylaws.
27 A special meeting may be called by the president, the
28 secretary or any two members of the board, and shall
29 be held only after all the directors are given notice
30 thereof. At all meetings three members shall constitute
31 a quorum. At each annual meeting the board of directors
32 shall elect, from its membership, a president, a vice
33 president, a secretary and a treasurer: *Provided, how-*
34 *ever,* That the librarian may be elected secretary and/or
35 treasurer. The board of directors shall adopt such bylaws,
36 rules and regulations as are necessary for its own guid-
37 ance and for the administration, supervision and pro-
38 tection of the library and all property belonging thereto.
39 The board of directors shall have all the powers neces-
40 sary, convenient and advisable for the proper operation,
41 equipment and management of the said library; and,
42 except as otherwise specially provided in this act, shall
43 have the powers and be subject to the duties which are
44 conferred and imposed, respectively, upon library di-
45 rectors by sections six, seven, eight, nine, ten and eleven
46 of article one of chapter ten of the West Virginia code.
47 The board of directors shall have the benefits arising
48 out of the creation and continuance of the state library
49 commission of West Virginia.

§3. Same—A body corporate.

1 The board of directors of the public library hereby
2 created shall be a corporation. As such it may contract

3 and be contracted with, sue and be sued, plead and be
4 impleaded, and shall have and use a common seal.

§4. Title to property.

1 The title to all property, both real and personal, now
2 devoted to public library purposes by the board of edu-
3 cation of the county of Raleigh in connection with the
4 operation by it of a public library in the city of Beckley
5 and the county of Raleigh, shall, on July first, one thou-
6 sand nine hundred sixty-nine, vest in the board of direc-
7 tors 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
2 operation of the public library hereby created and any
3 and all branches thereof the said supporting governing
4 authorities shall, upon written request by the board of
5 directors of the public library, levy annually as follows
6 within the respective taxing districts of the governing
7 authorities, on each one hundred dollars of assessed
8 valuation of the property taxable in the area served by
9 it according to the last assessment for state and county
10 purposes, amounts not exceeding the following amounts
11 for the fiscal year beginning July first, one thousand
12 nine hundred sixty-nine:

13 A. The county court of Raleigh county, for the first
14 year of the act and annually thereafter: Class one, one
15 and seven hundredths of a cent; class two, two and four-
16 teen hundredths of a cent; class three and class four,
17 four and twenty-eight hundredths of a cent.

18 B. The board of education of the county of Raleigh
19 for the first year of the act and annually thereafter: Class
20 one, one and seven hundredths of a cent; class two, two
21 and fourteen hundredths of a cent; class three and class
22 four, four and twenty-eight hundredths of a cent.

23 In addition to the aforesaid amounts which, upon
24 written request by said board, the governing authorities
25 shall levy, each such governing authority may support
26 the public library with any other general or special
27 revenues or excess levies. All income realized by the
28 operation of the public library from any sources other

29 than the above levies shall be used by the board of
30 directors for support of the public library.

§6. Deposit and disbursement of funds.

1 All money collected or appropriated by said two gov-
2 erning authorities for library purposes shall be deposited
3 in a special account of the board of directors of the
4 Raleigh county public library, and shall be disbursed
5 by that board for the purpose of operating a public
6 library system.

§7. Workmen's compensation, social security and public employees retirement benefits for employees.

1 All employees of the public library hereby created
2 shall be entitled to the benefits of the provisions of chap-
3 ter twenty-three and of articles seven and ten of chapter
4 five of the West Virginia code.

§8. Effect of future amendments of general law.

1 Amendments to article one, chapter ten of the West
2 Virginia code, and other general laws shall control this
3 act only to the extent that they do not conflict with the
4 special features hereof, or unless the intent to amend
5 this act is clear and unmistakable.

§9. Severability.

1 If any provision hereof is held invalid, such invalidity
2 shall not affect other provisions hereof which can be
3 given effect without the invalid provision, and to this
4 end the provisions of this act are declared to be severable.

CHAPTER 162

(House Bill No. 794—By Mr. McGraw)

[Passed February 24, 1969; in effect ninety days from passage. Approved by the Governor.]

AN ACT to authorize the county board of education of Wyoming county 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.

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
2 hereby authorized to transfer from the unexpended bal-
3 ances in the school building fund of one thousand nine
4 hundred fifty-nine to the permanent improvement fund
5 the sum of twenty-four thousand nine hundred ninety-
6 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.

HOUSE CONCURRENT RESOLUTION NO. 20
(Originating in the House Committee on Education)

[Adopted February 25, 1969]

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 Wither-
spoon 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.

HOUSE CONCURRENT RESOLUTION NO. 38

(By Mrs. Withrow)

[Adopted March 8, 1969]

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.

HOUSE JOINT RESOLUTION NO. 7

(By Mr. Nelson and Mr. Dinsmore)

[Adopted March 1, 1969]

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.

§24. Rules governing legislative proceedings.

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

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.

LEGISLATURE OF WEST VIRGINIA

ACTS OF 1968

SECOND EXTRAORDINARY SESSION

(September 11-September 14, 1968)

CHAPTER 1

(Senate Bill No. 14—By Mr. McKown and Mr. McCourt)

[Passed September 13, 1968; in effect from passage. Approved by the Governor.]

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, cut-backs 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
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13 The Workmen's Compensation Commission,
 14 Department of Welfare, Public Service Com-
 15 mission, Department of Natural Resources,
 16 Department of Motor Vehicles, State Road
 17 Commission, State Health Department and
 18 State Tax Department—Income Tax Divi-
 19 sion, shall reimburse the Postage appropria-
 20 tion of the Department of Finance and Ad-
 21 ministration monthly for all meter service.
 22 Any spending unit operating from Special
 23 Revenue or receiving reimbursement for
 24 postage costs from the Federal Government

25 shall refund to the Postage account of the
 26 Department of Finance and Administration
 27 such amounts. Should this appropriation for
 28 Postage be insufficient to meet the mailing
 29 requirements of the State spending units as
 30 set out above, any excess postage meter
 31 service requirements shall be a proper
 32 charge against the units, and each spending
 33 unit shall refund to the Postage appropria-
 34 tion of the Department of Finance and Ad-
 35 ministration any amounts required for that
 36 Department for postage in excess of this
 37 appropriation.

38 Any unexpended balance remaining in the
 39 "Postage Account" and all "Records Man-
 40 agement Accounts" at the close of the fiscal
 41 year 1967-68 are hereby reappropriated for
 42 expenditure during the fiscal year 1968-69.

43 The State Road Commission shall reimburse
 44 the appropriation of the Department of Fi-
 45 nance and Administration monthly for all
 46 actual expenses incurred pursuant to (the
 47 provision of) chapter 17, article 2-a, section
 48 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

1 Salary of Commissioner	\$ 14,000.00
2 Other Personal Services	3,842,950.00
3 Current Expenses	898,200.00
4 Repairs and Alterations	40,000.00
5 Equipment	45,300.00
6 Social Security Matching Fund	181,633.00
7 Public Employees Retirement Matching Fund	204,531.00

8 Total.....\$ 5,226,614.00

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

14 There is hereby appropriated from liquor reve-
 15 nues, in addition to the above appropriation,
 16 the necessary amount for the purchase of
 17 liquor, as provided by law.

18 It is the purpose of this appropriation to pro-
 19 vide additional funds to the West Virginia
 20 Alcohol Beverage Control Commissioner to
 21 permit him to make adjustments in salaries
 22 of employees providing a five percent in-
 23 crease 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	
2 Service	\$ 1,676,600.00
3 Concord College — Additional Amount for	
4 Maintenance Building	27,500.00
5 W. Va. Institute of Technology—Purchase of	
6 Maintenance Buildings	77,500.00
7 Glenville State College — Forest Technology	
8 Building	150,000.00
9 Glenville State College—Land Acquisition	10,000.00
10 Bluefield State College—Additional Amount	
11 for Tech. - Science Bldg. Addition	150,000.00
12 Bluefield State College—Basic Science Build-	
13 ing	2,100,000.00
14 Bluefield State College—Land Acquisition	70,000.00
15 Bluefield State College—Library Addition	480,000.00
16 W. Va. Institute of Technology — Library	
17 Building	1,800,000.00
18 W. Va. Institute of Technology—Land Acquisi-	
19 tion	100,000.00

20	W. Va. Institute of Technology—Community-	
21	Technical College Building	1,000,000.00
22	West Liberty State College — Library-Class-	
23	room Building	1,800,000.00
24	Marshall University—Communications Build-	
25	ing	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	2,170,000.00
31	Concord College—Land Acquisition	125,000.00
32	Fairmont State College—Science Building....	2,800,000.00
33	Glenville State College—Classroom Building	2,100,000.00
34	Glenville State College—Land Acquisition....	100,000.00
35	Shepherd College—Fine Arts Building	1,900,000.00
36	Fairmont State College—Health-Phy. Educ.	
37	Building	1,000,000.00
38	Marshall University — Engineering - Science	
39	Building	4,000,000.00
40	Marshall University—Land Acquisition	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	

59 of passage. It is intended that only complete
60 and usable units or projects be constructed
61 and equipped and then only in the listed
62 order of priority: *Provided, however,* That
63 the amounts shown for each unit or project
64 shall include in said amount matching-grant
65 funds from governmental or nongovern-
66 mental sources: And provided further, That
67 whenever the amount in the Capital Im-
68 provement Fund including both cash collec-
69 tions and the proceeds of bond sale, shall be
70 sufficient to cover all capital expenditures
71 authorized above, then the listed projects
72 shall be considered of equal priority and
73 all of them, or any one or more, may be
74 constructed as soon as plans can be prepared
75 and contracts let therefor.

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

80 Any unexpended balance remaining in this ap-
81 propriation at the close of the fiscal year
82 1967-1968 is hereby reappropriated for ex-
83 penditure during the fiscal year 1968-1969.

84 The appropriation heretofore authorized by
85 the Legislature for expenditure during the
86 fiscal years 1967-68, set forth in the Budget
87 Bill, regular session, 1967, acts of said ses-
88 sion, chapter eighteen, section 2, Appropria-
89 tions from Other Funds, pages 134 and 135,
90 inclusive, State Board of Education--Special
91 Capital Improvement Fund, Account No.
92 854, lines 19 through 62, inclusive, is hereby
93 voided and superseded by the above appro-
94 priation.

95 Out of funds in excess of the above appropria-
96 tion of a sum of \$80,000.00 shall be made
97 available to Concord College for the de-
98 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.

§51-2-1ee. Thirty-first circuit.

- 1 For the county of Morgan, on the first Tuesday in
- 2 January, April and September.
- 3 For the county of Jefferson, on the third Tuesday in
- 4 January, April and September.
- 5 For the county of Berkeley, on the third Tuesday in
- 6 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.

1 A county court, a county board of education or a mu-
2 nicipal government is hereby authorized and empowered
3 to become a community action program organization or
4 agency pursuant to Title II of the "Federal Economic
5 Opportunity Act of 1964", as amended. If any one of the
6 foregoing governmental agencies shall be designated
7 under said Title II as a community action program organ-
8 ization or agency, it shall have the power and authority
9 to conduct, operate and manage a community action pro-
10 gram in conformity with the requirements of the federal
11 economic opportunity act; to apply for, receive and dis-
12 burse all federal funds made available to it for the purpose
13 of carrying out its duties under the federal economic
14 opportunity act; and to receive grants and gifts from
15 private or local public sources and disburse the same.
16 Whenever a county court, county board of education or
17 municipal government is acting as a community action
18 program organization or agency, such county court,
19 county board of education or municipal government may
20 establish a governing board to administer such community
21 action program, such governing board to be selected in
22 compliance with the provisions of the federal economic
23 opportunity act and such rules and regulations as may
24 be adopted by such county court, county board of educa-
25 tion or municipal government, the promulgation of which
26 is hereby authorized; may transfer any of the funds,
27 grants and gifts referred to above to such governing board,
28 if such transfer is in conformity with the provisions of
29 the federal economic opportunity act; and may delegate
30 to such governing board all authority necessary and con-
31 venient to enable it to perform and carry out its duties.

CHAPTER 4

(Senate Bill No. 1—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 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 com-
2 missioner, is hereby designated the sponsor or agent of
3 the United States department of labor for the establish-
4 ment and operation within the state of West Virginia
5 of the work incentive program for recipients of aid under
6 Part A of Title IV of the Social Security Act. Such
7 work incentive program is provided for in Part C of said
8 Title IV of said Social Security Act. Part C was enacted
9 by the Ninetieth Congress in Social Security Amend-
10 ments of 1967, Public Law 90-248, under Section 204
11 thereof.

12 The commissioner, on behalf of the department, may
13 do any and all acts necessary to establish and operate such
14 work incentive program within the state of West Virginia.

15 The commissioner is hereby empowered and authorized
16 to enter into agreements with the secretary of labor, or
17 his designee, for the purpose of establishing and oper-
18 ating said work incentive program, or any part thereof,
19 within the state of West Virginia.

CHAPTER 5

(House Bill No. 3—By Mr. Speaker, Mr. White)

[Passed September 14, 1968; in effect from passage. Approved by the Governor.]

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

- 31-18-1. Short title.
- 31-18-2. Legislative findings and purpose.
- 31-18-3. Definitions.
- 31-18-4. Creation and establishment of fund; board of directors; appointment, term, etc., of private members; chairman and vice chairman; quorum.
- 31-18-5. Management and control of fund vested in board; officers.
- 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.
- 31-18-9. Borrowing of money.
- 31-18-10. Sale of notes or bonds.
- 31-18-11. Authorizing resolutions.
- 31-18-12. Validity of any pledge, mortgage, deed of trust or security instrument.
- 31-18-13. Redemption of notes or bonds.
- 31-18-14. Disclaimer of any liability of state of West Virginia.
- 31-18-15. Limitation of rights vested in housing development fund by state.
- 31-18-16. Default in payment of principal or interest.
- 31-18-17. Investment in notes and bonds.
- 31-18-18. Tax exemption.
- 31-18-19. Operating loan fund.
- 31-18-20. Authorized limit on borrowing.
- 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.

31-18-24. Annual audit.

31-18-25. Severability clause.

§31-18-1. Short title.

- 1 This article shall be known and may be cited as the
- 2 "West Virginia Housing Development Fund Act."

§31-18-2. Legislative findings and purpose.

1 (a) The Legislature hereby finds and declares that
2 as a result of public actions involving highways, public
3 facilities, flood control projects, and urban renewal ac-
4 tivities, and as a result of the spread of slum conditions
5 and blight to formerly sound urban and rural neighbor-
6 hoods, there exists in the state of West Virginia a serious
7 shortage of sanitary, decent and safe residential housing
8 available at low prices or rentals to persons and families
9 of low and moderate income. This shortage is severe in
10 certain urban areas of the state, especially critical in the
11 rural areas of West Virginia, and is inimical to the
12 health, welfare and prosperity of all residents of the
13 state and to the sound growth of West Virginia com-
14 munities.

15 (b) The Legislature hereby finds and declares further
16 that private enterprise and investment have not been able
17 to produce, without assistance, the needed construction of
18 sanitary, decent and safe residential housing at low prices
19 or rentals which persons and families of low and moderate
20 income can afford, or to achieve the urgently needed
21 rehabilitation of much of the present low and moderate
22 income housing stock. It is imperative that the supply
23 of residential housing for persons and families displaced
24 by public actions or natural disaster be increased; and
25 that private enterprise and investment be encouraged
26 both to sponsor land development for residential hous-
27 ing for such persons and families and to sponsor,
28 build and rehabilitate residential housing for such
29 persons and families, to help prevent the recurrence
30 of slum conditions and blight and assist in their per-
31 manent elimination throughout West Virginia.

32 (c) The Legislature hereby finds and declares fur-
33 ther that its intention by enacting this legislation is
34 to provide for the creation and establishment of the

35 West Virginia housing development fund, the corporate
36 purpose of which is to provide temporary financing
37 for development costs, land development and resi-
38 dential housing construction to public and private spon-
39 sors of land development for residential housing or
40 residential housing, new or rehabilitated, for sale or
41 rental to persons and families of low and moderate
42 income; further to provide technical, consultative and
43 project assistance services to public and private spon-
44 sors of such land development or residential housing;
45 and finally to assist in coordinating federal, state, re-
46 gional and local public and private efforts and resources
47 to otherwise increase the supply of such residential
48 housing.

49 (d) The Legislature hereby finds and declares fur-
50 ther that in accomplishing this purpose, the West Vir-
51 ginia housing development fund, created and established
52 by this article, is acting in all respects for the benefit
53 of the people of the state of West Virginia to serve a
54 public purpose in improving and otherwise promoting
55 their health, welfare and prosperity, and that the West
56 Virginia housing development fund, so created and es-
57 tablished, is empowered, hereby, to act on behalf of the
58 state of West Virginia and its people in serving this
59 public purpose for the benefit of the general public.

§31-18-3. Definitions.

1 As used in this article, unless the context otherwise
2 requires:

3 (1) "Development costs" means the costs approved
4 by the housing development fund as appropriate ex-
5 penditures which may be incurred by sponsors of land
6 development for residential housing or residential
7 housing, within this state, prior to commitment and ini-
8 tial advance of the proceeds of a federally insured con-
9 struction loan, federally insured mortgage or federal
10 mortgage or other public assistance programs, and for
11 which temporary loans from the operating loan fund, if
12 created, may be made by the housing development fund
13 subject to the provisions of section nineteen of this ar-
14 ticle, including but not limited to:

15 (a) Payments for options to purchase properties on
16 the proposed residential housing site, deposits on con-
17 tracts of purchase, or, with prior approval of the corpo-
18 ration, payments for the purchase of such properties;

19 (b) Legal and organizational expenses, including
20 payments of attorneys' fees, project manager and clerical
21 staff salaries, office rent and other incidental expenses;

22 (c) Payment of fees for preliminary feasibility
23 studies, advances for planning, engineering and architec-
24 tural work;

25 (d) Expenses for tenant surveys and market analyses;
26 and

27 (e) Necessary application and other fees;

28 (2) "Federally insured construction loan" means a
29 construction loan for land development for residential
30 housing which is either secured by a federally insured
31 mortgage or a federal mortgage, or which is insured by
32 the United States or an instrumentality thereof, or a
33 commitment by the United States or an instrumentality
34 thereof to insure such a loan;

35 (3) "Federally insured mortgage" means a mortgage
36 loan for land development for residential housing or resi-
37 dential housing insured or guaranteed by the United
38 States or an instrumentality thereof, or a commitment
39 by the United States or an instrumentality thereof to
40 insure such a mortgage;

41 (4) "Federal mortgage" means a mortgage loan for
42 land development for residential housing or residential
43 housing made by the United States or an instrumentality
44 thereof, or a commitment by the United States or an in-
45 strumentality thereof to make such a mortgage loan;

46 (5) "Housing development fund" means the West
47 Virginia housing development fund created and estab-
48 lished by section four of this article;

49 (6) "Land development" means the process of ac-
50 quiring land for residential housing construction,
51 and of making, installing, or constructing nonresi-
52 dential housing improvements, including waterlines
53 and water supply installations, sewer lines and sewage

54 disposal installations, steam, gas, and electric lines
55 and installations, roads, streets, curbs, gutters, side-
56 walks, whether on or off the site, which the housing
57 development fund deems necessary or desirable to
58 prepare such land for residential housing construction
59 within this state;

60 (7) "Operating loan fund" means the operating
61 loan fund which may be created and established by the
62 housing development fund in accordance with section
63 nineteen of this article;

64 (8) "Persons and families of low and moderate in-
65 come" means persons and families, irrespective of race,
66 creed, national origin or sex, deemed by the housing de-
67 velopment fund to be eligible or potentially eligible to
68 occupy residential housing constructed and financed,
69 wholly or in part, with federally insured construction
70 loans, federally insured mortgages, federal mortgages or
71 with other public or private assistance;

72 (9) "Residential housing" means a specific work or
73 improvement within this state undertaken primarily to
74 provide dwelling accommodations, including the acquis-
75 ition, construction or rehabilitation of land, buildings and
76 improvements thereto, for residential housing, and such
77 other nonhousing facilities as may be incidental or ap-
78 purtenant thereto.

**§31-18-4. Creation and establishment of fund; board of di-
rectors; appointment, term, etc., of private mem-
bers; chairman and vice chairman; quorum.**

1 (a) There is hereby created and established as a
2 governmental instrumentality of the state of West
3 Virginia, a public body corporate to be known as the
4 West Virginia housing development fund.

5 (b) The housing development fund is created and
6 established to serve a public corporate purpose and to
7 act for the public benefit and as a governmental in-
8 strumentality of the state of West Virginia, to act on
9 behalf of the state and its people in improving and other-
10 wise promoting their health, welfare and prosperity.

11 (c) The housing development fund shall be governed
12 by a board of directors, consisting of eleven members,
13 four of whom shall be the attorney general, the secre-
14 tary of state, the state treasurer and the commissioner
15 of commerce, as public directors, and seven of whom
16 shall be chosen from the general public residing in the
17 state, as private directors. No more than four of the
18 private directors shall be from the same political party.

19 (d) Upon organization of the housing development
20 fund, the governor shall appoint, by and with the advice
21 and consent of the Senate, the seven private directors to
22 take office and to exercise all powers thereof immediately,
23 with two each appointed for terms of two years and three
24 years, and with three each appointed for terms of four
25 years, respectively, as the governor shall designate; at
26 the expiration of said terms and for all succeeding terms,
27 the governor shall appoint a successor to the office of pri-
28 vate director for a term of four years in each case.

29 (e) In case of any vacancy in the office of a private
30 director, such vacancy shall be filled by appointment by
31 the governor for the unexpired term.

32 (f) The governor may remove any private director
33 whom he may appoint in case of incompetency, neglect
34 of duty, gross immorality, or malfeasance in office; and
35 he may declare his office vacant and may appoint a per-
36 son for such vacancy as provided in other cases of va-
37 cancy.

38 (g) The chairman of the board of directors shall be
39 designated by the governor from among the private
40 directors appointed. The vice chairman of the board
41 shall be the commissioner of commerce.

42 (h) Six members of the board of directors shall con-
43 stitute a quorum. No vacancy in the membership of
44 the board shall impair the right of a quorum to exercise
45 all the rights and perform all the duties of the board of
46 directors.

47 (i) No action shall be taken by the board of directors
48 except upon the affirmative vote of at least six of the
49 directors.

50 (j) The directors, including the chairman, vice chair-
51 man and treasurer of the board of directors, and the
52 secretary of the board of directors, shall receive no com-
53 pensation for their services but shall be entitled to their
54 reasonable and necessary expenses actually incurred in
55 discharging their duties under this article.

**§31-18-5. Management and control of fund vested in board;
officers.**

1 (a) The management and control of the housing
2 development fund shall be vested solely in the board of
3 directors in accordance with the provisions of this
4 article.

5 (b) The chairman shall be the chief executive officer
6 of the housing development fund, and, in his absence,
7 the vice chairman shall act as chief executive officer.

8 (c) The board of directors may appoint a chief
9 administrative officer and may fix his title, duties and
10 compensation.

11 (d) The board of directors of the housing develop-
12 ment fund shall annually elect from its membership a
13 treasurer, and shall annually elect a secretary, who
14 need not be a member of the board, to keep a
15 record of the proceedings of the housing development
16 fund.

17 (e) The treasurer of the housing development fund
18 shall be custodian of all funds of the housing develop-
19 ment fund, and shall be bonded in such amount as the
20 other members of the board of directors may designate.

§31-18-6. Corporate powers.

1 The housing development fund is hereby granted,
2 has and may exercise all powers necessary or appro-
3 priate to carry out and effectuate its corporate purpose,
4 including but not limited to the following:

5 (1) To make or participate in the making of federally
6 insured construction loans to sponsors of land develop-
7 ment for residential housing for occupancy by persons
8 or families of low and moderate income or residential
9 housing for occupancy by persons or families of low and

10 moderate income who are eligible or potentially eligible
11 for federally insured mortgages or federal mortgages.
12 Such loans shall be made only upon determination by
13 the housing development fund that construction loans
14 are not otherwise available, wholly or in part, from pri-
15 vate lenders upon reasonably equivalent terms and con-
16 ditions;

17 (2) To make temporary loans, with or without inter-
18 est, but with such security for repayment as the housing
19 development fund deems reasonably necessary and prac-
20 ticable, from the operating loan fund, if created, estab-
21 lished, organized and operated in accordance with the
22 provisions of section nineteen of this article, to defray
23 development costs to sponsors of land development for
24 residential housing for occupancy by persons and fam-
25 ilies of low and moderate income or residential housing
26 construction for occupancy by persons and families of
27 low and moderate income which is eligible or potentially
28 eligible for federally insured construction loans. federally
29 insured mortgages or federal mortgages;

30 (3) To accept appropriations, gifts, grants, bequests,
31 and devises, and to utilize or dispose of the same to carry
32 out its corporate purpose;

33 (4) To make and execute contracts, releases, compro-
34 mises, compositions and other instruments necessary
35 or convenient for the exercise of its powers, or to carry
36 out its corporate purpose;

37 (5) To collect reasonable fees and charges in con-
38 nection with making and servicing its loans, notes, bonds,
39 obligations, commitments and other evidences of indebt-
40 edness, and in connection with providing technical, con-
41 sultative and project assistant services. Such fees and
42 charges shall be limited to the amounts required to pay
43 the costs of the housing development fund, including
44 operating and administrative expenses, and reasonable
45 allowances for losses which may be incurred;

46 (6) To invest any funds not required for immediate
47 disbursement in obligations of the state of West Virginia
48 or of the United States government, the principal and
49 interest of which are guaranteed by the state of West

50 Virginia, or the United States government or any instru-
51 mentality thereof;

52 (7) To sue and be sued;

53 (8) To have a seal and alter the same at will;

54 (9) To make, and from time to time, amend and re-
55 peal bylaws, rules and regulations not inconsistent with
56 the provisions of this article;

57 (10) To appoint such officers, employees and consul-
58 tants as it deems advisable and to fix their compensation
59 and prescribe their duties;

60 (11) To acquire, hold and dispose of personal prop-
61 erty for its corporate purposes;

62 (12) To enter into agreements or other transactions
63 with any federal or state agency, any person and any
64 domestic or foreign partnership, corporation, association
65 or organization;

66 (13) To acquire real property, or an interest therein,
67 in its own name, by purchase or foreclosure, where such
68 acquisition is necessary or appropriate to protect any loan
69 in which the housing development fund has an interest
70 and to sell, transfer and convey any such property to a
71 buyer and, in the event such sale, transfer or conveyance
72 cannot be effected with reasonable promptness or at a
73 reasonable price, to lease such property to a tenant;

74 (14) To sell, at public or private sale, any mortgage or
75 other negotiable instrument or obligation securing a con-
76 struction, land development, mortgage or temporary loan;

77 (15) To procure insurance against any loss in con-
78 nection with its property in such amounts, and from
79 such insurers, as may be necessary or desirable;

80 (16) To consent, whenever it deems it necessary or
81 desirable in the fulfillment of its corporate purpose,
82 to the modification of the rate of interest, time of
83 payment or any installment of principal or interest,
84 or any other terms, of any mortgage loan, mortgage
85 loan commitment, construction loan, temporary loan,
86 contract or agreement of any kind to which the housing
87 development fund is a party;

88 (17) To make and publish rules and regulations
89 respecting its federally insured construction lending

90 and temporary lending to defray development costs
91 and any such other rules and regulations as are neces-
92 sary to effectuate its corporate purpose;

93 (18) To borrow money to carry out and effectuate
94 its corporate purpose and to issue its negotiable bonds
95 or notes as evidence of any such borrowing in such
96 principal amounts and upon such terms as shall be
97 necessary to provide sufficient funds for achieving its
98 corporate purpose, except that no negotiable bonds or
99 notes shall be issued to mature more than ten years
100 from date of issuance, and except that the amount
101 borrowed and evidenced by the issuance of its negotiable
102 bonds shall not exceed the amount reasonably esti-
103 mated at the time of the issuance of such negotiable
104 bonds to be required for the purpose of making fed-
105 erally insured construction loans for a period of two
106 years;

107 (19) To issue renewal notes, to issue bonds to pay
108 notes and, whenever it deems refunding expedient,
109 to refund any bonds by the issuance of new bonds,
110 whether the bonds to be refunded have or have not
111 matured except that no such renewal notes or refunding
112 bonds shall be issued to mature more than ten years
113 from date of issuance;

114 (20) To apply the proceeds from the sale of renewal
115 notes or refunding bonds to the purchase, redemp-
116 tion, or payment of the notes or bonds to be re-
117 funded;

118 (21) To provide technical services to assist in the
119 planning, processing, design, construction or rehabili-
120 tation of residential housing for occupancy by persons
121 and families of low and moderate income or land devel-
122 opment for residential housing for occupancy by persons
123 and families of low and moderate income;

124 (22) To provide consultative project assistance ser-
125 vices for residential housing for occupancy by persons and
126 families of low and moderate income and for land devel-
127 opment for residential housing for occupancy by persons
128 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 scien-
132 tific methods of constructing low cost residential housing
133 of high durability.

§31-18-7. Notes or bonds as general obligations of housing development fund.

1 Except as may otherwise be provided by the housing
2 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.

§31-18-9. Borrowing of money.

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.

1 Any such notes or bonds may be sold by the housing
2 development fund at public or private sale, in accord-
3 ance with the following procedure. The housing de-
4 velopment fund shall first advertise the notes or bonds
5 for sale, on sealed bids, which advertisement shall be
6 published as a Class II legal advertisement in compliance
7 with the provisions of article three, chapter fifty-nine
8 of this code, and the publication area for such publication
9 shall be the county in which the corporation's principal
10 office is established. The first publication shall be made
11 at least fourteen days before the date fixed for the re-
12 ception of bids. Such advertisement shall also be pub-
13 lished as a Class II legal advertisement in a financial
14 paper published either in the city of New York or the
15 city of Chicago. The housing development fund may
16 reject all bids. If any of the notes or bonds be not sold
17 pursuant to such advertisement, they may, within sixty
18 days after the day advertised for the reception of bids,
19 be sold by the housing development fund at private sale,
20 but no private sale shall be made at an interest cost to
21 the housing development fund in excess of six per centum
22 per annum.

§31-18-11. Authorizing resolutions.

1 Any resolution or resolutions authorizing any notes
2 or bonds, or any issue thereof, may contain provisions,
3 which shall be a part of the contract with the holders
4 thereof, as to:

5 (1) Pledging all or part of the mortgage or deed
6 of trust payments, charges and other fees made or re-
7 ceived by the housing development fund and other
8 moneys received or to be received to secure the pay-
9 ment of the notes or bonds or of any issue thereof,
10 subject to such agreements with bondholders or note-
11 holders as may then exist;

12 (2) Pledging all or any part of the assets of the hous-
13 ing development fund to secure the payment of the notes
14 or bonds or any issue of notes or bonds, subject to such
15 agreements with noteholders as may then exist;

16 (3) The setting aside of reserves or sinking funds
17 and the regulation and disposition thereof;

18 (4) Limitations on the purpose to which the pro-
19 ceeds of sale of notes or bonds may be applied and
20 pledging such proceeds to secure the payments of the
21 notes or bonds or of any issue thereof;

22 (5) Limitations on the issuance of additional notes or
23 bonds; the terms upon which additional notes or bonds
24 may be issued and secured; the refunding of outstanding
25 or other notes or bonds;

26 (6) The procedure, if any, by which the terms of
27 any contract with noteholders or bondholders may be
28 amended or abrogated, the amount of notes or bonds the
29 holders of which must consent thereto, and the manner
30 in which such consent may be given;

31 (7) Limitations on the amount of moneys to be
32 expended by the housing development fund for oper-
33 ating, administrative or other expenses of the housing
34 development fund;

35 (8) Vesting in a trustee or trustees such property,
36 rights, powers and duties of any trustee appointed by the
37 bondholders pursuant to section sixteen of this article,
38 and limiting or abrogating the right of the bondholders to
39 appoint a trustee under section sixteen of this article or
40 limiting the rights, powers and duties of such trustee; and

41 (9) Any other matters, of like or different character,
42 which in any way affect the security or protection of
43 the notes or bonds.

**§31-18-12. Validity of any pledge, mortgage, deed of trust or
security instrument.**

1 It is the intention hereof that any pledge, mortgage,
2 deed of trust or security instrument made by or for the
3 benefit of the housing development fund shall be valid
4 and binding between the parties from the time the pledge,
5 mortgage, deed of trust or security instrument is made;
6 and that the moneys or property so pledged, encum-
7 bered, mortgaged or entrusted shall immediately be sub-
8 ject to the lien of such pledge, mortgage, deed of trust or
9 security instrument without any physical delivery thereof

10 or further act. Nothing herein shall be construed to
11 prohibit the housing development fund from selling any
12 property subject to any such pledge, mortgage, deed of
13 trust or security instrument. Such property is not to
14 be sold for less than its fair market value.

§31-18-13. Redemption of notes or bonds.

1 The housing development fund, subject to such
2 agreements with noteholders or bondholders as may
3 then exist, shall have power, out of any funds available
4 therefor, to purchase notes or bonds of the housing
5 development fund.

6 If the notes or bonds are then redeemable, the price
7 of such purchase shall not exceed the redemption price
8 then applicable plus accrued interest to the next interest
9 payment date thereon. If the notes or bonds are not
10 then redeemable, the price of such purchase shall not
11 exceed the redemption price applicable on the first date
12 after such purchase upon which the notes or bonds
13 become subject to redemption plus accrued interest to
14 such date. Upon such purchase such notes or bonds shall
15 be canceled.

§31-18-14. Disclaimer of any liability of state of West Virginia.

1 The state of West Virginia shall not be liable on notes,
2 bonds or other evidences of indebtedness of the housing
3 development fund and such notes, bonds or other evi-
4 dences of indebtedness shall not be a debt of the state
5 of West Virginia, and such notes, bonds or other evi-
6 dences of indebtedness shall contain on the face thereof
7 a statement to such effect.

§31-18-15. Limitation of rights vested in housing development fund by state.

1 The state of West Virginia does hereby pledge to and
2 agree with the holders of any notes or bonds issued
3 under this article, that the state will not limit or alter
4 the rights hereby vested in the housing development
5 fund to fulfill the terms of any agreements made with
6 the holders thereof, or in any way impair the rights and
7 remedies of such holders until such notes or bonds,

8 together with the interest thereon, with interest on
9 any unpaid installments of interest, and all costs and
10 expenses for which the housing development fund is
11 liable in connection with any action or proceeding by
12 or on behalf of such holders, are fully met and discharged.
13 The housing development fund is hereby authorized to
14 include this pledge and agreement of the state in any
15 agreement with the holders of such notes and bonds.

§31-18-16. Default in payment of principal or interest.

1 (a) In the event the housing development fund shall
2 default in the payment of principal of or interest on
3 any issue of notes or bonds after the same shall become
4 due, whether at maturity or upon call for redemption,
5 and such default shall continue for a period of thirty
6 days, or in the event the housing development fund
7 shall fail or refuse to comply with the provisions of
8 this article or shall default in any agreement made with
9 the holders of any issue of notes or bonds, the holders
10 of twenty-five per centum in aggregate principal amount
11 of the notes or bonds of such issue then outstanding,
12 by instrument or instruments filed in the office of the
13 clerk of the county court of any county in which the
14 housing development fund operates and has an office
15 and acknowledged in the same manner as a deed to
16 be recorded, may appoint a trustee to represent the
17 holders of such notes or bonds for the purposes herein
18 provided.

19 (b) Any such trustee upon the written request of
20 the holders of twenty-five per centum in principal amount
21 of such notes or bonds then outstanding shall, in his or
22 its own name, do any one or more of the following:

23 (1) By civil action or other proceeding, enforce all
24 rights of the noteholders or bondholders, including the
25 right to require the housing development fund to per-
26 form its duties under this article;

27 (2) Bring a civil action upon such notes or bonds;

28 (3) By civil action or other proceeding, require the
29 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.

§31-18-18. Tax exemption.

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-

6 dences of indebtedness pursuant to the provisions of
7 this article, or upon any moneys, funds, revenues or other
8 income held or received by the housing development
9 fund and the notes and bonds of the housing development
10 fund, and the income therefrom shall at all times be
11 exempt from taxation, as aforesaid, except for death and
12 gift taxes, taxes on transfers, sales taxes, real property
13 taxes and business and occupation taxes.

§31-18-19. Operating loan fund.

1 (a) The board of directors of the housing develop-
2 ment fund may create and establish a special revolving
3 loan fund of moneys made available by contribution or
4 loan, to be known as the operating loan fund and to be
5 governed, administered and accounted for by the direc-
6 tors, officers and managerial staff of the housing de-
7 velopment fund as a public purpose trust account sepa-
8 rate and distinct from any other moneys, fund or funds
9 owned and managed by the housing development fund.

10 (b) The purpose for organizing and operating the
11 operating loan fund shall be to provide a source from
12 which the housing development fund may make tempo-
13 rary loans, with or without interest, but with such secu-
14 rity for repayment as the housing development fund
15 deems reasonably necessary and practicable; such loans
16 to be used to defray development costs to sponsors of
17 land development for residential housing construction for
18 occupancy by persons and families of low and moderate
19 income or residential housing construction for occupancy
20 by persons and families of low and moderate income which
21 is eligible or potentially eligible for federally insured con-
22 struction loans, federally insured mortgages or federal
23 mortgages or other public assistance programs.

24 (c) No temporary loans shall be made by the housing
25 development fund from the operating loan fund except in
26 accordance with a written loan agreement which shall in-
27 clude, but not be limited to, the following terms and
28 conditions:

29 (1) The proceeds of all such loans shall be used only
30 to defray the development costs of such proposed resi-
31 dential housing;

32 (2) All such loans shall be repaid in full, with or
33 without interest as provided in the agreement;

34 (3) All repayments shall be made concurrent with re-
35 ceipt by the borrower of the proceeds of a construction
36 loan or mortgage, as the case may be, or at such other
37 times as the housing development fund deems reason-
38 ably necessary or practicable; and

39 (4) Specification of such security for repayments upon
40 such terms and conditions as the housing development
41 fund deems reasonably necessary or practicable to ensure
42 all repayments.

43 (d) No funds from the operating loan fund shall be
44 used to carry on propaganda, or otherwise attempt to
45 influence legislation.

§31-18-20. Authorized limit on borrowing.

1 The housing development fund is hereby authorized to
2 borrow up to thirty million dollars and to issue its
3 negotiable bonds or notes as evidence of such borrow-
4 ing; and further to borrow such additional sums of
5 money as it deems reasonably necessary or appropriate
6 to effectuate its corporate purpose. Such additional bor-
7 rowing shall not be accompanied by the issuance of
8 negotiable bonds but may be accompanied by the issu-
9 ance of negotiable notes to evidence such additional in-
10 debtedness.

**§31-18-21. Prohibition on funds inuring to the benefit of or
being distributable to directors, officers or pri-
vate persons.**

1 No part of the funds of the housing development fund,
2 or of the operating loan fund, shall inure to the benefit
3 of or be distributable to its directors or officers or other
4 private persons except that the housing development
5 fund shall be authorized and empowered to pay reason-
6 able compensation, other than to the directors, including
7 the chairman, vice chairman and treasurer of the board
8 of directors and the secretary of the board of directors,
9 for services rendered and to make loans as previously

10 specified in furtherance of its corporate purpose: *Pro-*
11 *vided*, That no such loans shall be made to any director
12 or officer of the housing development fund.

§31-18-22. Termination or dissolution.

1 Upon termination or dissolution, all rights and prop-
2 erties of the housing development fund, including the
3 operating loan fund, shall pass to and be vested in the
4 state of West Virginia, subject to the rights of lienholders
5 and other creditors.

**§31-18-23. Services to the state of West Virginia and its po-
litical subdivisions.**

1 (a) The housing development fund may provide
2 technical, consultative and project assistance services to
3 the state of West Virginia and any of its political sub-
4 divisions and is hereby authorized to enter into contracts
5 with the state of West Virginia and any of its political
6 subdivisions to provide such services.

7 (b) The state of West Virginia or any political sub-
8 division thereof is hereby authorized to enter into con-
9 tracts with the housing development fund for such ser-
10 vices and to pay for such services as may be provided to it.

§31-18-24. Annual audit.

1 The housing development fund shall cause an annual
2 audit to be made by a resident independent certified
3 public accountant of its books, accounts, and records,
4 with respect to its receipts, disbursements, contracts,
5 mortgages, leases, assignments, loans and all other
6 matters relating to its financial operations, including
7 those of the operating loan fund. The person performing
8 such audit shall furnish copies of the audit report to
9 the commissioner of finance and administration, where
10 they shall be placed on file and made available for in-
11 spection by the general public. The person performing
12 such audit shall also furnish copies of the audit report
13 to the speaker of the House of Delegates, the president
14 of the Senate and the majority and minority leaders of
15 both houses.

§31-18-25. Severability clause.

1 If any provision of this article or the application
2 thereof to any person or circumstance is held invalid,
3 such invalidity shall not affect other provisions or appli-
4 cations of the article, and to this end the provisions of
5 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 pro-
2 vided by law, legal interest shall continue to be at the
3 rate of six dollars upon one hundred dollars for a year,
4 and proportionately for a greater or less sum, or for
5 a longer or shorter time, and no person upon any contract
6 other than a contract in writing shall take for the loan
7 or forbearance of money, or other thing, above the value
8 of such rate: *Provided*, That a charge of one dollar
9 may be made for any loan or forbearance of money
10 or other thing, where the interest at the rate aforesaid
11 would not amount to that sum, and the same shall not
12 be a usurious charge or rate of interest.

13 Parties may contract in writing after the effective date
14 of this section for the payment of interest for the loan or
15 forbearance of money at a rate not to exceed eight dollars
16 upon one hundred dollars for a year, and proportionately
17 for a greater or less sum, or for a longer or shorter time,
18 including points expressed as a percentage of the loan
19 divided by the number of years of the loan contract. For
20 the purpose of this section the term points is defined as the
21 amount of money, or other consideration, received by the
22 lender, from whatever source, as a consideration for mak-
23 ing the loan and not otherwise expressly permitted by
24 statute. Notwithstanding the foregoing provisions of
25 this paragraph, if the interest charge on an installment
26 loan made by a banking institution is deducted in advance
27 as permitted by section twenty, article four, chapter
28 thirty-one of this code, such interest charge shall not
29 exceed the six percent per annum maximum provided
30 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 indi-
2 rectly for the loan or forbearance of money or other

3 thing at a greater rate of interest than is permitted
4 by law shall be void as to all interest provided for in
5 any such contract or assurance, and the borrower or
6 debtor may, in addition, recover from the original
7 lender or creditor or other holder not in due course
8 an amount equal to four times all interest agreed to
9 be paid and in any event a minimum of one hundred
10 dollars. Every usurious contract and assurance shall
11 be presumed to have been wilfully made by the lender
12 or creditor, but a bona fide error, innocently made,
13 which causes such contract or assurance to be usuri-
14 ous shall not constitute a violation of this section if the
15 lender or creditor shall rectify the error within fifteen
16 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, designated section nineteen-a, all to read as follows:

ARTICLE 16A. WEST VIRGINIA TURNPIKE COMMISSION.**Section**

17-16A-5. Commission's general powers.

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.

§17-16A-5. Commission's general powers.

1 The commission is hereby authorized and empowered:

2 (a) To adopt bylaws for the regulation of its affairs
3 and the conduct of its business;

4 (b) To adopt an official seal and alter the same at
5 pleasure;

6 (c) To maintain an office at such place or places
7 within the state as it may designate;

8 (d) To sue and be sued in its own name, plead and
9 be impleaded. Any and all actions at law or in equity
10 against the commission shall be brought only in the
11 county in which the principal office of the commission
12 shall be located;

13 (e) To construct, maintain, repair and operate turn-
14 pike projects as hereinabove defined at such locations
15 within the state as may be determined by the com-
16 mission;

17 (f) To issue turnpike revenue bonds of the state of
18 West Virginia, payable solely from revenues, for the
19 purpose of paying all or any part of the cost of any
20 one or more turnpike projects;

21 (g) To fix and revise from time to time tolls for
22 transit over each turnpike project constructed by
23 it;

24 (h) To acquire, hold and dispose of real and per-
25 sonal property in the exercise of its powers and the
26 performance of its duties under this article;

27 (i) To acquire in the name of the state by purchase
28 or otherwise, on such terms and conditions and in such
29 manner as it may deem proper, or by the exercise of
30 the right of condemnation in the manner hereinafter
31 provided, such public or private lands, including public
32 parks, playgrounds or reservations, or parts thereof or

33 rights therein, right-of-ways, property, rights, ease-
34 ments and interests, as it may deem necessary for
35 carrying out the provisions of this article. No compen-
36 sation shall be paid for public lands, playgrounds, parks,
37 parkways or reservations so taken, and all public prop-
38 erty damaged in carrying out the powers granted by
39 this article, shall be restored or repaired and placed
40 in its original condition as nearly as practicable;

41 (j) To designate the locations, and establish, limit
42 and control such points of ingress to and egress from
43 each turnpike project as may be necessary or desirable
44 in the judgment of the commission to insure the proper
45 operation and maintenance of such project, and to
46 prohibit entrance to such project from any point or points
47 not so designated;

48 (k) To make and enter into all contracts and agree-
49 ments necessary or incidental to the performance of
50 its duties and the execution of its powers under this
51 article, and to employ consulting engineers, attorneys,
52 accountants, construction and financial experts, super-
53 intendents, managers, and such other employees and
54 agents as may be necessary in its judgment, and to fix
55 their compensation. All such expenses shall be pay-
56 able solely from the proceeds of turnpike revenue bonds
57 issued under the provisions of this article or from
58 revenues;

59 (l) To receive and accept from any federal agency
60 grants for or in aid of the construction of any turnpike
61 project, and to receive and accept aid or contributions
62 from any source of either money, property, labor or
63 other things of value, to be held, used and applied only
64 for the purposes for which such grants and contributions
65 may be made;

66 (m) To do all acts and things necessary or convenient
67 to carry out the powers expressly granted in this article;
68 and

69 (n) To file the necessary petition or petitions pur-
70 suant to Title 11 United States Code, § 401) being section
71 81 of the act of Congress entitled "An act to establish
72 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 alternative 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

12 not be deemed to constitute a debt of the state or of any
13 political subdivision thereof or a pledge of the faith
14 and credit of the state or of any such political sub-
15 division, but such bonds shall be payable solely from
16 the funds herein provided therefor from pledged prop-
17 erty and income therefrom as provided in subdivision
18 (a) of this section. All such special obligation bonds
19 shall contain on the face thereof a statement in accor-
20 dance with the preceding sentence. The issuance of such
21 bonds, the maturities and other details thereof, the
22 rights of the holders thereof, and the rights, duties and
23 obligations of the commission in respect of the same
24 shall be governed by the provisions of this article insofar
25 as the same may be applicable with the following express
26 exceptions:

27 (a) The principal of and the interest on such special
28 obligation bonds shall not be payable from tolls or
29 revenues of any turnpike project but shall be payable
30 solely from such other property purchased and pledged
31 as security therefor together with the income derived
32 from such property as the commission shall determine
33 which other property may include direct obligations of,
34 or obligations the principal of and the interest on which
35 are guaranteed by, the United States government; and

36 (b) Following the issuance of such special obligation
37 bonds there shall be no obligation to fix, revise, charge
38 and collect tolls for the use of any turnpike project
39 and any turnpike project shall be transferred to the
40 state road commission and shall thereafter be maintained
41 by the state road commission free of tolls. At such
42 time as the special obligation bonds are issued, then
43 section sixteen of this article shall be of no further
44 force and effect.

45 Financial, legal, engineering and feasibility consultants
46 may be employed to perform such services as the com-
47 mission shall deem necessary or desirable in connection
48 with the Title 11 proceedings mentioned above and the
49 issuance and exchange of the special obligation bonds.

50 The entire powers herein granted by this section to
51 the commission may be exercised by the state road
52 commission in which event the special obligation bonds

53 herein authorized shall be signed by the governor or
54 with a facsimile signature of the governor and by the
55 state road commissioner, and the official seal of the
56 state road commission shall be affixed thereto and
57 attested by the executive secretary of the state road
58 commission, and any coupons attached thereto shall bear
59 the facsimile signature of the state road commissioner.
60 In the event that the state road commission shall elect
61 to exercise the powers granted by this section, it shall
62 file a statement to that effect in the office of the chairman
63 of the commission and in the office of the secretary of
64 state, and upon the issuance of the special obligation
65 bonds herein provided for the state road commission
66 shall succeed immediately to the principal functions of
67 the commission and the commission shall then be
68 abolished.

69 The state road commission is hereby empowered to
70 acquire by purchase the West Virginia turnpike com-
71 mission and all its right-of-ways, equipment, facilities
72 and any and all other rights or interest the West Virginia
73 turnpike commission has or had in the West Virginia
74 turnpike project, from any funds available to it, except
75 funds received from the issuance of bonds and to pay
76 any expenses incident to such acquisition under the
77 provisions of this article: *Provided, however,* That the
78 contribution of the state road commission in making such
79 acquisition shall not exceed the sum of twenty million
80 dollars from all sources of public moneys of the state of
81 West Virginia, excluding any funds reimbursed by the
82 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
2 the Congress of the United States has enacted legislation
3 amending the Social Security Act to permit states to estab-
4 lish work incentive programs. The commissioner is hereby
5 authorized to transfer moneys from any appropriate pub-
6 lic assistance grant account under his control to the special
7 fund, administered by the United States secretary of labor,
8 created by such amendments. Any moneys transferred
9 by the commissioner to the aforesaid special fund shall
10 be considered as money expended for welfare grants.
11 The commissioner is further empowered to promulgate
12 rules, establish plans and perform any other acts neces-
13 sary to implement this state's participation in the afore-
14 said work incentive program.

15 The commissioner is directed and authorized to co-
16 operate and coordinate his activities in regard to such
17 program with the commissioner of the West Virginia
18 department of employment security as contemplated by
19 section sixteen-a, article two, chapter twenty-one-a of
20 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.]

AN ACT to amend and reenact section three, article four, chapter twenty-three of the code of West Virginia,

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
2 to time as he may determine to be appropriate, a sched-
3 ule of the maximum reasonable amounts to be paid to
4 physicians, surgeons, hospitals or other persons, firms or
5 corporations for the rendering of treatment to injured
6 employees under this chapter. Except in case of silicosis,
7 the commissioner shall disburse and pay from the fund
8 for such personal injuries to such employees as may
9 be entitled thereto hereunder as follows:

10 (a) Such sums for medicines, medical, surgical, dental
11 and hospital treatment, crutches, artificial limbs and such
12 other and additional approved mechanical appliances and
13 devices, as may be reasonably required and as are, in the
14 case of medical, surgical, dental or hospital treatment
15 only, within the maximum amount provided for by sched-
16 ule established by the commissioner as aforesaid, but

17 not as to any one injured employee in excess of three
18 thousand dollars: *Provided*, That in special cases where
19 the treatment required, in the opinion of competent
20 medical authority, is such as to necessitate an expendi-
21 ture in excess of said sum of three thousand dollars, the
22 commissioner may pay out of any available funds such ad-
23 ditional sum as may be necessary, but such additional sum
24 shall not be charged to the account of the employer.

25 (b) Payment for such medicine, medical, surgical,
26 dental and hospital treatment, crutches, artificial limbs
27 and such other and additional approved mechanical ap-
28 pliances and devices authorized under subdivision (a)
29 hereof may be made to the injured employee, or to the
30 person, firm or corporation who or which has rendered
31 such treatment or furnished any of the items specified
32 above, or who has advanced payment for same, as the
33 commissioner may deem proper, but no such payments
34 or disbursements shall be made or awarded by him un-
35 less duly verified statements on forms prescribed by the
36 commissioner shall be filed with the commissioner within
37 six months after the cessation of such treatment or the
38 delivery of such appliances: *Provided, however*, That no
39 payment hereunder shall be made unless such verified
40 statement shows no charge for or with respect to such
41 treatment or for or with respect to any of the items
42 specified above has been or will be made against the
43 injured employee or any other person, firm or corporation,
44 and when an employee covered under the provisions of
45 this chapter is injured in the course of and as a result
46 of his employment and is accepted for medical, surgi-
47 cal, dental or hospital treatment, the person, firm or
48 corporation rendering such treatment is hereby pro-
49 hibited from making any charge or charges therefor or
50 with respect thereto against the injured employee or any
51 other person, firm or corporation which would result in
52 a total charge for the treatment rendered in excess of
53 the maximum amount set forth therefor in the com-
54 missioner's schedule established as aforesaid.

55 (c) No employer shall enter into any contracts with
56 any hospital, its physicians, officers, agents or employees
57 to render medical, dental or hospital service or to give

58 medical or surgical attention therein to any employee
59 for injury compensable within the purview of this chap-
60 ter, and no employer shall permit or require any em-
61 ployee to contribute, directly or indirectly, to any fund
62 for the payment of such medical, surgical, dental or hos-
63 pital service within such hospital for such compensable
64 injury. Any employer violating this section shall be
65 liable in damages to his or its employees and shall not
66 avail himself of any of the common-law defenses men-
67 tioned in section eight, article two of this chapter, and
68 any employer or hospital or agent or employee thereof
69 violating the provisions of this section shall be guilty of
70 a misdemeanor, and, upon conviction thereof, shall be
71 sentenced to pay a fine not exceeding one thousand dol-
72 lars or undergo imprisonment not exceeding one year,
73 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 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 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," consisting of five members of the Senate, to be appointed by the President thereof, no more than three of whom shall be appointed 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.

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