

ACTS
OF THE
LEGISLATURE
OF
WEST VIRGINIA



Regular Session, 1970
First Extraordinary Session, 1969
First Extraordinary Session, 1970

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FOREWORD

This volume contains the Acts of the 1970 Regular Session and the Extraordinary Sessions of 1969 and 1970, and resolutions of general interest adopted by the Legislature during these sessions.

Regular Session, 1970

The second regular session of the 59th Legislature convened on January 14, 1970, and expired for general purposes at midnight, February 12. 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 Saturday, February 14.

Prior to the session the Governor by proclamation stated 186 items of business for consideration by the session. In addition, 41 resolutions were adopted by the Legislature stating additional business for consideration.

A total of 472 bills were introduced during the session—260 House Bills and 212 Senate Bills. The Legislature passed 95 bills—70 House Bills and 25 Senate Bills. Of the 95 enactments, the Governor approved 84 and vetoed 11. One of the bills vetoed by the Governor (H. B. 598, increasing the personal income tax), was again passed by the Legislature notwithstanding the objections of the Governor and became law.

Others bills vetoed were H. B. 588 (Value Added Income Tax), H. B. 589 (Persons subject to value added income tax not subject to business and occupation tax), H. B. 590 (Permitting municipalities to impose a business and occupation tax in instances where value added tax is inapplicable), H. B. 591 (Persons subject to the value added tax exempt from annual tax on certain carriers), H. B. 592 (Empowering municipalities to impose a value added tax), H. B. 593 (Increasing corporate net income tax and requiring payment of value added tax in lieu thereof when the tax under the latter is greater), H. B. 594 (Meaning of terms under Corporate Net Income Tax Act), H. B. 622 (Water Use Act), S. B. 151 (Submitting an amendment to the State Constitution to the voters, known as the "Constitutional Improvement Amendment"), and S. B. 208 (Assigning certain space in the capitol building to

the Legislature). H. B. No. 622 and S. B. Nos. 151 and 208 were vetoed subsequent to the adjournment of the session.

There were 162 concurrent resolutions introduced in the two Houses during the session—107 House Concurrent and 55 Senate Concurrent, of which 44 House and 14 Senate were adopted. Nine House Joint and five Senate Joint Resolutions were introduced, all proposing amendments to the State Constitution. Only three were adopted—H.J.R. Nos. 4, 6 and 8. The House had 14 House Resolutions and the Senate had 14 Senate Resolutions, of which 12 House and all Senate were adopted.

The Senate failed to pass 32 House Bills, passed by the House, and 11 Senate bills passed by that body, failed of passage by the House. One House Bill (H. B. 626), relating to assistance to the voters at the polls, died in conference.

First Extraordinary Session, 1969

This session was convened by the Governor on July 21, 1969 and adjourned *sine die* July 25, 1969. The proclamation of the Governor included 20 separate items of business for consideration by the Legislature. The Legislature by acts and resolutions put into effect 11 of these items.

During the session 20 identical bills were introduced in each House of the Legislature. Seven House Bills and three Senate Bills were passed. All the enactments were approved by the Governor.

There were three House Joint, Six House Concurrent and 11 plain House Resolutions offered during the session, of which four Concurrent and all the House Resolutions were adopted. The Senate had three Joint, one Concurrent and six plain Senate Resolutions, and the Concurrent Resolution and all the Senate Resolutions were adopted.

First Extraordinary Session, 1970

This session was convened by the Governor on June 16, 1970 and adjourned *sine die* on June 19, 1970. The proclamation of the Governor included twenty-three items of business for consideration by the Legislature.

During the session there was a total of 60 bills introduced in the two Houses—33 House Bills and 27 Senate Bills. Eight

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MEMBERS OF THE HOUSE OF DELEGATES

First Extraordinary Session, 1970

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)	Seth
	Dennie Lee Hill (D)	Madison
Braxton	Rodney B. Belknap (D)	Gassaway
Brooke	Mino R. D'Aurora (D)	Follansbee
	¹ L. Vernard Schwertfeger (D)	Follansbee
Cabell	David B. Daugherty (R)	Huntington
	² Clyde D. Fuller (R)	Huntington
	Hugh A. Kincaid (D)	Huntington
	Robert R. Nelson (D)	Huntington
	C. E. Romine, Jr. (R)	Huntington
	Jody G. Smiri (R)	Huntington
Clay	John W. Kyle (R)	Clay
Fayette	Ethel L. Crandall (D)	Gauley Bridge
	T. E. Myles (D)	Fayetteville
	Adam Toney (D)	Oak Hill
Hampshire	James B. Cookman (D)	Romney
Hancock	Gust G. Brenda, Jr. (D)	Weirton
	George G. Griffith (D)	Weirton
Harrison	Donald L. Kopp (D)	Clarksburg
	James Laulis (D)	Bridgeport
	Paul G. Lister (D)	Nutter Fort
	C. Paul Wanstreet (D)	Clarksburg
Jackson	³ William F. Carmichael (R)	Ripley
Jefferson	Roger J. Perry (D)	Charles Town
Kanawha	⁴ Jesse S. Barker (D)	Charleston
	Ivor F. Boiarsky (D)	Charleston
	Russell L. Davisson (R)	St. Albans
	Si Galperin, Jr. (D)	Charleston
	J. Dempsey Gibson (D)	St. Albans
	James Clay Jeter (R)	Charleston
	Cleo S. Jones (R)	Charleston
	Leo G. Kopelman (R)	East Bank
	James W. Loop (D)	Charleston
	⁵ Eric Nelson (R)	Charleston
	Thomas E. Potter (R)	Charleston
	Phyllis J. Rutledge (D)	Charleston
	Harlan Wilson, Jr. (R)	Charleston
	Paul Zakaib, Jr. (R)	Charleston
Lewis	Fred L. Mulneix (R)	Weston
Lincoln	H. Leon Hager (D)	Hamlin
Logan	Earl Hager (D)	Chapmanville
	Paul E. Hicks (D)	Logan
	Ervin S. Queen (D)	Logan
Marion	Nick Fantasia (D)	Kingmont
	William J. Parker (D)	Fairmont
	J. E. Watson (D)	Fairmont
Marshall	Robert C. Polen (R)	Moundsville
	Roy H. Rogerson (R)	Moundsville
Mason	Eugene Ball (D)	Point Pleasant

¹Appointed July 8, 1969, to fill vacancy caused by the death of Irma M. Maple.

²Appointed March 24, 1969, to fill vacancy caused by the resignation of John M. Bobbitt.

³Appointed July 8, 1969, to fill vacancy caused by the resignation of B. Noel Poling.

⁴Appointed June 2, 1970, to fill vacancy caused by the death of C. Sam Savilla.

⁵Appointed March 25, 1969, to fill vacancy caused by the resignation of Lon Clark Kinder, Sr.

HOUSE OF DELEGATES

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County or District	Name	Address
McDowell	Chester M. Matney (D) Harry R. Pauley (D) Mrs. Shirley Pickett (D) George Trechock (D)	Welch Jaeger Kyle Elkhorn
Mercer	Clarence C. Christian, Jr. (D) Odell H. Huffman (D) Charles E. Lohr (D) Mrs. Lucille W. Thornhill (D)	Princeton Princeton Princeton Bluefield
Mineral	Robert D. Harman (R)	Keyser
Mingo	Robert L. Simpkins (D) T. I. Varney (D)	Meador Matewan
Monongalia	Robert W. Dinsmore (D) Clifford B. Hoard (D) Harry U. Howell (D)	Morgantown Morgantown Morgantown
Monroe	William Marion Shiflet (D)	Union
Nicholas	D. R. Frazer (D)	Richwood
Ohio	Fred A. Grewe, Jr. (R) Judith Herndon (R) George H. Seibert, Jr. (R) Frederick P. Stamp, Jr. (R)	Wheeling Wheeling Wheeling Wheeling
Preston	Robert C. Halbritter (R)	Kingwood
Putnam	Charles R. Henderson (R)	Hurricane
Raleigh	Lewis N. McManus (D) Anthony J. Sparacino (D) Ted T. Stacy (D) Mrs. W. W. Withrow (D)	Beckley Beckley Beckley 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) Robert K. Flanagan (D)	Huntington Ceredo
Webster	Albert L. Sommerville, Jr. (D)	Webster Springs
Wetzel	William A. Powell, Jr. (R)	New Martinsville
Wood	J. C. Butcher (R) Calvin A. Calendine (R) Richard S. Cotterman (R) William P. A. Nicely (R)	Parkersburg Parkersburg Vienna Parkersburg
Wyoming	J. T. Davidson, Jr. (D) Warren R. McGraw (D)	Mullens 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

⁶Appointed July 8, 1969, to fill vacancy caused by the resignation of Fred G. Wooten.

⁷Appointed July 8, 1969, to fill vacancy caused by the death of Corbett Church.

⁸Appointed June 2, 1970, to fill vacancy caused by the resignation of James F. Companion.

⁹Appointed June 15, 1970, to fill vacancy caused by the resignation of Spencer K. Creel.

¹⁰Appointed April 11, 1969, to fill vacancy caused by the resignation of Robert W. Burk, Jr.

MEMBERS OF THE SENATE

FIRST EXTRAORDINARY SESSION, 1970

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) _____ ¹ 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	Mario 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) _____ ² J. R. McCoy (D) _____	Bluefield Union
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	³ James D. Hinkle, Jr. (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

(*) Senators elected in 1966.

¹Appointed February 28, 1969, to fill vacancy caused by the resignation of Jack L. Miller.

²Appointed June 15, 1970, to fill vacancy caused by resignation of Ray E. Sawyers.

³Appointed January 21, 1970, to fill vacancy caused by resignation of J. Kenton Lambert.

STANDING COMMITTEES OF THE SENATE

Regular Session, 1970

AGRICULTURE

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

EDUCATION

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

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, Hinkle, Kinsolving, 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, Knapp and Jackson (President) *ex officio*.

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, Hinkle, Kinsolving and Poffenbarger.

MILITARY

Hedrick (*Chairman*), Sawyers (*Vice Chairman*), Gainer, Sharpe, Smith (of Cabell), Smith (of Logan), Hinkle, 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), Bowers, Deem, Poffenbarger and Sayre.

PUBLIC INSTITUTIONS

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

RULES

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JOINT RULES

Jackson (*President*), Martin and Carrigan.

GOVERNMENT AND FINANCE

Jackson (*President*), (*ex officio Chairman*), Barnett, Brotherton, Martin, McCourt, Carrigan and Wolfe.

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Regular Session, 1970

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ENROLLED BILLS

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JOINT RULES

Boiarsky (*Speaker*), Shiflet and Seibert.

GOVERNMENT AND FINANCE

Boiarsky (*Speaker*) (*ex officio* Chairman), Lohr, McManus, Shiflet, Watson, Ours and Seibert.

FOREWORD

(Continued from page iv)

House Bills and two Senate Bills were passed. The Governor approved all of the bills except H. B. No. 1, increasing personal income tax rates, which he permitted to become a law without his approval.

There were one House Joint, eight House Concurrent and 11 plain House Resolutions offered during the session, of which five Concurrent and all of the House Resolutions were adopted. The Senate had one Joint, four Senate Concurrent and six plain Senate Resolutions, of which two Concurrent and all of the Senate Resolutions were 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

LEGISLATURE OF WEST VIRGINIA

ACTS OF 1970

REGULAR SESSION

CHAPTER 1

(Senate Bill No. 5—By Mr. Kinsolving)

[Passed February 7, 1970; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article one-a, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section three-a, relating to the purchase by the adjutant general of public liability insurance, the defense of governmental immunity and the pleading of such defense; and specifying that a jury shall not be advised directly or indirectly of the existence of any such insurance or of the amount thereof.

Be it enacted by the Legislature of West Virginia:

That article one-a, 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 three-a, to read as follows:

ARTICLE 1A. ADJUTANT GENERAL.

§15-1A-3a. Purchase of automobile liability insurance.

- 1 The adjutant general shall purchase, out of any funds
- 2 appropriated by the Legislature for such purpose, an ade-

3 quate public liability insurance covering all members
4 of the organized militia while operating any land motor
5 vehicle possessed or maintained by the organized militia:
6 *Provided*, That no policy or contract of public liability
7 insurance providing coverage for public liability shall be
8 purchased as provided herein, unless it shall contain a
9 provision or endorsement whereby the company issuing
10 such policy waives, or agrees not to assert as a defense
11 to any claim covered by the terms of such policy, the
12 defense of governmental immunity. In any action against
13 the adjutant general, his officers, agents or employees, in
14 which there is in effect liability insurance coverage in an
15 amount equal to or greater than the amount sued for, the
16 attorney for such adjutant general, the attorney for such
17 insurance carrier, or any other attorney who may appear
18 on behalf of the adjutant general, his agents, officers
19 or employees shall not set up the defense of governmental
20 immunity in any such action. Notwithstanding any other
21 provision of this section, under no circumstances what-
22 ever shall the jury in any such action be advised directly
23 or indirectly of the existence of any such insurance or
24 of the amount thereof.

CHAPTER 2

(House Bill No. 514—By Mr. Edgar and Mr. Seibert)

[Passed January 27, 1970; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article one-a, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to adjutant general.

Be it enacted by the Legislature of West Virginia:

That section four, article one-a, 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 1A. ADJUTANT GENERAL.**§15-1A-4. Assistant adjutants general.**

1 The governor shall appoint an assistant adjutant gen-
2 eral for air and an assistant adjutant general for army,
3 each with the rank of brigadier general, or such other
4 rank as shall be recognized by federal authority, who
5 shall be the deputy commander of the air national guard
6 and the deputy commander of the army national guard,
7 respectively. The governor may also appoint an assistant
8 adjutant general with the rank of colonel or such other
9 rank as shall be recognized by the federal authority,
10 who shall be the executive officer and administrative
11 assistant to assist the adjutant general in the adminis-
12 tration of the adjutant general's department (or depart-
13 ment of military affairs). The assistant adjutant general
14 serving as the executive officer and the administrative
15 assistant may also be the deputy commander of the army
16 or air national guard. The assistant adjutants general
17 shall be upon appointment, federally recognized officers
18 of the air national guard and the army national guard,
19 respectively.

CHAPTER 3

(House Bill No. 512—By Mr. Speaker, Mr. Boiarsky, and
Mr. Seibert)

[Passed January 27, 1970; in effect July 1, 1970. Approved by the Governor.]

AN ACT to amend and reenact section fifteen, article three, chapter sixty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the amount of stock allowed and contract for manufacture of state brand.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. SALES BY COMMISSIONER.**§60-3-15. Amount of stock allowed; contract for manufacture of state brand.**

1 In order to avoid the accumulation of excessive stocks
2 in warehouses and stores, the commission shall so plan
3 its purchases of alcoholic liquors for sale in state stores
4 and agencies that stock on hand at any time does not
5 exceed the estimated requirements for sixty days' sales,
6 that none of such stock be on a consignment basis and
7 that the amount of operating fund and the value of in-
8 ventory stock shall not exceed eight million dollars, ex-
9 cept during the last quarter of the calendar year, during
10 which time it shall not exceed ten million dollars.

11 The commission may, with the consent of the governor,
12 contract for the manufacture of alcoholic liquors for
13 sale in state stores and agencies. Such liquors shall
14 bear a special designation as "state brand."

15 Listed brands and sizes of spirituous liquors shall not
16 be reordered in quantities greater than at the rate of
17 comparative gross sales as determined by the last weekly
18 report published prior to each reorder: *Provided, how-*
19 *ever,* That listed brands on allocation by the respective
20 suppliers may be reordered upon the basis of anticipated
21 needs to be determined by projecting the adjusted sales
22 records to the period of allocation as fixed by the re-
23 spective suppliers.

24 The initial order of any new or unlisted brand of
25 spirituous liquor, excepting wine, shall not exceed five
26 hundred cases. The initial order of new or unlisted wine
27 brands shall not exceed fifteen hundred cases.

O

CHAPTER 4

(House Bill No. 537—By Mr. Speaker, Mr. Boiarsky,
and Mr. Buck)

[Passed January 30, 1970; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact article nineteen, chapter sixteen
of the code of West Virginia, one thousand nine hundred

thirty-one, as amended, relating to the uniform anatomical gift act, definitions of terms, persons who may execute an anatomical gift, persons who may become donees, purposes for which anatomical gifts may be made, manner of executing anatomical gifts, delivery of document of gift, amendment or revocation of gift, rights and duties at death, uniformity of interpretation, short title of article.

Be it enacted by the Legislature of West Virginia:

That article nineteen, 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 19. UNIFORM ANATOMICAL GIFT ACT.

§16-19-1. Definitions.

§16-19-2. Persons who may execute an anatomical gift.

§16-19-3. Persons who may become donees; purposes for which anatomical gifts may be made.

§16-19-4. Manner of executing anatomical gifts.

§16-19-5. Delivery of document of gift.

§16-19-6. Amendment or revocation of the gift.

§16-19-7. Rights and duties at death.

§16-19-8. Uniformity of interpretation.

§16-19-9. Short title.

§16-19-1. Definitions.

1 (a) "Bank or storage facility" means a facility licensed,
2 accredited, or approved under the laws of any state for
3 storage or distribution of human bodies or parts thereof.

4 (b) "Decedent" means a deceased individual and in-
5 cludes a stillborn infant or fetus.

6 (c) "Donor" means an individual who makes a gift
7 of all or part of his body.

8 (d) "Hospital" means a hospital licensed, accredited,
9 or approved under the laws of any state; includes a
10 hospital operated by the United States government, a
11 state, or a subdivision thereof, although not required to
12 be licensed under state laws.

13 (e) "Part" means organs, tissues, eyes, bones, arteries,
14 blood, other fluids and any other portions of a human
15 body.

16 (f) "Person" means an individual, corporation, gov-
17 ernment or governmental subdivision or agency, business

18 trust, estate trust, partnership or association, or any other
19 legal entity.

20 (g) "Physician" or "surgeon" means a physician or
21 surgeon licensed or authorized to practice under the
22 laws of any state.

23 (h) "State" includes any state, district, common-
24 wealth, territory, insular possession, and any other area
25 subject to the legislative authority of the United States of
26 America.

§16-19-2. Persons who may execute an anatomical gift.

1 (a) Any individual of sound mind and eighteen years
2 of age or more may give all or any part of his body for
3 any purpose specified in section three of this article, the
4 gift to take effect upon death.

5 (b) Any of the following persons, in order of priority
6 stated, when persons in prior classes are not available
7 at the time of death, and in the absence of actual notice
8 of contrary indications by the decedent or actual notice
9 of opposition by a member of the same or a prior class,
10 may give all or any part of the decedent's body for any
11 purpose specified in section three of this article:

12 (1) The spouse;

13 (2) An adult son or daughter;

14 (3) Either parent;

15 (4) An adult brother or sister;

16 (5) A guardian of the person of the decedent at the
17 time of his death;

18 (6) Any other person authorized or under obliga-
19 tion to dispose of the body.

20 (c) If the donee has actual notice of contrary indi-
21 cations by the decedent or that a gift by a member of
22 a class is opposed by a member of the same or a prior
23 class, the donee shall not accept the gift. The persons
24 authorized by subsection (b) of this section may make
25 the gift after or immediately before death.

26 (d) A gift of all or part of a body authorizes any
27 examination necessary to assure medical acceptability
28 of the gift for the purposes intended.

29 (e) The rights of the donee created by the gift are
30 paramount to the rights of others except as provided by
31 section seven, subsection (d) of this article.

§16-19-3. Persons who may become donees; purposes for which anatomical gifts may be made.

1 The following persons may become donees of gifts
2 of bodies or parts thereof for the purposes stated:

3 (1) Any hospital, surgeon, or physician, for medical
4 or dental education, research, advancement of medical
5 or dental science, therapy, or transplantation; or

6 (2) Any accredited medical or dental school, college
7 or university for education, research, advancement of
8 medical or dental science, or therapy; or

9 (3) Any bank or storage facility, for medical or dental
10 education, research, advancement of medical or dental
11 science, therapy, or transplantation; or

12 (4) Any specified individual for therapy or trans-
13 plantation needed by him.

§16-19-4. Manner of executing anatomical gifts.

1 (a) A gift of all or part of the body under section
2 two, subsection (a) of this article may be made by will.
3 The gift becomes effective upon the death of the tes-
4 tator without waiting for probate. If the will is not pro-
5 bated, or if it is declared invalid for testamentary pur-
6 poses, the gift, to the extent that it has been acted
7 upon in good faith, is nevertheless valid and effec-
8 tive.

9 (b) A gift of all or part of the body under section
10 two, subsection (a) of this article may also be made
11 by document other than a will. The gift becomes effec-
12 tive upon the death of the donor. The document, which
13 may be a card designed to be carried on the person,
14 must be signed by the donor in the presence of two
15 witnesses who must sign the document in his presence.
16 If the donor cannot sign, the document may be signed
17 for him at his direction and in his presence in the pres-
18 ence of two witnesses who must sign the document in
19 his presence. Delivery of the document of gift during

20 the donor's lifetime is not necessary to make the gift
21 valid.

22 (c) The gift may be made to a specified donee or
23 without specifying a donee. If the latter, the gift may be
24 accepted by the attending physician as donee upon or
25 following death. If the gift is made to a specified donee
26 who is not available at the time and place of death,
27 the attending physician upon or following death, in the
28 absence of any expressed indication that the donor
29 desired otherwise, may accept the gift as donee. The
30 physician who becomes a donee under this subsection
31 shall not participate in the procedures for removing or
32 transplanting a part, except that this prohibition shall not
33 apply to the removing or transplanting of an eye or eyes.

34 (d) Notwithstanding section seven, subsection (b) of
35 this article, the donor may designate in his will, card, or
36 other document of gift the surgeon or physician to carry
37 out the appropriate procedures. In the absence of a designa-
38 tion or if the designee is not available, the donee or
39 other person authorized to accept the gift may employ or
40 authorize any surgeon or physician for the purpose.

41 (e) Any gift by a person designated in section two,
42 subsection (b) of this article shall be made by a docu-
43 ment signed by him or made by his telegraphic, re-
44 corded telephonic, or other recorded message.

45 (f) No particular words shall be necessary for dona-
46 tion of all or part of a body, but the following words,
47 in substance, properly signed and witnessed, shall be
48 legally valid for donations made pursuant to subsection
49 (b) of this section:

50 "UNIFORM DONOR CARD

51 of

52 _____
53 Print or type name of donor

54 In the hope that I may help others, I hereby make this
55 anatomical gift, if medically acceptable, to take effect
56 upon my death. The words and marks below indicate
57 my desires.

58 I give: (a) _____ any needed organs or parts

59 (b) _____ only the following organs or parts
60 _____
61 Specify the organ(s) or part(s)
62 for the purposes of transplantation, therapy, medical
63 research or education;
64 (c) _____ my body for anatomical study if
65 needed.
66 Limitations or special wishes, if any: _____
67 Signed by the donor and the following two witnesses
68 in the presence of each other:
69 _____
70 Signature of Donor Date of Birth of Donor
71 _____
72 Date Signed City and State
73 _____
74 Witness Witness
75 This is a legal document under the Uniform Anatomical
76 Gift Act or similar laws."

§16-19-5. Delivery of document of gift.

1 If the gift is made by the donor to a specified donee,
2 the will, card, or other document, or an executed copy
3 thereof, may be delivered to the donee to expedite the
4 appropriate procedures immediately after death. Delivery
5 is not necessary to the validity of the gift. The will,
6 card, or other document, or an executed copy thereof,
7 may be deposited in any hospital, bank or storage facility
8 or registry office that accepts it for safekeeping or for
9 facilitation of procedures after death. On request of any
10 interested party upon or after the donor's death, the
11 person in possession shall produce the document for
12 examination.

§16-19-6. Amendment or revocation of the gift.

1 (a) If the will, card, or other document or executed
2 copy thereof, has been delivered to a specified donee,
3 the donor may amend or revoke the gift by:
4 (1) The execution and delivery to the donee of a
5 signed statement; or
6 (2) An oral statement made in the presence of two
7 persons and communicated to the donee; or

8 (3) A statement during a terminal illness or injury
9 addressed to an attending physician and communicated
10 to the donee; or

11 (4) A signed card or document found on his person
12 or in his effects.

13 (b) Any document of gift which has not been de-
14 livered to the donee may be revoked by the donor in the
15 manner set out in subsection (a) of this section or by
16 destruction, cancellation, or mutilation of the document
17 and all executed copies thereof.

18 (c) Any gift made by a will may also be amended
19 or revoked in the manner provided for amendment or
20 revocation of wills, or as provided in subsection (a) of
21 this section.

§16-19-7. Rights and duties at death.

1 (a) The donee may accept or reject the gift. If the
2 donee accepts a gift of the entire body, he may, subject
3 to the terms of the gift, authorize embalming and the
4 use of the body in funeral services. If the gift is of a
5 part of the body, the donee, upon the death of the donor
6 and prior to embalming, shall cause the part to be
7 removed without unnecessary mutilation. After removal
8 of the part, custody of the remainder of the body vests
9 in the surviving spouse, next of kin, or other persons
10 under obligation to dispose of the body.

11 (b) The time of death shall be determined by a phy-
12 sician who tends the donor at his death, or, if none, the
13 physician who certifies the death. Such physician shall
14 not participate in the procedures for removing or trans-
15 planting a part.

16 (c) A person who acts in good faith in accord with
17 the terms of this article or with the anatomical gift laws
18 of another state or a foreign country is not liable for
19 damages in any civil action or subject to prosecution in
20 any criminal proceeding for his act.

21 (d) The provisions of this article are subject to the
22 laws of this state prescribing powers and duties with
23 respect to autopsies.

§16-19-8. Uniformity of interpretation.

- 1 This article shall be so construed as to effectuate its
- 2 general purpose to make uniform the law of those states
- 3 which enact it.

§16-19-9. Short title.

- 1 This article may be cited as the "Uniform Anatomical
- 2 Gift Act."

* CHAPTER 5

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

[Passed February 14, 1970; in effect from passage. Approved by the Governor February 18, 1970, after reducing certain items and parts of items and disapproving certain items, which reductions and disapprovals by the Governor were invalidated by the Supreme Court of Appeals.
See Clerk's note on this page.]

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

Be it enacted by the Legislature of West Virginia:

Title

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

TITLE 1. GENERAL PROVISIONS.

- §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 and

*Clerk's note: On February 18, 1970, the Governor reduced certain items in this Act and disapproved others. On June 16, 1970, the Supreme Court of Appeals issued a preemptory writ of mandamus in an action styled Chauncey H. Browning, Jr., Attorney General, Relator, vs. C. A. Blankenship, Clerk of the House of Delegates, Respondent, holding the Governor's action with respect to reduction and disapproval of the certain items to be invalid, and commanding the Clerk of the House of Delegates, "as keeper of the rolls, to publish the Budget Act, as passed by the Legislature, and not as amended by the Governor." In compliance with the Court's mandate, the Act is so published herein.

4 its agencies during the fiscal year one thousand nine hun-
5 dred seventy-one.

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 one” shall mean the period from July first, one thousand
8 nine hundred seventy through June thirtieth, one thousand
9 nine hundred seventy-one.

10 “From collections” shall mean that part of the total ap-
11 propriation which must be collected by the spending unit
12 to be available for expenditure. If the authorized amount
13 of collections is not collected, the total appropriation for
14 the spending unit shall be reduced automatically by the
15 amount of the deficiency in the collection. If the amount
16 collected exceeds the amount designated “from collections”
17 the excess shall be set aside in a special surplus fund and
18 may be expended for the purpose of the spending unit as
19 provided by Chapter 5-A, Article 2 of the Code of West
20 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 appropriations
6 made to the spending units of state government, there
7 may be transferred upon approval of the Governor, to a
8 special account an amount sufficient to match Federal
9 Funds under any Federal Acts;

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

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

14 “Repairs and Alterations” shall include all expenditures
15 for materials, supplies and labor used in repairing and
16 altering buildings, grounds and equipment, other than per-
17 sonal service;

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

21 "Buildings" shall include construction and alteration of
22 structures and the improvements of lands, sewer and water
23 improvements, and shall include shelter, support, storage,
24 protection, or the improvement of a natural condition;

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

27 Appropriations otherwise classified shall be expended
28 only where the distribution of expenditures for different
29 purposes cannot well be determined in advance or it is
30 necessary or desirable to permit the spending unit freedom
31 to 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
6 limiting that article.

TITLE 2. APPROPRIATIONS.

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- §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.**—From
 2 the state fund, general revenue, there is hereby appro-
 3 priated conditionally upon the fulfillment of the provisions
 4 set forth in Chapter 5-A, Article 2 of the Code of West Vir-
 5 ginia, the following amounts, as itemized, for expenditure
 6 during the fiscal year one thousand nine hundred seventy-
 7 one.

LEGISLATIVE

1—Senate

Acct. No. 101

	<i>Fiscal Year</i> 1969-70
1 Compensation and per diem of officers and	
2 attaches	\$ 65,000.00
	<i>Fiscal Year</i> 1970-71
1 Salaries of Members	\$ 54,000.00
2 Compensation and per diem of officers and	
3 attaches	190,000.00
4 Mileage of Members	3,000.00
5 Current Expenses and Contingent Fund	130,000.00
6 To pay the Clerk of the Senate for compil-	
7 ing and publishing the West Virginia Blue	
8 Book, the distribution of which shall be	
9 made by the office of the Clerk of the Sen-	
10 ate and shall include seventy-five copies	
11 for each member of the Legislature and	
12 two copies to each classified and approved	
13 High and Junior High School and one to	
14 each Elementary School within the state	10,000.00
15 To pay cost of printing the 1970 edition of	
16 the Blue Book	50,000.00
17 The appropriations for the Senate for the	
18 fiscal year 1969-70 are to remain in full	
19 force and effect, and are hereby reappro-	
20 priated to June 30, 1971.	
21 Any balances so reappropriated may be	
22 transferred and credited to the 1970-71	
23 accounts.	

24 Upon written request of the Clerk of the
 25 Senate the State Auditor shall transfer
 26 amounts between items of the total appro-
 27 priation in order to protect or increase the
 28 efficiency of the service.

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

2—House of Delegates

Acct. No. 102

Fiscal Year
1969-70

1 Compensation and per diem of officers and	
2 attaches	\$ 50,000.00

Fiscal Year
1970-71

1 Salaries of Members	\$ 154,500.00
2 Compensation and per diem of officers and	
3 attaches	220,000.00
4 Mileage of Members	7,000.00
5 Current Expenses and Contingent Fund	150,000.00

6 The appropriation for the House of Delegates
 7 for the fiscal year 1969-70 are to remain
 8 in full force and effect, and are hereby re-
 9 appropriated to June 30, 1971.

10 Any balances so reappropriated may be trans-
 11 ferred and credited to the 1970-71 accounts.
 12 Upon the written request of the Clerk of the
 13 House of Delegates, the State Auditor shall

14 transfer amounts between items of the total
15 appropriation in order to protect or in-
16 crease the efficiency of the service.

17 The Clerk of the House of Delegates, with
18 approval of the Speaker, is authorized to
19 draw his requisitions upon the Auditor,
20 payable out of the contingent fund of the
21 House of Delegates, for any bills for sup-
22 plies and services that may have been in-
23 curred by the House of Delegates, and not
24 included in the appropriation bill, for bills
25 for services and supplies incurred in prepa-
26 ration for the opening of the session and
27 after adjournment, and for the necessary
28 operation of the House of Delegates'
29 offices, the requisition for same to be ac-
30 companied by bills to be filed with the
31 Auditor.

32 For duties imposed by law and by the House
33 of Delegates, including the salary allowed
34 by law as keeper of the rolls, the Clerk of
35 the House of Delegates shall be paid a
36 monthly salary as provided in House Reso-
37 lution No. 3, adopted January 14, 1970, pay-
38 able from the contingent fund of the House
39 of Delegates, and the Clerk may employ a
40 secretary and a bookkeeper at the salaries
41 provided in said resolution.

42 The Speaker of the House of Delegates, up-
43 on recommendation of the Chairman of
44 the Finance Committee, shall have the
45 authority to convene the Finance Com-
46 mittee at any time within ten (10) days
47 prior to the next Legislative session for
48 the purpose of reviewing the budget re-
49 quests of the various spending units of
50 this State. Such members of the Com-
51 mittee are to be allowed \$25.00 per diem in
52 lieu of actual and necessary expenses, and
53 the Clerk of the House is hereby authorized

54 to draw requisitions upon the State Auditor
 55 payable out of the appropriation for Cur-
 56 rent Expenses and Contingent Fund for
 57 these expenses.

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

3—Joint Expenses

Acct. No. 103

Fiscal Year
1969-70

1	Joint Committee on Government and	
2	Finance	\$ 75,000.00

Fiscal Year
1970-71

1	To pay the cost of legislative printing	\$ 175,000.00
2	Commission on Interstate Cooperation	20,000.00
3	Joint Committee on Government and Finance	1,005,000.00

4 The appropriation for Joint Expenses for the fiscal year
 5 1969-1970, are to remain in full force and effect, and are
 6 hereby reappropriated to June 30, 1971.

7 Any balances so reappropriated may be transferred and
 8 credited to the 1970-71 accounts.

9 Upon written request of the Clerk of the Senate and the
 10 Clerk of the House of Delegates the State Auditor shall
 11 transfer amounts between items of the total appropria-
 12 tion in order to protect or increase the efficiency of the
 13 service.

JUDICIAL

4—*Supreme Court of Appeals*

Acct. No. 110

1	Salaries of Judges	\$	137,500.00
2	Other Personal Services		221,592.00
3	Current Expenses		33,000.00
4	Equipment		5,000.00
5	Total	\$	397,092.00

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		225,000.00
5	Criminal Charges		355,000.00
6	Total	\$	1,358,600.00
7	This appropriation shall be administered by		
8	the State Auditor who shall draw his requi-		
9	sition for warrants in payments of salaries		
10	in the form of payrolls, making deductions		
11	therefrom as required by law, for taxes and		
12	other items. The appropriation for Judges		
13	Retirement System is to be transferred to		
14	the Judges Retirement Fund, in accord-		
15	ance with the law relating thereto, upon		
16	requisition of the State Auditor.		

6—*State Law Library*

Acct. No. 114

1	Personal Services	\$	52,000.00
2	Current Expenses		7,565.00
3	Equipment		35,000.00
4	Total	\$	94,565.00

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) \$	125,000.00
3	Current Expenses	*(45,000.00)	50,000.00
4	Equipment	*(5,000.00)	15,000.00
5	Civil Contingent Fund		100,000.00
6	Of this appropriation there may be expended,		
7	at the discretion of the Governor, an		
8	amount not to exceed \$1,000.00 as West		
9	Virginia's contribution to the Interstate Oil		
10	Compact Commission.		
11	Custodial Fund		75,000.00
12	To be used for current general expenses, in-		
13	cluding compensation of servants and em-		
14	ployees, household maintenance, cost of		
15	official functions, and any additional house-		
16	hold expenses occasioned by such official		
17	functions.		
18	Federal State Coordination and		
19	Office of Federal State Relations		500,000.00
20	Disaster Relief-Federal Matching		50,000.00
21	To match and aid Federal Programs, and any		
22	part of this appropriation may be trans-		
23	ferred to any department for such purposes.		
24	Any unexpended balance remaining in the		
25	appropriation-Civil Contingent Fund, Office		
26	of Federal State Relations, and Federal		
27	State Coordination, at the close of the fiscal		
28	year 1969-70 is hereby reappropriated for		
29	expenditure during the fiscal year 1970-71.		
30	Total	*(\$916,980.00) \$	940,000.00

*The figures in parenthesis indicate the amount of the item as reduced by the Governor. The last column shows the amount in the bill as passed by the Legislature and restored by the Supreme Court of Appeals in the mandamus proceeding, styled State of West Virginia ex rel. Chauncey H. Browning, Jr., vs. C. A. Blankenship, Clerk of the House of Delegates. The last column represents the official act of the Legislature and constitutes compliance with the Court's mandate.

9—*West Virginia Housing Development Fund*

Acct. No. 122

1	Total	\$	25,000.00
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FISCAL

10—*Auditor's Office—General Administration*

Acct. No. 150

1	Salary of State Auditor	\$	18,000.00
2	Other Personal Services	*(\$442,287.00)	500,060.00
3	Current Expenses	*(131,657.00)	136,025.00
4	Equipment	*(9,500.00)	10,000.00
5	Microfilm Program		7,500.00
6	Total	*(\$608,944.00) \$	671,585.00

11—*Treasurer's Office*

Acct. No. 160

1	Salary of State Treasurer	\$	17,500.00
2	Other Personal Services		159,400.00
3	Current Expenses		28,770.00
4	Equipment		7,500.00
5	Board of Investments		1,500.00
6	Total	\$	214,670.00

12—*Sinking Fund Commission*

Acct. No. 170

1	Personal Services	\$	32,640.00
2	Current Expenses	*(\$ 2,175.00)	3,075.00
3	Equipment		1,000.00
4	Total	*(\$ 35,815.00) \$	36,715.00

13—*State Tax Department*

Acct. No. 180

1	Personal Services	\$	2,185,827.00
2	Current Expenses		652,565.00

*See note page 22.

3	Equipment	28,000.00
4	Total	\$ 2,866,392.00

14—State Tax Department
Property Appraisal

Acct. No. 185

1	Personal Services	\$ 354,500.00
2	Other Expenses	145,500.00
3	Total	\$ 500,000.00
4	Any balances remaining in the Property Ap-	
5	praisal Accounts previously appropriated	
6	in 1967-68; 1968-69 and 1969-70 at the close	
7	of the fiscal year 1969-70 is hereby reappro-	
8	priated for expenditure during the fiscal	
9	year 1970-71.	

15—State Commissioner of Public Institutions

Acct. No. 190

1	Salary of Commissioner	\$ 16,000.00
2	Salaries of Board Members—Board of Pro-	
3	bation and Parole	36,000.00
4	Other Personal Services	414,540.00
5	Current Expenses	129,920.00
6	Equipment	2,500.00
7	Total	\$ 598,960.00

16—Department of Finance and Administration

Acct. No. 210

1	Personal Services	\$ 820,000.00
2	Current Expenses	397,300.00
3	Repairs and Alterations	125,000.00
4	Equipment	20,000.00
5	Postage	230,000.00
6	Records Management	49,000.00
7	Office of State Emergency Planning	24,000.00

8	State Agency Surplus Property	50,000.00
9	Transportation Division—Vehicles.....	125,000.00
10	Information Systems Service Division.....	200,000.00
11	Major Building Repairs	325,000.00
12	National Youth Science Camp	80,000.00

13 Total.....\$ 2,445,300.00

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

40 Any unexpended balance remaining in the
 41 "Postage Account" and "Major Building
 42 Repairs" (Major Building Repairs to in-
 43 clude maintenance and repairs to Gover-
 44 nor's Mansion) at the close of the fiscal
 45 year 1969-70 is hereby reappropriated for
 46 expenditure during the fiscal year 1970-71.

47 State Department of Highways, shall reim-
 48 burse the appropriation of the Department
 49 of Finance and Administration monthly
 50 for all actual expenses incurred pursuant
 51 to (the provisions of) Chapter 17, Article
 52 2-A, Section 13 of the Code of West
 53 Virginia.

17—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 ap-
 12 propriations be insufficient to meet the pre-
 13 mium requirements of the state spending
 14 units, any excess premium requirements
 15 shall be a proper charge against the units
 16 and each spending unit shall reimburse to
 17 the Board of Insurance any amounts re-
 18 quired for that department for premiums
 19 in excess of this appropriation.

20 Any unexpended balance remaining in the
 21 appropriation for "Self-Insurance Fund"
 22 at the close of the fiscal year 1969-70 is
 23 hereby reappropriated for expenditure dur-
 24 ing the fiscal year 1970-71.

LEGAL

18—Attorney General

Acct. No. 240

1 Salary of Attorney General	\$ 18,500.00
------------------------------------	--------------

2	Other Personal Services	* (\$280,626.00)	583,360.00
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	* (\$363,126.00) \$	665,860.00
9	When legal counsel or secretarial help is ap-		
10	pointed by the Attorney General, for any		
11	state spending unit, this account shall be		
12	reimbursed from such unit's appropriated		
13	account in an amount agreed upon by the		
14	Attorney General and the proper authority		
15	of said spending unit.		

19—*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

20—*Secretary of State*

Acct. No. 250

1	Salary of Secretary of State	\$	17,000.00
2	Other Personal Services	* (\$ 85,360.00)	111,740.00
3	Current Expenses	* (33,332.00)	40,015.00
4	Equipment		7,650.00
5	Total	* (\$143,342.00) \$	176,405.00

EDUCATIONAL

21—*West Virginia Board of Regents (Control)*

Acct. No. 279

1	Personal Services	\$	44,537,700.00
2	Current Expenses		5,110,400.00
3	Repairs and Alterations		1,714,400.00
4	Equipment		2,706,100.00
5	Oak Wilt Research		10,000.00

*See note page 22.

6	Veterinary Tuition	40,200.00
7	Educational T.V.	523,000.00
8	Bureau for Coal Research	225,000.00
9	Forestry Products	90,000.00
10	Regional Research Institute	79,700.00
11	Intensive Agriculture-Demonstration Trial ..	26,000.00
12	Experimental Projects in Teacher Education	45,000.00
13	Branch College	203,200.00
14	Community Development and Research	18,000.00
15	Center for Economic Action	45,000.00
16	Total	\$ 55,373,700.00
17	Out of the above appropriation for "Personal Services" an	
18	amount of \$30,000.00 shall be expended for the Greenbrier	
19	Valley Branch.	

22—*West Virginia Board of Regents*

Acct. No. 280

1	Personal Services	\$ 247,340.00
2	Current Expenses	83,625.00
3	Equipment	13,600.00
4	Total	\$ 344,565.00

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

Acct. No. 289

1	Total	\$ 200,000.00
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24—*Department of Education*

Acct. No. 290

1	Comprehensive Educational Program	\$ 1,000,000.00
---	---	-----------------

25—*Educational Broadcasting Authority*

Acct. No. 291

1	Personal Services	\$ 38,760.00
2	Current Expenses	21,670.00

3	Equipment	3,000.00
4	Regional ETV* (\$400,000.00)	687,000.00
5	Total.....*	(\$463,430.00) \$ 750,430.00
6	For participation in the construction and	
7	operation 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	
12	revenue accounts for matching County	
13	and/or Federal Funds.	

26—*State Board of Education—Vocational Division*

Acct. No. 293

1	To implement Vocational Education Act of	
2	1963 P. L. 88-210*	(\$1,100,000.00) \$ 1,750,000.00
3	The above appropriation includes \$100,000.00	
4	for Manpower Training.	

27—*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 1969-70 is hereby re-	
5	appropriated for expenditure during the	
6	fiscal year 1970-71.	

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

Acct. No. 295

1	State Aid to supplement the General School	
2	Fund	\$125,072,311.00
3	To be transferred to the General School Fund	
4	upon the requisition of the Governor.	

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

Acct. No. 296

1	Personal Services	\$ 33,360.00
2	Current Expenses	8,200.00

*See note page 22.

3	Out-of-State Instruction	90,000.00
4	Aid to Counties * (\$1,324,000.00)	1,724,000.00
		<hr/>
5	Total..... * (\$1,455,560.00) \$	1,855,560.00
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.	

30—Teachers Retirement Board

Acct. No. 298

1	Benefit Fund—Payments to Retired	
2	Teachers	\$ 11,502,000.00
3	Employers' Accumulation Fund—To match	
4	contributions of members	3,525,000.00
5	Expenses Fund	35,000.00
		<hr/>
6	Total.....	\$ 15,062,000.00

31—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	
4	Program * (\$175,000.00)	250,000.00
5	Scholarship Program * (175,000.00)	250,000.00
6	Awareness Program	50,000.00
		<hr/>
7	Total..... * (\$558,400.00) \$	708,400.00
8	The appropriation for Guaranteed Student	
9	Loan Program and Scholarship Program	
10	may be transferred to Special Revenue	
11	Fund for the purpose of matching Federal	
12	Funds for the above-named program.	

32—West Virginia Schools for the Deaf and Blind

Acct. No. 333

1	Personal Services	\$ 921,990.00
2	Current Expenses	185,000.00

*See note page 22.

3	Repairs and Alterations	55,350.00
4	Equipment	39,500.00
		<hr/>
5	Total	\$ 1,201,840.00
6	Any unexpended balance remaining in the	
7	appropriation "Intermediate Classroom	
8	Dormitory Unit" at the close of the fiscal	
9	year 1969-70 is hereby reappropriated for	
10	expenditure during the fiscal year 1970-71.	

33—State FFA-FHA Camp and Conference Center

Acct. No. 336

1	Personal Services	\$ 40,700.00
2	Current Expenses	7,250.00
3	Repairs and Alterations	6,250.00
4	Equipment	7,050.00
		<hr/>
5	Total	\$ 61,250.00

34—Department of Archives and History

Acct. No. 340

1	Personal Services	\$ 63,450.00
2	Current Expenses	15,850.00
3	Equipment	11,500.00
		<hr/>
4	Total	\$ 90,800.00

35—West Virginia Library Commission

Acct. No. 350

1	Personal Services	\$ 125,542.00
2	Current Expenses	4,900.00
3	Equipment	5,000.00
4	Books and Periodicals	31,480.00
5	To Match Federal Funds	208,096.00
		<hr/>
6	Total	\$ 375,018.00
7	Any unexpended balance remaining in the	
8	appropriation "Library Matching Fund" at	
9	the close of the fiscal year 1969-70 is hereby	
10	reappropriated for expenditure during the	
11	fiscal year 1970-71.	

CHARITIES AND CORRECTION

36—*West Virginia Industrial School for Boys*

Acct. No. 370

1	Personal Services	\$	556,899.00
2	Current Expenses		199,100.00
3	Repairs and Alterations		35,000.00
4	Equipment		22,700.00
<hr/>			
5	Total	\$	813,699.00

37—*Forestry Camp for Boys*

Acct. No. 371

1	Personal Services	\$	137,220.00
2	Current Expenses		89,550.00
3	Repairs and Alterations		10,500.00
4	Equipment		15,000.00
<hr/>			
5	Total	\$	252,270.00

38—*West Virginia Industrial Home for Girls*

Acct. No. 372

1	Personal Services	\$	280,240.00
2	Current Expenses		96,700.00
3	Repairs and Alterations		13,500.00
4	Equipment		10,500.00
5	Vocational Training		5,000.00
<hr/>			
6	Total	\$	405,940.00

39—*West Virginia Forestry Camp—(Leckie)*

Acct. No. 373

1	Personal Services	\$	139,960.00
2	Current Expenses		103,300.00
3	Repairs and Alterations		4,900.00
4	Equipment		13,800.00
<hr/>			
5	Total	\$	261,960.00

40—*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
<hr/>			
5	Total	\$	127,300.00

41—*West Virginia Penitentiary*

Acct. No. 375

1	Personal Services	\$	1,207,720.00
2	Current Expenses		520,580.00
3	Repairs and Alterations		45,500.00
4	Equipment		26,100.00
<hr/>			
5	Total	\$	1,799,900.00

42—*Huttonsville Correctional Center*

Acct. No. 376

1	Personal Services	\$	537,096.00
2	Current Expenses		195,750.00
3	Repairs and Alterations		25,000.00
4	Equipment		28,000.00
5	Diagnostic Center		100,000.00
<hr/>			
6	Total	\$	885,846.00

43—*West Virginia Children's Home*

Acct. No. 380

1	Personal Services	\$	73,464.00
2	Current Expenses		37,130.00
3	Repairs and Alterations		14,000.00
4	Equipment		11,624.00
<hr/>			
5	Total	\$	136,218.00

44—*Andrew S. Rowan Memorial Home*

Acct. No. 384

1	Personal Services	\$	366,560.00
2	Current Expenses		180,695.00

3	Repairs and Alterations	29,500.00
4	Equipment	10,000.00
5	Total	\$ 586,755.00

HEALTH AND WELFARE

45—State Health Department

Acct. No. 400

1	Personal Services	\$ 702,727.00
2	Current Expenses	131,140.00
3	Equipment	21,443.00
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	123,947.00
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	231,280.00
18	Environmental Health Services	67,510.00
19	Total	\$ 2,411,287.00

46—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 Legisla-	
7	ture, one thousand nine hundred forty-	
8	three	15,000.00
9	Total	\$ 301,420.00

- 10 Any unexpended balances remaining in the
 11 appropriation "To Provide Educational Op-
 12 portunities for Children of War Veterans"
 13 at the close of the fiscal year 1969-70 is
 14 hereby reappropriated for expenditure
 15 during the fiscal year 1970-71.

47—Department of Welfare

Acct. No. 405

1	Personal Services	\$ 4,008,290.00
2	Current Expenses	1,600,000.00
3	Equipment	35,262.00
4	Public Assistance Grants (Classified Aid)	11,392,721.00
5	Aid to Crippled Children	770,000.00
6	Medical Services	3,500,000.00
7	Conservation of Vision and Prevention of	
8	Blindness	40,000.00
9	Child Welfare Services	230,781.00
10	General Relief and Boarding Care	2,472,742.00
11	Social Security Matching Fund	396,180.00
12	Day Care Services	50,000.00
13	Legal Services	25,000.00
		<hr/>
14	Total	\$ 24,520,976.00

48—State Commission on Aging

Acct. No. 406

1	Personal Services	\$ 34,980.00
2	Current Expenses	2,805.00
		<hr/>
3	Total	\$ 37,785.00

49—Department of Mental Health

Acct. No. 410

1	Personal Services	\$ 728,028.00
2	Current Expenses	159,630.00
3	Equipment	13,800.00
4	Research and Training	30,000.00
5	Civil Service Costs	77,000.00
6	Division of Health Education	18,500.00
7	Day Care Center	60,000.00

8	Commission on Mental Retardation	16,720.00
9	Division of Alcoholism* (\$250,000.00)	350,000.00
10	Division of Community	
11	Services* (200,000.00)	300,000.00
12	Roney's Point Branch Hospital	100,000.00
13	Total.....* (\$1,653,678.00)	\$ 1,853,678.00

50—Colin Anderson Center

Acct. No. 419

1	Personal Services	\$ 1,819,200.00
2	Current Expenses	332,100.00
3	Repairs and Alterations	57,300.00
4	Equipment	31,500.00
5	Total.....	\$ 2,240,100.00
6	Any unexpended balance remaining in the	
7	appropriation "Capital Outlay Improve-	
8	ment" at the close of fiscal year 1969-70 is	
9	hereby reappropriated for expenditure dur-	
10	ing the fiscal year 1970-71.	

51—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	Psychiatric Training Center for Student	
6	Nurses	310,000.00
7	Total.....	\$ 4,886,388.00
8	Any unexpended balance remaining in the	
9	appropriation "Boiler Replacement" at the	
10	close of fiscal year 1969-70 is hereby re-	
11	appropriated for expenditure during the	
12	fiscal year 1970-71.	

52—Spencer State Hospital

Acct. No. 421

1	Personal Services	\$ 2,144,320.00
2	Current Expenses	601,672.00

*See note page 22.

3	Repairs and Alterations	66,375.00
4	Equipment	57,000.00
5	Total	\$ 2,869,367.00

53—Huntington State Hospital

Acct. No. 422

1	Personal Services	\$ 2,264,070.00
2	Current Expenses	801,580.00
3	Repairs and Alterations	103,750.00
4	Equipment	62,500.00
5	Total	\$ 3,231,900.00

54—Lakin State Hospital

Acct. No. 423

1	Personal Services	\$ 1,090,000.00
2	Current Expenses	315,500.00
3	Repairs and Alterations	67,300.00
4	Equipment	59,100.00
5	Total	\$ 1,531,900.00
6	Any unexpended balance remaining in the	
7	appropriation — Construct Recreation	
8	Building, Renovate Classroom Building,	
9	Construct Ward Building, at the close of	
10	the fiscal year 1969-70 is hereby reappro-	
11	priated for expenditure during the fiscal	
12	year 1970-71.	

55—Barboursville State Hospital

Acct. No. 424

1	Personal Services	\$ 567,320.00
2	Current Expenses	171,120.00
3	Repairs and Alterations	42,000.00
4	Equipment	15,100.00
5	Total	\$ 795,540.00

56—Fairmont Emergency Hospital

Acct. No. 425

1	Personal Services	\$ 317,830.00
2	Current Expenses	105,235.00

3	Repairs and Alterations	13,715.00
4	Equipment	11,050.00
		<hr/>
5	Total	\$ 447,830.00

57—Welch Emergency Hospital

Acct. No. 426

1	Personal Services	\$ 341,720.00
2	Current Expenses	173,920.00
3	Repairs and Alterations	44,750.00
4	Equipment	22,500.00
		<hr/>
5	Total	\$ 582,890.00

58—Hopemont State Hospital

Acct. No. 430

1	Personal Services	\$ 1,231,600.00
2	Current Expenses	302,800.00
3	Repairs and Alterations	21,700.00
4	Equipment	2,700.00
		<hr/>
5	Total	\$ 1,558,800.00

59—Pinecrest State Hospital

Acct. No. 431

1	Personal Services	\$ 1,116,790.00
2	Current Expenses	441,500.00
3	Repairs and Alterations	27,800.00
4	Equipment	17,300.00
		<hr/>
5	Total	\$ 1,603,390.00

60—Denmar State Hospital

Acct. No. 432

1	Personal Services	\$ 968,410.00
2	Current Expenses	244,000.00
3	Repairs and Alterations	31,950.00
4	Equipment	29,500.00
		<hr/>
5	Total	\$ 1,273,860.00

61—*Berkeley Springs Sanitarium*

Acct. No. 436

1	Personal Services	\$	64,990.00
2	Current Expenses		10,000.00
3	Repairs and Alterations		7,900.00
4	Equipment		3,000.00
5	Total	\$	85,890.00

62—*State Board of Education—Rehabilitation Division*

Acct. No. 440

1	Personal Services	*(\$484,575.00)	\$	535,007.00
2	Current Expenses			138,020.00
3	Rehabilitation Center			437,905.00
4	Case Services	*(927,694.00)		1,010,596.00
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			38,000.00
9	Total	*(\$2,108,221.00)	\$	2,241,555.00

BUSINESS AND INDUSTRIAL RELATIONS

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

Acct. No. 450 *

1	Personal Services	\$	542,010.00
2	Current Expenses		185,973.00
3	Equipment		3,500.00
4	Total	\$	731,483.00

64—*Department of Employment Security
Work Incentive Program*

Acct. No. 451

- 1 Any unexpended balance remaining in this
- 2 appropriation at the close of the fiscal
- 3 year 1969-70 is hereby reappropriated for
- 4 expenditure during the fiscal year 1970-71.

*See note page 22.

65—Department of Mines

Acct. No. 460

1	Personal Services	\$ 1,277,740.00
2	Current Expenses	192,075.00
3	Equipment	33,500.00
4	Total	\$ 1,503,315.00
5	Out of the above appropriation for "Personal Services" the	
6	sum of \$19,000.00 is to be expended for and in the case of	
7	employment of the "Deputy Director for Oil and Gas"	
8	and only in the event such Deputy Director is qualified	
9	pursuant to Section 1b, Chapter 22 of the Code of West	
10	Virginia, as amended.	

66—Department of Commerce

Acct. No. 465

1	Personal Services	\$ 375,000.00
2	Current Expenses	831,970.00
3	Equipment	5,000.00
4	Mt. State Forest Festival	15,000.00
5	Alpine Festival	1,000.00
6	West Virginia Historical Drama Association	35,000.00
7	Arts and Humanities Fund	124,960.00
8	West Virginia Water Festival	5,000.00
9	Mountain State Arts & Crafts Fair	5,000.00
10	Oil and Gas Festival	1,500.00
11	Total	\$ 1,399,430.00
12	The above appropriations, Mountain State	
13	Forest Festival, Alpine Festival, Moun-	
14	tain State Arts and Crafts Fair, West Vir-	
15	ginia Water Festival and West Virginia	
16	Historical Drama Association shall be ex-	
17	pended only upon authorization of the	
18	Commerce Commissioner and in accord-	
19	ance with the provisions of Chapter 5-A of	
20	the Code of West Virginia.	
21	All Federal moneys received as reimburse-	
22	ments to the Department of Commerce, for	
23	moneys expended from the General Reve-	

24 nue fund for Arts and Humanities are here-
 25 by reappropriated for purposes as origi-
 26 nally made, including Personal Services,
 27 Current Expenses and Equipment.

28 Any unexpended balance remaining in the
 29 appropriation "Independence Hall, Wheel-
 30 ing, West Virginia" at the close of the fiscal
 31 year 1969-70 is hereby reappropriated for
 32 expenditure during the fiscal year 1970-71.

67—*State Commission on Manpower, Technology
 and Training*

Acct. No. 470

1	Personal Services	\$	21,000.00
2	Current Expenses		7,400.00
3	Equipment		200.00
4	Total	\$	28,600.00

68—*Interstate Commission on Potomac River Basin*

Acct. No. 473

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

69—*Ohio River Valley Water Sanitation Commission*

Acct. No. 474

1	West Virginia's contribution to the Ohio		
2	River Valley Water Sanitation Commis-		
3	sion	\$	20,657.00

70—*Southern Regional Education Board*

Acct. No. 475

1	West Virginia's contribution to Southern		
2	Regional Education Board	\$	55,072.00
3	To be expended upon requisition of the		
4	Governor.		

71—*West Virginia Air Pollution Commission*

Acct. No. 476

1	Personal Services	\$	145,750.00
2	Current Expenses		33,232.00

3	Equipment	11,505.00
4	Total	\$ 190,487.00

72—Interstate Education Compact

Acct. No. 477

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

73—Antiquities Commission

Acct. No. 478

1	Personal Services	\$ 14,640.00
2	Current Expenses	5,075.00
3	Equipment	2,300.00
4	Total	\$ 22,015.00

74—Department of Banking

Acct. No. 480

1	Personal Services	\$ 148,100.00
2	Current Expenses	61,600.00
3	Equipment	1,500.00
4	Total	\$ 211,200.00

75—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	Total	\$ 55,700.00

7 Any unexpended balance remaining in the
 8 appropriation "Airport Matching Fund" at
 9 the close of the fiscal year 1969-70 is hereby
 10 reappropriated for expenditure during fis-
 11 cal year 1970-71.

76—*West Virginia Nonintoxicating Beer Commissioner*

Acct. No. 490

1	Personal Services	\$	140,589.00
2	Current Expenses		59,550.00
3	Equipment		1,200.00
4	Total	\$	201,339.00

77—*West Virginia Racing Commission*

Acct. No. 495

1	Personal Services	\$	159,490.00
2	Current Expenses * (\$ 31,480.00)		36,355.00
3	Equipment		1,000.00
4	Total	* (\$191,970.00) \$	196,845.00

AGRICULTURE

78—*Department of Agriculture*

Acct. No. 510

1	Salary of Commissioner	\$	17,000.00
2	Other Personal Services		771,110.00
3	Current Expenses		293,700.00
4	Equipment		25,000.00
5	Total	\$	1,106,810.00
6	Out of the above funds a sum may be used to		
7	match Federal Funds for the eradication		
8	and control of pest and plant diseases.		

79—*Department of Agriculture—Soil Conservation
Committee*

Acct. No. 512

1	Personal Services	\$	115,715.00
2	Current Expenses		43,000.00
3	Watershed Program		50,000.00
4	Total	\$	208,715.00
5	Any unexpended balance remaining in the		
6	Watershed Program at the end of the fiscal		

*See note page 22.

- 7 year 1969-70 is hereby reappropriated for
 8 expenditure during fiscal year 1970-71.

80—*Department of Agriculture—Division of Rural Resources*

Acct. No. 513

- 1 Matching Fund _____* (\$170,000.00) \$ 320,000.00
 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.

81—*Department of Agriculture—Meat Inspection*

Acct. No. 514

- 1 Unclassified _____* (\$200,000.00) \$ 240,000.00
 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 1969-70 is hereby
 9 reappropriated for expenditure during the
 10 fiscal year 1970-71.

82—*Department of Agriculture—Agricultural Awards*

Acct. No. 515

- | | |
|----------------------------------|--------------|
| 1 West Virginia State Fair _____ | \$ 30,000.00 |
| 2 Agricultural Awards _____ | 45,000.00 |
| 3 Walnut Festival _____ | 3,500.00 |
| 4 Apple Festival _____ | 1,500.00 |
| 5 Strawberry Festival _____ | 3,500.00 |
| 6 Buckwheat Festival _____ | 1,000.00 |
| 7 Total _____ | \$ 84,500.00 |

CONSERVATION AND DEVELOPMENT

83—*Geological and Economic Survey Commission*

Acct. No. 520

- | | |
|---------------------------|---------------|
| 1 Personal Services _____ | \$ 234,000.00 |
| 2 Current Expenses _____ | 91,600.00 |

*See note page 22.

3	Equipment	8,900.00
4	Cooperative Mapping Program	60,000.00
5	Total	\$ 394,500.00
6	Of the above appropriations for Current Ex-	
7	penses, the sum of \$50,000.00 may be used	
8	to cooperate with the United States Geo-	
9	logical Survey in Ground Waters Re-	
10	sources Study.	

84—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, Vet-	
6	erans of Foreign Wars and Sons of Vet-	
7	erans.	

85—Department of Natural Resources

Acct. No. 565

1	Personal Services	\$ 2,469,068.00
2	Current Expenses	630,525.00
3	Repairs and Alterations	108,850.00
4	Equipment	229,570.00
5	Subsistence for Conservation Officers	176,425.00
6	Clarke-McNary Fire Prevention	200,000.00
7	A.R.A.-E.D.A. Park Programs	94,940.00
8	Water Resources Board	5,000.00
9	U.S. Geological Survey	40,500.00
10	Rabies Control	30,000.00
11	Work Incentive Program	277,709.00
12	French Creek Game Farm	30,000.00
13	Total	\$ 4,292,587.00
14	Out of the above appropriation for Subsist-	
15	ence for Conservation Officers, subsistence	
16	shall be paid at the rate of five dollars per	
17	calendar day to the chief conservation offi-	
18	cer and each full-time uniformed conserva-	
19	tion officer, under his direct supervision,	

20 whose primary duties and responsibilities
21 are law enforcement.

22 Any unexpended balance remaining in the
23 appropriation "Clarke-McNary—Fire Pre-
24 vention" at the close of the fiscal year
25 1969-70 is hereby reappropriated for ex-
26 penditure during the fiscal year 1970-71.

27 Out of the above appropriation for "Per-
28 sonal Services" and "Current Expenses"
29 there shall be expended an amount of
30 *\$16,520.00 to operate the North Bend Golf
31 Course.

32 Any unexpended balance remaining in the ap-
33 propriation "Capital Improvements, State
34 Parks" at the close of the fiscal year 1969-70
35 is hereby reappropriated for expenditure
36 during the fiscal year 1970-71.

PROTECTION

86—Department of Public Safety

Acct. No. 570

1 Personal Services	\$ 3,566,280.00
2 Current Expenses	1,791,468.00
3 Repairs and Alterations	79,500.00
4 Equipment	450,000.00
5 Total	\$ 5,887,248.00

87—Adjutant General—State Militia

Acct. No. 580

1 Personal Services	\$ 99,740.00
2 Current Expenses	196,660.00
3 Repairs and Alterations	23,200.00
4 Equipment	2,300.00
5 Compensation of Commanding Officers, Cleri- 6 cal Allowances and Uniform Allowances	90,540.00
7 Property Maintenance	170,060.00
8 State Armory Board	846,678.00
9 Total	\$ 1,429,178.00

*This appropriation was disapproved by the Governor, but was rein-
stated under the mandate of the Supreme Court of Appeals. See note
on page 11.

88—*Department of Civil and Defense Mobilization*

Acct. No. 581

1	Personal Services	\$	42,853.00
2	Current Expenses		10,862.00
3	Equipment		600.00
4	Total	\$	54,315.00

89—*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 Department
 8 of Highways, Department of Motor Vehi-
 9 cles, Workmen's Compensation Commis-
 10 sion, Public Service Commission, and other
 11 departments operating from Special Reve-
 12 nue Fund and/or Federal Funds shall pay
 13 their proportionate share of the social
 14 security cost for their respective divisions.
 15 Any unexpended balance remaining in this
 16 appropriation at the close of the fiscal year
 17 1969-70 is hereby reappropriated for ex-
 18 penditure during the fiscal year 1970-71.

90—*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

91—*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

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

Acct. No. 587

1 To pay the per diem of members and other		
2 general expenses	\$	29,000.00
3 From Collections		29,000.00

93—*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

94—*State Board of Pharmacy*

Acct. No. 590

1 To pay the per diem of members and other		
2 general expenses	\$	28,350.00
3 From Collections		28,350.00

95—*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

96—*State Board of Embalmers and Funeral Directors*

Acct. No. 593

1 To pay the per diem of members and other		
2 general expenses	\$	25,000.00
3 From Collections		25,000.00

97—*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

98—*State Board of Architects*

Acct. No. 595

1 To pay the per diem of members and other		
2 general expenses	\$	5,000.00
3 From Collections		5,000.00

99—*State Veterinary Board*

Acct. No. 596

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

100—*State Board of Law Examiners*

Acct. No. 597

1 To pay the per diem of members and other		
2 general expenses	\$	3,400.00

101—*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

102—*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

103—*West Virginia Public Employees Retirement Board*

Acct. No. 614

1 Employers Accumulation Fund	\$	2,695,000.00
2 Expense Fund		25,000.00
3 Total	\$	2,720,000.00

- 4 The above appropriation is intended to cover
 5 the state's share of the West Virginia Pub-
 6 lic Employee's 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 Department of Highways, Depart-

12 ment of Motor Vehicles, State Tax Depart-
 13 ment—Gasoline Tax Division, Workmen's
 14 Compensation Commission, Public Service
 15 Commission, and other departments oper-
 16 ating from Special Revenue Funds and/or
 17 Federal 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 Spe-
 22 cial Revenue Funds in excess of specific
 23 appropriations.

104—*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 conditional-
 3 ly upon the fulfillment of the provisions set forth in
 4 Chapter 5-A, Article 2 of the Code of West Virginia, the
 5 following amounts, as itemized, for expenditure during
 6 the fiscal year one thousand nine hundred seventy-one.

105—*State Department of Highways*

Acct. No. 670

TO BE PAID FROM STATE ROAD FUND

1 Federal-Aid Construction—Interstate Pro-	
2 gram	\$ 189,000,000.00
3 Federal-Aid Construction—ABC Program	27,500,000.00
4 Appalachian Program	106,000,000.00
5 Interstate Maintenance	3,500,000.00
6 Maintenance	
7 —Expressway, Trunkline and Feeder	19,835,000.00
8 Maintenance	
9 —State Local Service	26,000,000.00

10	Nonfederal Aid Construction	22,500,000.00
11	Emergency Operations—Snow and Ice Con-	
12	trol—Flood and Slides	6,300,000.00
13	Scenic Highway	750,000.00
14	Forest Highway	50,000.00
15	General Operations	26,000,000.00
16	Equipment Purchases	2,000,000.00
17	Inventory Purchases	1,000,000.00
18	Debt Service	24,000,000.00
<hr/>		
19	Total	\$454,435,000.00

20 It is the intent to appropriate and make avail-
 21 able for expenditure, the balances and all
 22 revenues and income of the state road fund,
 23 including the proceeds from the sale of
 24 bonds, for the maintenance, construction
 25 and reconstruction of state roads and for
 26 other purposes in accordance with the pro-
 27 visions of Chapter 17, Code of West Vir-
 28 ginia, one thousand nine hundred thirty-
 29 one, as amended.

30 Funds in excess of amounts herein appropri-
 31 ated may be made available by budget
 32 amendment upon request of the Highways
 33 Commissioner and approval of the Gov-
 34 ernor.

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

46 There is hereby appropriated, within the
 47 above line items, sufficient moneys for the
 48 payment of claims, accrued or arising dur-

49 ing this budgetary period, to be paid in
 50 accordance with Chapter 14, Article 2,
 51 Sections 7 and 8, Code of West Virginia,
 52 one thousand nine hundred thirty-one, as
 53 amended.

54 Notwithstanding the provisions of Chapter
 55 5-A, Article 2, Section 19, Code of West Vir-
 56 ginia, one thousand nine hundred thirty-
 57 one, as amended, transfer of amounts be-
 58 tween the line items of appropriation
 59 herein is authorized.

106—*Department of Motor Vehicles*

Acct. No. 671

TO BE PAID FROM STATE ROAD FUND

1	Personal Services	\$ 980,120.00
2	Current Expenses	575,865.00
3	Equipment	30,000.00
4	Purchase of License Plates	260,000.00
5	Social Security Matching Fund	48,430.00
6	Public Employees Retirement Matching Fund	64,800.00
7	Total	\$ 1,959,215.00

107—*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	68,300.00
3	Equipment	4,000.00
4	Social Security Matching Fund	12,000.00
5	Total	\$ 335,040.00

108—*State Board of Education—Vocational Division*

Acct. No. 701

TO BE PAID FROM GENERAL SCHOOL FUND

1	Personal Services	\$ 102,292.00
2	Current Expenses	62,100.00

3	Equipment	2,325.00
4	Vocational Aid	378,335.00
		<hr/>
5	Total	\$ 545,052.00
6	Any unexpended balance remaining in the	
7	appropriation — Vocational Aid and Aid	
8	to Counties at the close of the fiscal year	
9	1969-70 is hereby reappropriated for ex-	
10	penditure during the fiscal year 1970-71.	

109—*Department of Education—Veterans Education*

Acct. No. 702

TO BE PAID FROM GENERAL SCHOOL FUND

1	Personal Services	\$ 55,680.00
2	Current Expenses	15,300.00
		<hr/>
3	Total	\$ 70,980.00
4	Expenditures from this appropriation shall	
5	not exceed the amount to be reimbursed by	
6	the Federal Government.	
7	Federal funds in excess of the amounts here-	
8	by appropriated may be made available by	
9	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.	

110—*Department of Education*

Acct. No. 703

TO BE PAID FROM GENERAL SCHOOL FUND

1	Personal Services	\$ 561,268.00
2	Current Expenses	233,550.00
3	Equipment	6,850.00
4	National Defense Education Act	223,270.00
5	Statewide Testing Program	176,000.00
6	Experimental Projects	18,730.00
		<hr/>
7	Total	\$ 1,219,668.00

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

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

111—*State Board of School Finance*

Acct. No. 704

TO BE PAID FROM GENERAL SCHOOL FUND

1	Personal Services	\$	45,000.00
2	Current Expenses		16,780.00
3	Equipment		2,500.00
4	Total	\$	64,280.00

112—*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		28,410.00
3	Aid to Counties—Includes hot lunches and		
4	canning for hot lunches		475,000.00
5	Total	\$	592,390.00

113—*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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114—*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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115—*Department of Education—Safety Education*

Acct. No. 708

TO BE PAID FROM GENERAL SCHOOL FUND

1	Personal Services	\$	13,040.00
2	Current Expenses		2,960.00
3	Aid to Counties		135,000.00
<hr/>			
4	Total	\$	151,000.00

116—*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 thirty-		
5	nine.		

117—*Treasurer's Office*

Acct. No. 800

TO BE PAID FROM SPECIAL REVENUE FUND

1	Abandoned and Unclaimed Property —		
2	Trust and Expense Fund	\$	20,000.00

118—*Real Estate Commission*

Acct. No. 801

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$	34,740.00
2	Current Expenses		16,664.00
3	Social Security Matching Fund		1,550.00
4	Public Employees Retirement Matching Fund		1,600.00
<hr/>			
5	Total	\$	54,554.00

- 6 The total amount of this appropriation shall
 7 be paid out of collections of license fees as
 8 provided by law.

119—*West Virginia Racing Commission*

Acct. No. 808

TO BE PAID FROM SPECIAL REVENUE FUND

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

120—*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		16,000.00
		<hr/>
3 Total	\$	39,100.00

- 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 amendments upon request of the
 10 State Auditor and the approval of the
 11 Governor.

121—*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		10,800.00
3 Equipment		20,000.00
4 Social Security Matching Fund		6,600.00
5 Public Employees Retirement Matching Fund		8,950.00
		<hr/>
6 Total	\$	183,070.00

- 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 Code
 10 of West Virginia.

- 11 The above appropriation includes salaries and
12 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 hereby
18 appropriated may be made available by
19 budget amendments upon request of the
20 Department of Finance and Administration
21 and approval of the Governor.

122—*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 in-
11 tention that special funds in excess of the
12 amounts hereby appropriated may be made
13 available by budget amendments upon re-
14 quest of the Commissioner of Agriculture,
15 and approval of the Governor.

123—*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	4,500.00
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6	Total	\$ 106,700.00
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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.

124—Public Service Commission

Acct. No. 828

TO BE PAID FROM SPECIAL REVENUE FUND

1	Salaries of Commissioners	\$ 42,000.00
2	Other Personal Services	643,816.00
3	Current Expenses	115,975.00
4	Equipment	16,265.00
5	Social Security Matching Fund	22,787.00
6	Public Employees Retirement Matching Fund	39,781.00

7	Total	\$ 880,624.00
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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.

125—Public Service Commission— Gas Pipeline Division

Acct. No. 8285

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$ 55,340.00
2	Current Expenses	21,025.00
3	Equipment	6,930.00
4	Social Security Matching Fund	2,160.00

5 Public Employees Retirement Matching Fund 3,400.00

6 Total\$ 88,855.00

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

126—*Public Service Commission—Motor Carrier Division*

Acct. No. 829

TO BE PAID FROM SPECIAL REVENUE FUND

1 Personal Services\$ 269,564.00

2 Current Expenses 70,400.00

3 Equipment 4,860.00

4 Social Security Matching Fund 11,677.00

5 Public Employees Retirement Matching Fund 16,160.00

6 Total\$ 372,661.00

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 Ser-
10 vice Commission pursuant to and in the
11 exercise of regulatory authority over motor
12 carriers as authorized by law.

127—*Department of Natural Resources*

Acct. No. 830

TO BE PAID FROM SPECIAL REVENUE FUND

1 Personal Services\$ 1,395,255.00

2 Current Expenses 631,939.00

3 Repairs and Alterations 80,200.00

4 Equipment 123,600.00

5 Land Purchase & Building 50,000.00

6 Total\$ 2,280,994.00

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

9 fees collected by the Department of Natu-
 10 ral Resources. Expenditures shall be limit-
 11 ed 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
 18 Governor.

128—*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	76,290.00
3 Repairs and Alterations	4,850.00
4 Equipment	10,850.00
5 Social Security Matching Fund.....	958.00
6 Total.....	\$ 249,080.00

7 The total amount of this appropriation shall
 8 be paid from Special Revenue Fund out of
 9 fees collected for inspection stickers as
 10 provided by law.

11 Special Funds in excess of the amounts here-
 12 by appropriated may be made available by
 13 budget amendment upon request of the De-
 14 partment of Public Safety and approval of
 15 the Governor for the purpose of repairs
 16 to, or construction of police barracks.

129—*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	949,598.00

4	Repairs and Alterations	18,000.00
5	Equipment	62,500.00
6	Social Security Matching Fund	219,542.00
7	Public Employees Retirement Matching	
8	Fund	292,722.00
		<hr/>
9	Total	\$ 5,630,362.00

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

13 The above appropriation includes the salaries
 14 of store personnel, store inspectors, store
 15 operating expenses and equipment; and
 16 salaries, expenses and equipment of ad-
 17 ministration offices.

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

130—West Virginia Civil Service System

Acct. No. 840

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$ 216,000.00
2	Current Expenses	40,050.00
3	Social Security Matching Fund	9,500.00
4	Public Employees Retirement Matching Fund	14,100.00
		<hr/>
5	Total	\$ 279,650.00

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.

**131—Board of Regents—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	300,000.00
3 Misc. Small Projects	500,000.00
4 Utilities, Roads and Parking	535,000.00
5 Renovating of Existing Buildings	500,000.00
6 Total	<u>\$ 2,500,000.00</u>
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 1969-70 is hereby reappropriated for ex-	
14 penditure during the fiscal year 1970-71.	

132—Board of Regents—Special Capital Improvement Fund

Acct. No. 854

TO BE PAID FROM SPECIAL REVENUE FUND

1 West Virginia Board of Regents Debt Service \$	1,900,000.00
2 Marshall University—Athletic Development	
3 —Phase I	1,088,000.00
4 Fairmont State College—Roads & Parking	
5 Areas	150,000.00
6 Fairmont State College—Dining Hall Air	
7 Conditioning	50,000.00
8 Glenville State College—Parking Areas	30,000.00
9 Glenville State College—Dormitory Furni-	
10 ture & Equipment	230,000.00
11 Shepherd College—Dining Hall Air Condi-	
12 tioning	60,000.00
13 Shepherd College—Science Hall Furnace	12,000.00
14 West Virginia State College—Steam Plant	
15 Renovation	225,000.00
16 West Virginia State College—Science Hall	
17 Elevator	40,000.00

18	West Virginia Board of Regents—Miscellaneous Small Projects	500,000.00
20	Glenville State College—Additional amount	
21	Forest Technology Building	80,000.00
22	W. Va. Institute of Technology—Additional	
23	amount Library Building	400,000.00
24	W. Va. Institute of Technology—Additional	
25	amount Community Technical College	
26	Building	350,000.00
27	Glenville State College—Heating Complex.....	325,000.00
28	Glenville State College—Classroom Building	2,100,000.00

29 The appropriation for items in lines 1 through 19 are to
 30 be paid on a cash basis and made available from date of
 31 passage and the costs of projects for items in lines
 32 20 through 26 are to be paid for from additional
 33 federal grants, with appropriations for items in lines
 34 27 and 28 being shown only for separation purposes, said
 35 items in lines 27 and 28 remaining in the same order of
 36 priority as reflected in the 1969 Budget Bill as Glenville
 37 State College, Classroom Building and Heating Complex.

38 The total amount of this appropriation shall be paid from
 39 the nonrevolving Capital Improvement Fund, created
 40 by the 1959 Legislature, as amended.

41 Any unexpended balance remaining in this appropriation
 42 at the close of the fiscal year 1969-70 is hereby reappro-
 43 priated for expenditure during the fiscal year 1970-71.

44 It is intended that only complete and usable units or
 45 projects be constructed and/or equipped, and then only
 46 in the listed order of priority: *Provided, however,* That
 47 the amounts shown for each unit or project shall include
 48 in said amount matching-grant funds from governmental
 49 or nongovernmental sources: *And provided further,* That
 50 whenever the amount in the Capital Improvement Fund,
 51 including both cash collections and the proceeds of bond
 52 sale, shall be sufficient to cover all capital expenditures
 53 authorized above, then the listed projects shall be con-
 54 sidered of equal priority and all of them, or any one or
 55 more, may be constructed as soon as plans can be pre-
 56 pared and contracts let therefor.

133—*West Virginia University—Medical School*

Acct. No. 873

TO BE PAID FROM MEDICAL SCHOOL FUND

1	Personal Services	\$ 10,440,455.00
2	Current Expenses	3,517,077.00
3	Repairs and Alterations	329,998.00
4	Equipment	212,470.00
		<hr/>
5	Total	\$ 14,500,000.00
6	Special funds in excess of the amounts hereby	
7	appropriated may be made available by	
8	budget amendment upon request of the	
9	Board of Regents and approval of the	
10	Governor.	

134—*Workmen's Compensation Commission*

Acct. No. 900

TO BE PAID FROM WORKMEN'S COMPENSATION FUND

1	Personal Services	\$ 1,039,360.00
2	Current Expenses	362,258.00
3	Equipment	22,516.00
4	Social Security Matching Fund	44,550.00
5	Public Employees Retirement Matching Fund	66,500.00
		<hr/>
6	Total	\$ 1,535,184.00
7	There is hereby authorized to be paid out of	
8	the above appropriation for current ex-	
9	penses the amount necessary for the pre-	
10	miums on bonds given by the State Treas-	
11	urer and bond custodian for the protection	
12	of the Workmen's Compensation Fund.	
13	This sum shall be transferred to the Board	
14	of Insurance.	

1 **Sec. 3. Supplemental and Deficiency Appropriation.—**
2 From the State Fund, General Revenue, except as other-
3 wise provided, there are hereby appropriated the following
4 amounts, as itemized, for expenditure during the fiscal
5 year one thousand nine hundred seventy to supplement the
6 1969-70 appropriations, and to be available for expenditure
7 upon date of passage.

135—*West Virginia Housing Development Fund*

Acct. No. 122

1	Total	\$	35,000.00
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136—*Marshall University*

Acct. No. 320

1	Personal Services	\$	90,000.00
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2	Current Expenses		60,200.00
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3	Total	\$	150,200.00
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4 Any unexpended balance remaining in the
5 above appropriation at the close of the
6 fiscal year 1969-70 is hereby reappropriated
7 for expenditure during the fiscal year
8 1970-71.

137—*Forestry Camp for Boys*

Acct. No. 371

1	Capital Improvements	\$	15,000.00
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138—*West Virginia Forestry Camp (Leckie)*

Acct. No. 373

1	Personal Services	\$	38,485.00
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2	Current Expenses		49,150.00
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3	Repairs and Alterations		3,100.00
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4	Equipment		59,755.00
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5	Total	\$	150,490.00
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139—*Department of Commerce*

Acct. No. 465

1	Independence Hall, Wheeling	\$	200,000.00
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2 Any unexpended balance remaining in the
3 above appropriation at the close of the
4 fiscal year 1969-70 is hereby reappropriated
5 for expenditure during the fiscal year
6 1970-71.

140—*Department of Natural Resources*

Acct. No. 565

1	Personal Services	\$	8,320.00
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2	Current Expenses		85,800.00
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3	Repairs and Alterations	6,130.00
4	Equipment	97,200.00
5	WIN Program	86,675.00

6 Total\$ 284,125.00

7 Out of the above line items there shall be
8 expended the sum of *\$22,350.00 for the
9 operation of North Bend Golf Course.

141—*Department of Public Safety*

Acct. No. 570

1 Current Expenses\$ 85,824.00

1 **Sec. 4. Awards for Claims Against the State.**—From
2 the funds designated there are hereby appropriated for
3 the remainder of the fiscal year 1969-70 and to remain in
4 effect until June 30, 1971, for payment of claims against
5 the State, the following amounts as itemized.

Claims Versus the State Department of Highways

TO BE PAID FROM STATE ROAD FUND

1	Howard Arbogast	\$ 300.00
2	Allstate Plumbing Service	1,200.00
3	Bates & Rogers Construction Co.	2,500.00
4	R. L. Beranak	149.51
5	Ray Bice	760.29
6	J. N. Callwell & A. M. Callwell,	
7	d/b/a Callwell's Hardware	581.24
8	Michael & Evangeline Catsos	101.41
9	Warren N. Connon	8.24
10	S. P. Davidson, H. H. Davidson, and A. L.	
11	Davidson, d/b/a Davidson Brothers	567.88
12	Fredrick Engineering Company	21,720.00
13	Carl W. and Ellen Grubbs	159.59
14	Fred and Ruth Hendricks	498.00
15	Johnson Welders Supply, Inc.	788.33
16	King's Jewelry	437.24
17	The Kroger Company	226.33
18	Gene R. Monk	69.79

*This appropriation was disapproved by the Governor, but was reinstated under the mandate of the Supreme Court of Appeals. See note on page 11.

19 Mountain State Construction Co.	53,966.95
20 Mountaineer Highway Abrasives, Inc.	16,976.28
21 Ralph Myers Contracting Corp.	33,979.32
22 S. J. Neathawk Lumber, Inc.	315.94
23 Creed Samples, Administrator of the Estate	
24 of Fonda Samples, Deceased	11,065.49
25 Creed Samples	699.84
26 Jo Ann Samples	3,861.43
27 Leta Samples, a minor, who sues by her	
28 father and next friend Creed Samples	1,250.00
29 Penny Samples, a minor, who sues by her	
30 father and next friend, Creed Samples	5,434.00
31 Thomas Company	18,956.23
32 John C. Varner, Administrator of the Estate	
33 of Julia M. Varner, Deceased	8,201.30
34 R. C. Wetherall, Jr. and Paul Price	20,847.75
35 Lawrence H. Young, Jr.	249.26

Claims Versus the State Board of Education

TO BE PAID FROM GENERAL REVENUE FUND

1 Shepherdstown Register, Inc.	\$ 922.50
2 Joe L. Smith, d/b/a Biggs-Johnson-	
3 Withrow	727.30

Claims Versus the Department of Welfare

TO BE PAID FROM GENERAL REVENUE FUND

1 Harlan Hall	\$ 226.00
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Claims Versus the Department of Mental Health

TO BE PAID FROM GENERAL REVENUE FUND

1 Allergy Rehabilitation Foundation, Inc.	\$ 1,703.87
2 M. C. Hicks, Committee for Lucy K. Hicks	201.00
3 Raymond Mathison	247.50

*Claims Versus the Board of Governors of
West Virginia University*

TO BE PAID FROM GENERAL REVENUE FUND

1 City of Morgantown	\$ 40,886.22
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*Claims Versus the West Virginia Vocational
Rehabilitation Division*

TO BE PAID FROM GENERAL REVENUE FUND

1 Drs. Heilman, Anderson and Abplanalp.....	\$	116.50
2 Harmarville Rehabilitation Center.....		411.00
3 Drs. Squire, Francke and Goodwin		134.50

Claims Versus the Adjutant General

TO BE PAID FROM GENERAL REVENUE FUND

1 John L. Rolfe, a subrogation assigned to		
2 Harleysville Insurance Co.	\$	275.67
3 Interstate Lumber Company		2,011.00

Claims Versus the State Department of Education

TO BE PAID FROM WEST VIRGINIA STATE COLLEGE—STUDENT
UNION CONSTRUCTION FUND

1 Hibbard, O'Conner & Weeks, Inc.	*\$	57,450.00
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Claims Versus the Office of Federal-State Relations

TO BE PAID FROM SPECIAL REVENUE FUND

1 William J. Twigger, d/b/a R. L. Swearer Co. \$	1,128.89
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Claims Versus the Alcohol Beverage Control Commission

TO BE PAID FROM SPECIAL REVENUE FUND

1 Joe L. Smith, d/b/a Biggs-Johnson-		
2 Withrow	\$	4,907.70

1 **Sec. 5. Reappropriations.**—The unexpended balance,
2 if any, in Item 151, Section 5, of the 1967 Budget Act is
3 hereby reappropriated for expenditure through June 30,
4 1971.

1 **Sec. 6. Special Revenue Appropriations.**—There is
2 hereby appropriated for expenditure during the fiscal year
3 one thousand nine hundred seventy-one appropriations
4 made by general law from special revenue which are not
5 paid into the state fund as general revenue under the
6 provisions of Chapter 12, Article 2, Section 2, of the Code of

*This appropriation was disapproved by the Governor, but was reinstated under the mandate of the Supreme Court of Appeals. See note on page 11.

7 West Virginia, one thousand nine hundred thirty-one:
8 *Provided, however,* That none of the moneys so appro-
9 priated by this section shall be available for expenditure
10 except in compliance with and in conformity to the pro-
11 visions of Chapter 12, Articles 2 and 3, and Chapter
12 5-A, Article 2 of the Code of West Virginia, unless
13 the spending unit has filed with the state director of
14 the budget, the state auditor and the legislative auditor
15 prior to the beginning of each fiscal year:

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

18 (b) A detailed expenditure schedule showing for what
19 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 ac-
5 count, and shall be expended according to the provisions of
6 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 re-
8 funding of the proper amount. The auditor shall issue his
9 warrant to the treasurer and the treasurer shall pay the
10 warrant out of the fund into which the amount was origi-
11 nally paid.

1 **Sec. 9. Sinking Fund Deficiencies.**—There is hereby
2 appropriated 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 first
13 remittance collected from any state agency or local taxing
14 district for which the Governor advanced funds, with
15 interest at the rate carried by the bonds for which the
16 advance was made.

1 **Sec. 10. Appropriations from Taxes and License Fees.—**
2 There is hereby appropriated from the soft drink tax
3 revenues for administration and enforcement of the law
4 relating 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**
2 **of 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
4 necessary to pay taxes due county, district, and municipal
5 corporations and which have been paid into the treasury:

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

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

1 **Sec. 14. General School Fund.—**The balance of the
2 proceeds of the general school fund remaining after the
3 payment of the appropriations made by this act is appro-

4 priated for expenditure in accordance with Chapter 18,
5 Article 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
7 Virginia.

8 Where former spending units have been absorbed by or
9 combined with other spending units by acts of this Legisla-
10 ture, it is the intent of this act that reappropriation shall
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
2 declared unconstitutional by a court of competent juris-
3 diction, its decision shall not affect any portion of this act
4 which remains, but the remaining portion shall be in full
5 force and effect as if the portion declared unconstitutional
6 had never been a part of the act.

CHAPTER 6

(House Bill No. 733—By Mr. Seibert)

[Passed February 12, 1970; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections nine and fourteen,
article three, chapter seven of the code of West Virginia,
one thousand nine hundred thirty-one, as amended, re-
lating to the maximum rate of interest on and the net
interest cost of revenue bonds issued by county courts.

Be it enacted by the Legislature of West Virginia:

That sections nine and fourteen, article three, chapter seven
of the code of West Virginia, one thousand nine hundred

thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 3. COUNTY PROPERTY.

§7-3-9. Form and payment of bonds; use of proceeds of bonds.

§7-3-14. Authority to acquire and operate hospitals, clinics, long-term care facilities and other related facilities; financing.

§7-3-9. Form and payment of bonds; use of proceeds of bonds.

1 Any county court issuing revenue bonds under the pro-
2 visions of this article shall thereafter, so long as any such
3 bonds remain outstanding, operate and maintain said
4 courthouse, hospital, other public buildings, or jail, to pro-
5 vide revenues sufficient to pay all operating costs, pro-
6 vide a sinking fund for, and to retire such bonds and
7 pay the interest thereon as the same may become due.
8 The amounts, as and when so set apart by said county
9 court, shall be remitted to the state sinking fund com-
10 mission at least thirty days previous to the time interest
11 or principal payments become due, to be retained and
12 paid out by said commission consistent with the pro-
13 visions of this article and with the order pursuant to
14 which such bonds have been issued. The state sinking
15 fund commission is hereby authorized to act as fiscal
16 agent for the administration of such sinking fund under
17 any order passed pursuant to the provisions of this
18 article, and shall invest all sinking funds, as provided by
19 general law. Revenue bonds issued under the provisions of
20 this article are hereby declared to be and to have all
21 the qualities of negotiable instruments. Such bonds
22 shall bear interest at not more than seven percent per
23 annum, payable semiannually, and shall mature at any
24 time fixed by the county court, in not more than thirty
25 years from their date. Such bonds shall be sold at a price
26 not lower than a price which, when computed upon stan-
27 dard tables of bond values, will show a net return of not
28 more than eight percent per annum to the purchaser upon
29 the amount paid therefor. Such bonds may be made re-
30 deemable at the option of the county court at such price
31 and under terms and conditions as said court may fix, by
32 its order, prior to the issuance of such bonds. Revenue

33 bonds issued hereunder shall be payable at the office of the
34 state treasurer, or some bank in the city of New York.

35 In case any of the officers whose signatures appear on
36 such bonds or coupons shall cease to be such officers be-
37 fore the delivery of such bonds, such signatures shall,
38 nevertheless, be valid and sufficient for all purposes the
39 same as if they had remained in office until such delivery.
40 The county court shall by order entered prior to the issu-
41 ance of said bonds, fix the denominations, times and places
42 of payment of such bonds, the principal and interest of
43 which shall be payable in lawful money of the United
44 States of America. The proceeds of such bonds shall be
45 used solely for the payment of the cost of land, buildings,
46 furniture and equipment thereon, and shall be checked
47 out by the county court under such restrictions as are con-
48 tained in the order providing for the issuance of said bonds.
49 If the proceeds of such bonds issued for any courthouse,
50 hospital, other public buildings, or jail, shall exceed the
51 cost thereof, the surplus shall be paid into the fund herein
52 provided for the payment of principal and interest upon
53 such bonds. Such fund may be used for the purchase or re-
54 demption of any of the outstanding bonds payable from
55 such fund at the market price, but at not exceeding the
56 price at which any of such bonds shall in the same
57 year be redeemable, as fixed by the court in its said
58 order, and all bonds redeemed or purchased shall forth-
59 with be canceled, and shall not again be issued.

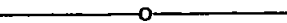
60 Prior to the preparation of definitive bonds, the county
61 court may, under like restrictions, issue temporary bonds,
62 or interim certificates, with or without coupons, ex-
63 changeable for definitive bonds upon the issuance of the
64 latter. Such bonds may be issued without any other
65 proceedings or the happening of any other conditions or
66 things than those proceedings, conditions and things
67 which are specified and required by this article.

**§7-3-14. Authority to acquire and operate hospitals, clinics,
long-term care facilities and other related facilities;
financing.**

1 The county court of any county is hereby authorized
2 and empowered to acquire by purchase or construction

3 and to thereafter own, equip, furnish, operate, lease,
4 improve and extend a public hospital, clinic, long-term
5 care facility and other related facilities, with all appurte-
6 nances, including the necessary real estate as a site there-
7 for. Any such county public hospital acquired pursuant
8 hereto may include a nurses home and nurses training
9 school. The county court is further authorized and em-
10 powered, upon acquiring a hospital, clinic, long-term
11 care facility or other related facility, to lease to others
12 any or all such facilities for such rentals and upon such
13 terms and conditions as the county court may deem
14 advisable. For the purpose of paying all or any part of the
15 costs, not otherwise provided, of acquiring, completing,
16 equipping, furnishing, improving or extending such hos-
17 pital, clinic, long-term care facility or other related
18 facility, the county court is hereby authorized and em-
19 powered by order duly entered of record, to issue
20 and sell the negotiable revenue bonds of such county,
21 which shall be payable solely and only from all or such
22 part of the net revenues from the operation of such
23 county public hospital, clinic, long-term care facility
24 or other related facility as may be provided by said
25 order; and each such revenue bond so issued shall con-
26 tain a recital that payment or redemption of the bond
27 and payment of the interest thereon is secured by the
28 revenues pledged therefor, and that such bond does not
29 constitute an indebtedness of such county or the county
30 court thereof within the meaning of any constitutional
31 or statutory limitation or provision. Such revenue bonds
32 may bear such date or dates, may mature at such time
33 or times not exceeding thirty-four years from their
34 respective dates, may bear interest at such rate or rates not
35 exceeding seven percent per annum, may be of such de-
36 nomination or denominations, may be in such form, may
37 carry such registration privileges, may be made subject to
38 such terms of redemption with or without premium, and
39 may contain such other terms and covenants not inconsis-
40 tent with this article as may be provided in such order.
41 Such revenue bonds shall be exempt from taxation by the
42 state of West Virginia and the other taxing bodies of
43 the state. In determining the amount of revenue bonds

44 to be issued, there may be included any expenses in
45 connection with and incidental to the issuance and sale
46 of bonds and for the preparation of plans, specifications,
47 surveys and estimates, interest during the estimated
48 construction period and for six months thereafter, and
49 a reasonable amount for working capital and prepaid
50 insurance. Such bonds may be sold in such manner, at
51 such times and upon such terms as may be determined
52 by the county court to be for the best interests of the
53 county: *Provided*, That no bonds may be sold upon terms
54 which will result in the net interest cost of more than
55 eight percent per annum computed to maturity of the
56 bonds according to standard tables of bond values. There
57 may be included in any such order authorizing the issu-
58 ance of revenue bonds such covenants, stipulations and
59 conditions as may be deemed necessary with respect to
60 the expenditure of the bond proceeds, the operation and
61 maintenance of the county public hospital, clinic, long-
62 term care facility or other related facility, and the custody
63 and application of the revenues from such operation. The
64 holder of any bond or bonds may, by mandamus or other
65 appropriate proceedings, require and compel performance
66 of any duties imposed by law in connection with the hos-
67 pital, clinic, long-term care facility or other related facil-
68 ity, or any covenant, stipulation or condition that may
69 have been expressed in such bond order.



CHAPTER 7

(Senate Bill No. 15—By Mr. Poffenbarger)

[Passed February 12, 1970; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section twelve, article sixteen; section fourteen, article eighteen; sections four and six, article nineteen; and section five, article twenty, all of chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the

revenue bond financing of municipal public works; increasing the allowable rate of interest thereon; the issuance of such bonds; the estimate of cost and debt service for such bonds; the amount, negotiability and execution of such bonds; and the refund of outstanding obligations or securities by sale or exchange of such bonds.

Be it enacted by the Legislature of West Virginia:

That section twelve, article sixteen; section fourteen, article eighteen; sections four and six, article nineteen; and section five, article twenty, all of chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

Article

- 16. **Municipal Public Works; Revenue Bond Financing.**
- 18. **Assessments to Improve Streets, Sidewalks and Sewers; Sewer Connections and Board of Health.**
- 19. **Municipal Waterworks Systems.**
- 20. **Combined Waterworks and Sewerage Systems.**

ARTICLE 16. MUNICIPAL PUBLIC WORKS; REVENUE BOND FINANCING.

§8-16-12. Interest rate and life of bonds; redemption; how payable; form, denominations, etc.; additional bonds authorized; interim certificates.

1 Such revenue bonds shall bear interest at not more
2 than eight percent per annum, payable semiannually, or
3 at shorter intervals, and shall mature at such time or
4 times, not exceeding forty years, as may be determined
5 by the ordinance or ordinances authorizing the issuance
6 of such bonds. Such bonds may be made redeemable
7 before maturity, at the option of the municipality or
8 municipalities issuing the same, to be exercised by said
9 board, at not more than the par value thereof, and at
10 a premium of not more than five percent, under such
11 terms and conditions as may be fixed by the ordinance
12 or ordinances authorizing the issuance of the bonds.
13 The principal and interest of the bonds may be made
14 payable in any lawful medium. Such ordinance or ordi-
15 nances shall determine the form of the bonds, including
16 the interest coupons to be attached thereto, and shall
17 fix the denomination or denominations of such bonds,

18 and the place or places of the payment of the principal
19 and interest thereof, which may be at any banking in-
20 stitution or trust company within or without the state.
21 When two or more municipalities take joint action under
22 the provisions of this article, the bonds shall be issued
23 by the participating municipalities either as separate
24 or joint bonds, as the governing bodies thereof may
25 agree, and when separate bonds are issued, the amount
26 of the bonds to be issued by each participating munici-
27 pality shall be fixed by agreement of the governing
28 bodies of the participating municipalities set forth in
29 the ordinance of each participating municipality au-
30 thorizing the issuance of such bonds. The bonds shall
31 contain a statement on their face that the municipality
32 or municipalities issuing the same shall not be obligated
33 to pay the same, or the interest thereon, except from the
34 special fund derived from the net revenue of the works,
35 or the pro rata part thereof, as provided for in section
36 eleven hereof. All such bonds shall be, and shall have
37 and are hereby declared to have all the qualities and
38 incidents of negotiable instruments, under the Uniform
39 Commercial Code of this state. Provision may be made
40 for the registration of any of the bonds in the name of
41 the owner as to principal alone; but bonds shall be
42 executed in such manner as the governing body or bodies
43 may direct. The bonds shall be sold by the governing
44 body or bodies in such manner as may be determined
45 to be for the best interest of the municipality or munici-
46 palities: *Provided*, That said bonds shall not be negoti-
47 ated at a price lower than a price which when computed
48 to maturity upon standard tables of bond values will
49 show a net return of more than eight percent per annum
50 to the purchaser upon the amount paid therefor. Any
51 surplus of the bond proceeds over and above the cost
52 of the project shall be paid into the sinking fund herein-
53 after provided for. If the proceeds of the bonds, by
54 error of calculation or otherwise, shall be less than the
55 cost of the project, additional bonds may in like manner
56 be issued to provide the amount of such deficit, and,
57 unless otherwise provided in the ordinance or ordinances
58 authorizing the issuance of the bonds first issued, or

59 in the trust indenture hereinafter authorized, shall be
60 deemed to be of same issue, and shall be entitled to
61 payment without preference or priority of the bonds
62 first issued; and if any preference or priority of the
63 bonds first issued is provided for in the ordinance or
64 ordinances authorizing the issuance of the bonds first
65 issued or in said trust indenture, such preference or
66 priority shall not extend to an amount exceeding ten
67 percent of the original issue. Prior to the preparation
68 of the definitive bonds, interim certificates may, under
69 like restrictions, be issued with or without coupons ex-
70 changeable for definitive bonds upon the issuance of the
71 latter.

**ARTICLE 18. ASSESSMENTS TO IMPROVE STREETS, SIDE-
WALKS AND SEWERS; SEWER CONNECTIONS
AND BOARD OF HEALTH.**

§8-18-14. Issuance of bonds.

1 Every municipality is hereby empowered and autho-
2 rized to issue its bonds for any improvements under the
3 provisions of this article in anticipation of special assess-
4 ments to be made upon the property abutting upon the
5 streets, alleys, public ways or easements, or sewer rights-
6 of-way or easements, so improved, and such bonds may
7 be in such an amount as will be sufficient to pay the
8 entire estimated cost and expense of such improvements
9 for which such special assessments are levied. Such
10 municipality is also authorized to sell such bonds, but the
11 price for which they are sold shall not be below the par
12 value of such bonds. Such bonds shall be payable in not
13 to exceed ten years from the date of the issuance thereof,
14 and shall bear interest at not to exceed eight percent per
15 annum, payable annually; and in the issuance and sale of
16 such bonds, the municipality shall be governed by all the
17 restrictions and limitations of the constitution of this state,
18 and by the restrictions and limitations of the statutes
19 of this state with respect to the issuance and sale of other
20 bonds, so far as they are not in conflict with the pro-
21 visions of this article; and the assessments shall be col-
22 lected as provided in sections ten and twelve of this
23 article, and as paid and collected shall be applied to the

24 liquidation of such bonds and the interest thereon; and if
25 by reason of penalties collected with delinquent assess-
26 ments there be any balance after the payment of such
27 bonds and all accrued interest and cost, such balance shall
28 be turned into the municipal treasury to the credit of the
29 interest and sinking fund of the municipality: *Provided*,
30 That no such municipality shall by sale or issuance of
31 such bonds cause the aggregate of its indebtedness of
32 every kind whatsoever to exceed five percent of the value
33 of taxable property therein: *Provided, however*, That
34 nothing herein contained shall be construed as authoriz-
35 ing any such municipality to become indebted in any
36 other manner or for any other purpose, to an amount,
37 including its existing indebtedness, in the aggregate ex-
38 ceeding two and one-half percent of the value of the tax-
39 able property therein, as provided in section three, article
40 one, chapter thirteen of this code, except for the purpose
41 of grading, regrading, paving, repaving, surfacing, re-
42 surfacing, curbing, recurbing, building or renewing side-
43 walks, or constructing sewers or otherwise improving or
44 reimproving the streets, alleys, public ways or easements,
45 or sewer rights-of-way or easements, of such municipality,
46 as provided for in this article; nor shall such municipality
47 make such issuance and sale without at the same time
48 providing for the collection of a direct annual tax suffi-
49 cient to pay annually the interest on such debt and the
50 principal thereof within and not exceeding ten years.
51 All of the assessments, interest and penalties collected
52 from the abutting property owners on account of the
53 grading, regrading, paving, repaving, surfacing, resurfac-
54 ing, curbing, recurbing, building or renewing sidewalks,
55 or constructing sewers or otherwise improving or re-
56 improving the streets, alleys, public ways or easements,
57 or sewer rights-of-way or easements, of any such mu-
58 nicipality, under the provisions of this article, shall an-
59 nually be applied to the annual tax required to pay the
60 interest on such debt and such principal within and not
61 exceeding ten years; and in the event that the assess-
62 ments, interest and penalties so collected do not amount
63 to a sum sufficient to pay annually the interest on such
64 debt and the principal thereof within and not exceeding

65 ten years, then the governing body of such municipality
66 shall collect so much of such levy as will pay annually
67 the interest on such debt and the principal thereof within
68 and not exceeding ten years.

ARTICLE 19. MUNICIPAL WATERWORKS SYSTEMS.

§8-19-4. Estimate of cost; ordinance for issuance of revenue bonds; interest on bonds; rates for services.

§8-19-6. Amount, negotiability and execution of bonds.

§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,
9 the amount, rate or rates of interest, the time and place of
10 payment, and other details in connection with the issu-
11 ance of the bonds. Such bonds shall be in such form and
12 shall be negotiated in such manner and upon such terms
13 as 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 taxa-
17 tion by this state, or any county, municipality, political
18 subdivision or agency thereof. Such bonds shall bear
19 interest at not more than eight percent per annum, pay-
20 able semiannually, and shall be payable at such times, not
21 exceeding forty years from their date, and at such place
22 or places, within or without the state, as shall be pre-
23 scribed in the ordinance providing for their issuance. Such
24 ordinance shall also declare that a statutory mortgage lien
25 shall exist upon the property so to be acquired, construct-
26 ed, established, extended or equipped, fix minimum rates
27 or charges for water to be collected prior to the payment
28 of all of said bonds and shall pledge the revenues derived
29 from the waterworks system for the purpose of paying
30 such bonds and interest thereon, which pledge shall defi-

31 nitely fix and determine the amount of revenues which
32 shall be necessary to be set apart and applied to the pay-
33 ment of the principal of and interest upon the bonds and
34 the proportion of the balance of such revenues which are
35 to be set aside as a proper and adequate depreciation ac-
36 count, and the remainder shall be set aside for the reason-
37 able and proper maintenance and operation thereof. The
38 rates or charges to be charged for the services from such
39 waterworks system shall be sufficient at all times to pro-
40 vide for the payment of interest upon all bonds and to
41 create a sinking fund to pay the principal thereof as and
42 when the same become due, and reasonable reserves there-
43 for, and to provide for the repair, maintenance and opera-
44 tion of the waterworks system, and to provide an adequate
45 depreciation fund, and to make any other payments which
46 shall be required or provided for in the ordinance autho-
47 rizing the issuance of said bonds.

§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 to
3 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 months
6 subsequent to the estimated date of completion. Bonds
7 issued under the provisions of this article are hereby de-
8 clared to be negotiable instruments, and the same shall be
9 executed by the proper legally constituted authorities of
10 the municipality and be sealed with the corporate seal of
11 the municipality, and in case any of the officers whose
12 signatures appear on the bonds or coupons shall cease to
13 be such officers before delivery of such bonds, such signa-
14 tures shall nevertheless be valid and sufficient for all
15 purposes the same as if they had remained in office until
16 such delivery. All signatures on the bonds or coupons and
17 the corporate seal may be mechanically reproduced if
18 authorized in the ordinance authorizing the issuance of
19 the bonds. Said bonds shall not be negotiated at a price
20 lower than a price which when computed to maturity up-
21 on standard tables of bond values will show a net return
22 of more than eight percent per annum to the purchaser
23 upon the amount paid therefor.

ARTICLE 20. COMBINED WATERWORKS AND SEWERAGE SYSTEMS.**§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 pay-
5 ing the cost of constructing any extensions, additions,
6 betterments or improvements to either the waterworks
7 or sewerage system of said combined waterworks and
8 sewerage system, or both, any such municipality may
9 issue revenue bonds under the provisions of this article.
10 All such bonds may be authorized, issued and sold pur-
11 suant to ordinance in installments at different times or
12 an entire issue or series may be sold at one time. Such
13 bonds shall bear interest at a rate not to exceed eight
14 percent per annum, payable semiannually, and shall ma-
15 ture within the period of usefulness of the project in-
16 volved, to be determined by the governing body and in
17 any event within a period of not more than forty years.
18 Such bonds may be in such denomination or denomina-
19 tions, may be in such form, either coupon or registered,
20 may carry such registration and conversion privileges,
21 may be executed in such manner, may be payable in such
22 medium of payment, at such place or places, may be sub-
23 ject to such terms of redemption, with or without a pre-
24 mium, may be declared to become due before the maturity
25 date thereof, may provide for the replacement of muti-
26 lated, destroyed, stolen or lost bonds, may be authenticated
27 in such manner and upon compliance with such condi-
28 tions, and may contain such other terms and covenants,
29 as may be provided by ordinance of the governing body of
30 the municipality. Notwithstanding the form or tenor
31 thereof, and in the absence of an express recital on the
32 face thereof that the bond is nonnegotiable, all such bonds
33 shall at all times be, and shall be treated as, negotiable
34 instruments for all purposes. Said bonds and the interest
35 thereon, together with all properties and facilities of said

36 municipality owned or used in connection with said com-
37 bined waterworks or sewerage system, and all the moneys,
38 revenues and other income of such municipality derived
39 from such combined waterworks and sewerage system
40 shall be exempt from all taxation by this state or any
41 county, municipality, political subdivision or agency
42 thereof. Such bonds may be sold in such manner as the
43 governing body shall determine and if issued to bear
44 interest at the rate of eight percent per annum shall be
45 sold for not less than par and accrued interest. If any
46 such bonds shall be issued to bear interest at a rate of less
47 than eight percent per annum, the minimum price at
48 which they may be sold shall be such that the interest
49 cost to such municipality of the proceeds of such bonds
50 shall not exceed eight percent per annum computed to
51 maturity according to the standard table of bond values:
52 *Provided*, That if the governing body of the municipality
53 determines to sell any revenue bonds of such combined
54 waterworks and sewerage system for refunding pur-
55 poses, such bonds shall be sold at not less than par and
56 accrued interest and the proceeds deposited at the place
57 of payment of the bonds, obligations or securities being
58 refunded thereby. In case any officer whose signature ap-
59 pears on such bonds or coupons attached thereto shall
60 cease to be such officer before the delivery of the bonds
61 to the purchaser, such signature shall nevertheless be
62 valid and sufficient for all purposes, with the same effect
63 as if he had remained in office until the delivery of the
64 bonds. All signatures on the bonds or coupons and the
65 corporate seal may be mechanically reproduced if
66 authorized in the ordinance authorizing the issuance of
67 the bonds. Such bonds shall have all the qualities of
68 negotiable instruments under the law of this state.

69 Whenever a waterworks and sewerage system is in-
70 cluded in a combined waterworks and sewerage system
71 under the provisions of this article and there are un-
72 paid and outstanding revenue bonds or any other obliga-
73 tions or securities previously issued which are payable
74 solely from the revenues of such waterworks or such
75 sewerage system or any part thereof, such outstanding

76 bonds, obligations or securities may be refunded by the
77 issuance and sale or exchange therefor of revenue bonds
78 to be issued under the provisions of this article. When-
79 ever any outstanding bonds, obligations or securities pre-
80 viously issued which are payable solely from the revenues
81 of any waterworks or sewerage system included in a
82 combined waterworks and sewerage system under the
83 provisions of this article are refunded and the refunding
84 is to be accomplished by exchange, such outstanding
85 bonds, obligations or securities shall be surrendered and
86 exchanged for revenue bonds of such combined water-
87 works and sewerage system of a total principal amount
88 which shall not be more and may be less than the princi-
89 pal amount of the bonds, obligations or securities sur-
90 rendered and exchanged plus the interest to accrue there-
91 on to the date of surrender and exchange, and if the re-
92 funding is to be accomplished through the sale of revenue
93 bonds of such combined waterworks and sewerage sys-
94 tem the total principal amount of such revenue bonds
95 which may be sold for refunding purposes shall not ex-
96 ceed the principal amount of the bonds, obligations or
97 securities being refunded plus the interest to accrue
98 thereon to the retirement date or the next succeeding
99 interest payment date, whichever date may be earlier.
100 Provision may be made that each bond to be exchanged
101 for refunding bonds shall be kept intact and shall not be
102 canceled or destroyed until the refunding bonds, and
103 interest thereon, have been finally paid and discharged;
104 but each such bond shall be stamped with a legend to
105 the effect that the same has been refunded pursuant to
106 the provisions of this article.

CHAPTER 8

(House Bill No. 647—By Mr. Seibert)

[Passed February 12, 1970; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section fourteen, article twenty-seven, chapter eight of the code of West Virginia, one

thousand nine hundred thirty-one, as amended, pertaining to maximum interest on revenue bonds issued to finance urban mass transportation systems.

Be it enacted by the Legislature of West Virginia:

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

**ARTICLE 27. INTERGOVERNMENTAL RELATIONS—URBAN
MASS TRANSPORTATION SYSTEMS.**

§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 pur-
4 pose 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, engineer-
13 ing, inspection and legal fees, the fees of fiscal agents
14 and 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 in-
21 terest at such rate or rates not exceeding seven per cen-
22 tum per annum, payable semiannually, and shall mature
23 at such time or times not exceeding forty years from
24 their date or dates, as may be determined by the au-
25 thority, and may be made redeemable before maturity, at
26 the option of the authority, at such price or prices and
27 under such terms and conditions as may be fixed by the

28 authority prior to the issuance of the bonds. The authority
29 shall determine the form of the bonds, including any in-
30 terest coupons to be attached thereto, and shall fix the de-
31 nomination or denominations of the bonds and the place
32 or places of payment of the principal and interest, which
33 may be at any banking institution or trust company
34 within or without the state. The bonds shall be signed
35 by the president of the authority or shall bear his fac-
36 simile signature, and the official seal of the authority,
37 or a facsimile thereof, shall be impressed or imprinted
38 thereupon and attested by the secretary of the authority,
39 and any coupons attached to the bonds shall bear the
40 facsimile signature of the president of the authority.
41 All such signatures, countersignatures and seal may be
42 printed, lithographed or mechanically reproduced, except
43 that one of such signatures or countersignatures on the
44 bonds shall be manually affixed, unless the resolution
45 authorizing the issuance of such bonds shall otherwise
46 provide. If any officer whose signature or countersig-
47 nature or a facsimile of whose signature or counter-
48 signature appears on bonds or coupons ceases to be such
49 officer before the delivery of the bonds, his signature
50 shall be as effective as if he had remained in office until
51 such delivery. The bonds may be issued in coupon or
52 in registered form, or both, as each authority may de-
53 termine and provision may be made for the registra-
54 tion of any coupon bonds as to principal alone, and also
55 as to both principal and interest, for the reconversion
56 into coupon bonds of any bonds registered as to both
57 principal and interest, and for the interchange of regis-
58 tered and coupon bonds. Notwithstanding the form or
59 tenor thereof, and in the absence of any express re-
60 cital on the face thereof that the bond is nonnegotiable,
61 all such bonds shall be, and shall be treated as, nego-
62 tiable instruments for all purposes except when registered
63 in the name of a registered owner.

64 The authority may exchange its bonds, in whole or
65 in part, for any system or systems, or any parts there-
66 of, or facilities and equipment therefor, or may sell its
67 bonds, in whole or in part, in such manner either at

68 public or private sale and for such price as it may deter-
69 mine will best effect the purposes of this article and be
70 for the best interest of the authority: *Provided*, That if the
71 bonds be issued the minimum price for which they may be
72 exchanged or at which they may be sold shall be such
73 that the interest cost to the authority of the proceeds of
74 the bonds shall not exceed eight percent per annum com-
75 puted to maturity according to the standard table of bond
76 values and the interest rate or rates shall not exceed eight
77 percent per annum.

78 Prior to the preparation of definitive bonds, the author-
79 ity may, under like restrictions, issue interim receipts
80 or temporary bonds with or without coupons, exchange-
81 able for definitive bonds when such bonds shall have
82 been executed and are available for delivery. The au-
83 thority may also provide for the replacement of any
84 bonds which shall become mutilated or shall be de-
85 stroyed or lost.

86 The authority is hereby empowered and authorized to
87 provide by resolution, from time to time, for the issuance,
88 sale or exchange of revenue refunding bonds of such
89 authority for the purpose of refunding any bonds then
90 outstanding which shall have been issued under the
91 provisions of this article, including the payment of any
92 redemption premium thereon, and any interest accrued
93 or to accrue to the date of redemption of such bonds, and
94 the payment of all expenses incidental thereto. The
95 authority is further empowered and authorized to pro-
96 vide by resolution, from time to time, for the issuance,
97 sale or exchange of revenue bonds of such authority
98 for the combined purpose of refunding any bonds then
99 outstanding, as herein provided, and paying all or any
100 part of the cost of any additional project or projects.
101 All provisions of this article applicable to the issuance
102 of revenue bonds are applicable to the issuance of re-
103 funding bonds and to the sale or exchange thereof.

CHAPTER 9

(Senate Bill No. 158—By Mr. Carrigan and Mr. Crawford)

[Passed February 3, 1970; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section fourteen, article one, chapter thirteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to bond issues for original indebtedness of political subdivisions of the state of West Virginia.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. BOND ISSUES FOR ORIGINAL INDEBTEDNESS.

§13-1-14. Resolution authorizing issuance and fixing terms of bonds.

1 If three fifths of all the votes cast for and against the
2 proposition to incur debt and issue negotiable bonds shall
3 be in favor of the same, the governing body of the politi-
4 cal division shall, by resolution, authorize the issuance of
5 such bonds in an amount not exceeding the amount stated
6 in the proposition; fix the date thereof; set forth the
7 denominations in which they shall be issued, which de-
8 nominations shall be one hundred dollars or multiples
9 thereof; determine the rate of interest which the bonds
10 shall bear, which rate of interest shall be within the
11 maximum rate stated in the proposition submitted to vote
12 and payable semiannually, and shall in no case exceed
13 eight percent per annum; prescribe the medium with
14 which the bonds shall be payable; require that the bonds
15 shall be made payable at the office of the state treasurer
16 and at such other place or places as the body issuing the
17 same may designate; provide for a sufficient levy to pay
18 the annual interest on the bonds and the principal at
19 maturity; fix the times within the maximum period, as
20 contained in the proposition submitted to vote, when the
21 bonds shall become payable, which shall not exceed
22 thirty-four years from the date thereof; and prescribe a
23 form for executing the bonds authorized.

CHAPTER 10

(House Bill No. 641—By Mr. Seibert)

[Passed February 12, 1970; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article two-a, chapter thirteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the interest rate and form of refunding bonds.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2A. REVENUE BOND REFINANCING.

§13-2A-5. Form of bonds; interest rates; negotiability.

1 The refunding bonds may be issued in one or more
2 series, may bear such date or dates, may mature at
3 such time or times not exceeding the period of usefulness
4 of the enterprise, as determined by the governing body
5 in its discretion, not in any event exceeding forty years
6 from their respective dates; may bear interest at such
7 rate or rates not exceeding the maximum rate of interest
8 borne by the notes, bonds, or other obligations refinanced
9 thereby; may be in such denomination or denominations,
10 may be in such form either coupon or registered, may
11 carry such registration and conversion privileges, may be
12 executed in such manner, may be payable in such medium
13 of payment, at such place or places, may be subject to
14 such terms of redemption, with or without a premium,
15 may be declared or become due before the maturity
16 date thereof, may provide for the replacement of mutilated,
17 destroyed, stolen, or lost bonds, may be authenticated
18 in such manner and upon compliance with such
19 conditions; and may contain such other terms and covenants,
20 as may be provided by resolution or resolutions
21 of the governing body of the public body: *Provided*, That
22 if the refinancing is for the sole purpose of discharging
23 at less than their face or par value all of the outstanding
24 notes, bonds or other obligations of a Class I or Class II

city, as defined in chapter eight of this code, and such notes, bonds or other obligations are to be refinanced, then such refunding bonds may bear interest at any rate or rates, not exceeding eight percent per annum, which results in a total interest cost of not more than the total amount of interest, including interest then in arrears, that would have been payable from the date of such refinancing to maturity of the notes, bonds or other obligations so refinanced.

Notwithstanding the form or tenor thereof, and in the absence of an express recital on the face thereof that the bond is nonnegotiable, all refunding bonds shall at all times be, and shall be treated as, negotiable instruments for all purposes.

CHAPTER 11

(Senate Bill No. 16—By Mr. Poffenbarger)

[Passed February 12, 1970; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section ten, article thirteen; and section thirteen, article thirteen-a, all of chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the establishment of maximum rate of interest of eight percent for revenue bonds sold by municipal corporations and sanitary districts for water, sewerage works and sewage disposal.

Be it enacted by the Legislature of West Virginia:

That section ten, article thirteen; and section thirteen, article thirteen-a, all of 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

13. Sewage Works of Municipal Corporations and Sanitary Districts.

13A. Public Service Districts for Water and Sewerage Services.

ARTICLE 13. SEWAGE WORKS OF MUNICIPAL CORPORATIONS AND SANITARY DISTRICTS.

§16-13-10. Interest on and redemption of bonds; form; statement on face of bond; negotiability; exemption from taxation; registration; execution; sale; disposition of surplus proceeds; additional and temporary bonds.

1 Such revenue bonds shall bear interest at not more than
2 eight percent per annum, payable semiannually, and shall
3 mature at such time or times as may be determined by
4 ordinance. Such bonds may be made redeemable before
5 maturity at the option of the municipality, to be exercised
6 by said board, at not more than the par value thereof and
7 a premium of five percent, under such terms and condi-
8 tions as may be fixed by the ordinance authorizing the is-
9 suance of the bonds. The principal and interest of the
10 bonds may be made payable in any lawful medium. Said
11 ordinance shall determine the form of the bonds, includ-
12 ing the interest coupons to be attached thereto, and shall
13 fix the denomination or denominations of such bonds and
14 the place or places of payment of the principal and interest
15 thereof, which may be at any bank or trust company with-
16 in or without the state. The bonds shall contain a state-
17 ment on their face that the municipality shall not be obli-
18 gated to pay the same or the interest thereon except from
19 the special fund provided from the net revenues of the
20 works. All such bonds shall be, and shall have and are
21 hereby declared to have all the qualities and incidents of,
22 negotiable instruments under the Uniform Commercial
23 Code of the state. Said bonds shall be exempt from all
24 taxation, state, county and municipal. Provisions may be
25 made for the registration of any of the bonds in the name
26 of the owner as to principal alone. Such bonds shall be
27 executed by the proper legally constituted authorities of
28 the municipality and be sealed with the corporate seal of
29 the municipality, and in case any of the officers whose sig-
30 natures appear on the bonds or coupons shall cease to be
31 such officers, before delivery of such bonds, such signa-
32 tures shall nevertheless be valid and sufficient for all pur-
33 poses the same as if they had remained in office until such
34 delivery. Such bonds shall be sold at a price not lower
35 than a price, which when computed upon standard tables
36 of bond values, will show a net return of not more than

37 nine per centum per annum to the purchaser upon the
38 amount paid therefor and the proceeds derived therefrom
39 shall be used exclusively for the purposes for which said
40 bonds are issued and same may be sold at one time or in
41 parcels as funds are needed. Any surplus of bond proceeds
42 over and above the cost of the works shall be paid into the
43 sinking fund hereinafter provided. If the proceeds of the
44 bonds, by error of calculation or otherwise, shall be less
45 than the cost of the works, additional bonds may in like
46 manner be issued to provide the amount of such deficit
47 and, unless otherwise provided in said ordinance authoriz-
48 ing the issuance of the bonds first issued or in the trust
49 indenture hereinafter authorized, shall be deemed to be
50 of the same issue and shall be entitled to payment without
51 preference or priority of the bonds first issued. Prior to
52 the preparation of the definitive bonds, temporary bonds
53 may under like restrictions be issued with or without
54 coupons, exchangeable for definitive bonds upon the is-
55 suance of the latter.

**ARTICLE 13A. PUBLIC SERVICE DISTRICTS FOR WATER AND
SEWERAGE SERVICES.**

***§16-13A-13. Revenue bonds.**

1 For constructing or acquiring any public service
2 properties for the authorized purposes of the district, or
3 necessary or incidental thereto, and for constructing im-
4 provements and extensions thereto, and also for reimburs-
5 ing or paying the costs and expenses of creating the dis-
6 trict, the board of any such district is hereby authorized to
7 borrow money from time to time and in evidence thereof
8 issue the bonds of such district, payable solely from the
9 revenues derived from the operation of the public service
10 properties under control of the district. Such bonds may
11 be issued in one or more series, may bear such date or
12 dates, may mature at such time or times not exceeding
13 forty years from their respective dates, may bear interest

***Clerk's note:** This section was also amended and reenacted by Chapter 12 (H. B. No. 510), Acts of this Session. The only difference in the section as amended by the two acts is in the maximum interest rate such bonds may bear. This act provides for eight percent and Chapter 12 provides for seven percent. Both of these acts were passed on March 12, 1970, to take effect from passage, and they were both approved by the Governor on March 16, 1970. See line 14, Section 13A of this act and line 15 of Chapter 12.

14 at such rate or rates not exceeding eight percent per
15 annum payable semiannually, may be in such form, may
16 carry such registration privileges, may be executed in
17 such manner, may be payable at such place or places, may
18 be subject to such terms of redemption with or without
19 premium, may be declared or become due before maturity
20 date thereof, may be authenticated in any manner, and
21 upon compliance with such conditions, and may contain
22 such terms and covenants as may be provided by resolu-
23 tion or resolutions of the board. Notwithstanding the form
24 or tenor thereof, and in the absence of any express recital
25 on the face thereof, that the bond is nonnegotiable, all such
26 bonds shall be, and shall be treated as, negotiable instru-
27 ments for all purposes. Bonds bearing the signatures of
28 officers in office on the date of the signing thereof shall be
29 valid and binding for all purposes notwithstanding that
30 before the delivery thereof any or all of the persons whose
31 signatures appear thereon shall have ceased to be such
32 officers. Notwithstanding the requirements or provisions
33 of any other law, any such bonds may be negotiated or
34 sold in such manner and at such time or times as is found
35 by the board to be most advantageous, and all such bonds
36 may be sold at such price that the interest cost of the
37 proceeds therefrom does not exceed eight percent per
38 annum, based on the average maturity of such bonds and
39 computed according to standard tables of bond values. Any
40 resolution or resolutions providing for the issuance of such
41 bonds may contain such covenants and restrictions upon
42 the issuance of additional bonds thereafter as may be
43 deemed necessary or advisable for the assurance of the
44 payment of the bonds thereby authorized.

CHAPTER 12

(House Bill No. 510—By Mr. McManus and Mr. Seibert)

[Passed February 12, 1970; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirteen, article thirteen-a, chapter sixteen of the code of West Virginia, one

thousand nine hundred thirty-one, as amended, relating to revenue bonds issued by public service districts.

Be it enacted by the Legislature of West Virginia:

That section thirteen, article thirteen-a, 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 13A. PUBLIC SERVICE DISTRICTS FOR WATER AND SEWERAGE SERVICES.

***§16-13A-13. Revenue bonds.**

1 For constructing or acquiring any public service
2 properties for the authorized purposes of the district,
3 or necessary or incidental thereto, and for constructing
4 improvements and extensions thereto, and also for reim-
5 bursing or paying the costs and expenses of creating
6 the district, the board of any such district is hereby
7 authorized to borrow money from time to time and in
8 evidence thereof issue the bonds of such district, pay-
9 able solely from the revenues derived from the operation
10 of the public service properties under control of the
11 district. Such bonds may be issued in one or more series,
12 may bear such date or dates, may mature at such time
13 or times not exceeding forty years from their respec-
14 tive dates, may bear interest at such rate or rates not
15 exceeding seven percent per annum payable semiannually,
16 may be in such form, may carry such registration priv-
17 ileges, may be executed in such manner, may be pay-
18 able at such place or places, may be subject to such
19 terms of redemption with or without premium, may be
20 declared or become due before maturity date thereof,
21 may be authenticated in any manner, and upon com-
22 pliance with such conditions, and may contain such
23 terms and covenants as may be provided by resolution
24 or resolutions of the board. Notwithstanding the form
25 or tenor thereof, and in the absence of any express
26 recital on the face thereof, that the bond is nonnegoti-
27 able, all such bonds shall be, and shall be treated as,
28 negotiable instruments for all purposes. Bonds bearing
29 the signatures of officers in office on the date of the
30 signing thereof shall be valid and binding for all pur-

*See Clerk's note on page 92.

31 poses notwithstanding that before the delivery thereof
32 any or all of the persons whose signatures appear thereon
33 shall have ceased to be such officers. Notwithstanding
34 the requirements or provisions of any other law, any
35 such bonds may be negotiated or sold in such manner
36 and at such time or times as is found by the board to
37 be most advantageous, and all such bonds may be sold
38 at such price that the interest cost of the proceeds there-
39 from does not exceed eight percent per annum, based on
40 the average maturity of such bonds and computed accord-
41 ing to standard tables of bond values. Any resolution or
42 resolutions providing for the issuance of such bonds may
43 contain such covenants and restrictions upon the issu-
44 ance of additional bonds thereafter as may be deemed
45 necessary or advisable for the assurance of the payment
46 of the bonds thereby authorized.

CHAPTER 13

(House Bill No. 658—By Mr. Seibert)

[Passed February 12, 1970; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-five, article eleven, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to West Virginia University generally and the acquisition, construction, financing and regulation of parking facilities and penalties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 11. WEST VIRGINIA UNIVERSITY.

§18-11-25. Acquisition, construction, financing and regulation of parking facilities; penalties.

- 1 The board of regents is hereby authorized to construct,
- 2 maintain and operate automobile parking facilities on

3 the campus or other areas under its jurisdiction for use
4 by students, faculty, staff and visitors. Such facilities
5 shall be open to use on such terms and subject to such
6 reasonable rules and regulations as may be prescribed
7 by the board, which rules and regulations shall have
8 the force and effect of law. A summary of the rules
9 and regulations pertaining to parking and the penalties
10 which may be imposed for any violation thereof shall
11 be posted conspicuously in each parking area.

12 No person shall park any vehicle in violation of such
13 rules and regulations, and any person parking any vehi-
14 cle contrary thereto shall be subject to a fine of not
15 less than one dollar nor more than five dollars for each
16 offense. Justices of the peace in Monongalia county and
17 the police court and police court judge of Morgantown,
18 West Virginia, shall have jurisdiction of all such offenses.

19 In addition, the board shall have the authority, when-
20 ever any vehicle is parked in a university parking facility
21 in violation of the posted rules and regulations, to re-
22 move the vehicle, by towing or otherwise, to an estab-
23 lished garage or parking lot for storage until called for
24 by the owner or his agent. In such case, the owner
25 shall be liable for the reasonable cost of such removal
26 and storage, and until payment of such cost the garage
27 or parking lot operator may retain possession of the
28 vehicle subject to a lien for the amount due. The garage
29 or parking lot operator may enforce his lien for tow-
30 ing and storage in the manner provided in section four-
31 teen, article eleven, chapter thirty-eight of this code
32 for the enforcement of other liens.

33 The board shall have authority to charge fees for the
34 use of parking facilities under its control. All moneys
35 collected for such use shall be paid into a special fund
36 which is hereby created in the state treasury. The
37 moneys in such fund shall be used first to pay the
38 cost of maintaining and operating such facilities, but
39 any excess not needed for this purpose may be used to
40 finance the construction of additional parking facilities
41 or the acquisition by lease or purchase of additional park-
42 ing areas. The board may use the moneys in such special

43 fund to finance the costs of the above purposes on a
44 cash basis, or may from time to time issue revenue
45 bonds of the state as provided in this section to finance
46 such costs and pledge all or any part of the moneys in
47 such special funds for the payment of the principal of
48 and interest on such revenue bonds, and for reserves
49 therefor. Whenever parking facilities are provided in
50 any university building financed in whole or in part
51 by the issue of revenue bonds otherwise authorized by
52 law, the net revenue derived from the parking facilities
53 included in such building may be used or pledged to
54 meet the sinking fund requirements of the bonds issued
55 for construction of the building. The pledge of moneys
56 in such special fund for any revenue bonds shall be a
57 prior and superior charge on such special fund over
58 the use of any of the moneys in such fund to pay for
59 the cost of any of such purposes on a cash basis.

60 Such revenue bonds may be authorized and issued from
61 time to time by the board of regents to finance in whole
62 or in part the purposes provided in this section in an
63 aggregate principal amount not exceeding the amount
64 which the board shall determine can be paid as to both
65 principal and interest and reasonable margins for a re-
66 serve therefor from the moneys in such special fund.

67 The issuance of such bonds shall be authorized by a
68 resolution adopted by the board, and such revenue bonds
69 shall bear such date or dates, mature at such times not
70 exceeding forty years from their respective dates; bear in-
71 terest at such rate or rates, not exceeding seven per
72 centum per annum; be in such form either coupon or
73 registered, with such exchangeability and interchange-
74 ability privileges; be payable in such medium of pay-
75 ment and at such place or places, within or without the
76 state; be subject to such terms of prior redemption at
77 such prices not exceeding one hundred six per centum
78 of the principal amount thereof; and shall have such
79 other terms and provisions as the board shall determine.
80 Such revenue bonds shall be signed by the governor
81 and by the president of the board of regents, under the
82 great seal of the state, attested by the secretary of state,

83 and the coupons attached thereto shall bear the facsimile
84 signature of the president of the board. Such revenue
85 bonds shall be sold in such manner as the board may
86 determine to be for the best interests of the state, such
87 sale to be made at a price not lower than a price which
88 will show a net return of not more than eight per centum
89 per annum to the purchaser upon the amount paid
90 therefor computed to the stated maturity dates of such
91 revenue bonds without regard to any right of prior
92 redemption.

93 The board may enter into trust agreements with banks
94 or trust companies, within or without the state, and in
95 such trust agreements or the resolutions authorizing
96 the issuance of such bonds may enter into valid and
97 legally binding covenants with the holders of such reve-
98 nue bonds as to the custody, safeguarding and disposi-
99 tion of the proceeds of such revenue bonds, the moneys
100 in such special fund, sinking funds, reserve funds, or
101 any other moneys or funds; as to the rank and priority,
102 if any, of different issues of revenue bonds under the
103 provisions of this section; and as to any other matters
104 or provisions which are deemed necessary and advisable
105 by the board in the best interests of the state and to
106 enhance the marketability of such revenue bonds.

107 Such revenue bonds shall be and constitute negotiable
108 instruments under the law merchant and the negotiable
109 instruments law of the state; shall, together with the
110 interest thereon, be exempt from all taxation by the
111 state of West Virginia, or by any county, school district,
112 municipality or political subdivision thereof; and such
113 revenue bonds shall not be deemed to be obligations or
114 debts of the state, and the credit or taxing power of
115 the state shall not be pledged therefor, but such reve-
116 nue bonds shall be payable only from the revenue pledged
117 therefor as provided in this section.

CHAPTER 14

(House Bill No. 659—By Mr. Seibert)

[Passed February 12, 1970; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article eleven-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to revenue bonds for capital improvements at West Virginia University.

Be it enacted by the Legislature of West Virginia:

That section three, article eleven-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 11A. REVENUE BONDS FOR UNIVERSITY CAPITAL IMPROVEMENTS.

§18-11A-3. Issuance of revenue bonds.

1 The issuance of bonds under the provisions of this
2 article shall be authorized by a resolution of the board
3 of regents, which shall recite an estimate by the board
4 of the cost of the proposed building or buildings; and
5 shall provide for the issuance of bonds in an amount
6 sufficient, when sold as hereinafter provided, to pro-
7 vide moneys sufficient to pay such cost, less the amount
8 of any other funds available for the construction of the
9 building or buildings from any appropriation, grant or
10 gift therefor. Such resolution shall prescribe the rights
11 and duties of the bondholders and the board, and for
12 such purpose may prescribe the form of the trust agree-
13 ment hereinafter referred to. The bonds shall be of
14 such series, bear such date or dates, mature at such time
15 or times not exceeding thirty years from their respec-
16 tive dates, bear interest at such rate or rates, not ex-
17 ceeding seven per centum per annum, payable semi-
18 annually; be in such denominations; be in such form,
19 either coupon or fully registered without coupons, carry-
20 ing such registration exchangeability and interchange-

21 ability privileges; be payable in such medium of payment
22 and at such place or places; be subject to such terms
23 of redemption at such prices not exceeding one hundred
24 five percent of the principal amount thereof, and be enti-
25 tled to such priorities on the revenues paid into the
26 special university capital improvements fund as may
27 be provided in the resolution authorizing the issuance
28 of the bonds or in any trust agreement made in connec-
29 tion therewith. The bonds shall be signed by the gover-
30 nor, and by the president of the board of regents, under
31 the great seal of the state, attested by the secretary of
32 state, and the coupons attached thereto shall bear the
33 facsimile signature of the president of the board. In
34 case any of the officers whose signatures appear on the
35 bonds or coupons cease to be such officers before the
36 delivery of such bonds, such signatures shall neverthe-
37 less be valid and sufficient for all purposes the same
38 as if such officers had remained in office until such de-
39 livery.

40 Such bonds shall be sold in such manner as the board
41 may determine to be for the best interests of the state,
42 taking into consideration the financial responsibility
43 of the purchaser, the terms and conditions of the pur-
44 chase, and especially the availability of the proceeds
45 of the bonds when required for payment of the cost
46 of such building or buildings, such sale to be made at a
47 price not lower than a price which, when computed upon
48 standard tables of bond values, will show a net return
49 of not more than eight percent per annum to the pur-
50 chaser upon the amount paid therefor. The proceeds
51 of such bonds shall be used solely for the payment of
52 the cost of such building or buildings, and shall be depos-
53 ited in the state treasury in a special fund and checked
54 out as provided by law for the disbursement of other
55 state funds. If the proceeds of such bonds, by error in
56 calculation or otherwise, shall be less than the cost of
57 such building or buildings, additional bonds may in like
58 manner be issued to provide the amount of the deficiency;
59 and unless otherwise provided for in the resolution or
60 trust agreement hereinafter mentioned, shall be deemed

61 to be of the same issue, and shall be entitled to pay-
62 ment from the same fund, without preference or prior-
63 ity, as the bonds before issued for such building or
64 buildings. If the proceeds of bonds issued for such build-
65 ing or buildings shall exceed the cost thereof, the sur-
66 plus shall be paid into the sinking fund to be established
67 for payment of the principal and interest of such bonds
68 as hereinafter provided. Prior to the preparation of
69 definitive bonds, the board may, under like restrictions,
70 issue temporary bonds with or without coupons, ex-
71 changeable for definitive bonds upon their issuance.

72 The bonds issued under the provisions of this article
73 shall be and have all the qualities of negotiable instru-
74 ments under the law merchant and the Uniform Com-
75 mercial Code of this state.

CHAPTER 15

(House Bill No. 660—By Mr. Saibert)

[Passed February 12, 1970; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article eleven-b, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to revenue bonds for facilities, buildings and structures.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 11B. REVENUE BONDS FOR UNIVERSITY FACILITIES, BUILDINGS AND STRUCTURES.

§18-11B-4. Issuance of revenue bonds.

1 The issuance of revenue bonds under the provisions
2 of this article shall be authorized by a resolution of
3 the board of regents, which shall recite an estimate by
4 the board of the cost of the proposed facilities, build-

5 ings or structures; and shall provide for the issuance
6 of bonds in an amount sufficient, when sold as herein-
7 after provided, to provide moneys sufficient to pay such
8 cost, less the amount of any other funds available for the
9 construction of the facilities, buildings or structures
10 from any appropriation, grant or gift therefor. Such
11 resolution shall prescribe the rights and duties of the
12 bondholders and the board, and for such purpose may
13 prescribe the form of the trust agreement hereinafter
14 referred to. The bonds shall be of such series, bear
15 such date or dates, mature at such time or times not
16 exceeding thirty years from their respective dates, bear
17 interest at such rate or rates, not exceeding seven per
18 centum per annum, payable semiannually; be in such
19 denominations; be in such form, either coupon or fully
20 registered without coupons, carrying such registration,
21 exchangeability and interchangeability privileges; be
22 payable in such medium of payment and at such place
23 or places; be subject to such terms of redemption at
24 such prices not exceeding one hundred five percent of
25 the principal amount thereof, and be entitled to such
26 priorities on the revenues paid into the special univer-
27 sity capital improvements fund as may be provided in
28 the resolution authorizing the issuance of the bonds or
29 in any trust agreement made in connection therewith.
30 The bonds shall be signed by the governor, and by the
31 president of the board of regents, under the great seal
32 of the state, attested by the secretary of state, and the
33 coupons attached thereto shall bear the facsimile signa-
34 ture of the president of the board. In case any of the
35 officers whose signatures appear on the bonds or coupons
36 cease to be such officers before the delivery of such bonds,
37 such signatures shall nevertheless be valid and sufficient
38 for all purposes the same as if such officers had remained
39 in office until such delivery.

40 Such bonds shall be sold in such manner as the board
41 may determine to be for the best interest of the state,
42 taking into consideration the financial responsibility of
43 the purchaser, the terms and conditions of the purchase,
44 and especially the availability of the proceeds of the

45 bonds when required for payment of the cost of such
46 facilities, buildings or structures, such sale to be made at
47 a price not lower than a price which, when computed
48 upon standard tables of bond values, will show a net re-
49 turn of not more than eight percent per annum to the
50 purchaser upon the amount paid therefor. The proceeds
51 of such bonds shall be used solely for the payment of the
52 cost of such facilities, buildings or structures, and shall
53 be deposited in the state treasury in a special fund and
54 checked out as provided by law for the disbursement of
55 other state funds. If the proceeds of such bonds, by error
56 in calculation or otherwise, shall be less than the cost of
57 such facilities, buildings or structures, additional bonds
58 may in like manner be issued to provide the amount of
59 the deficiency; and unless otherwise provided for in the
60 resolution or trust agreement hereinafter mentioned,
61 shall be deemed to be of the same issue, and shall be
62 entitled to payment from the same fund, without pref-
63 erence or priority, as the bonds before issued for such
64 facilities, buildings or structures. If the proceeds of
65 bonds issued for such facilities, buildings or structures
66 shall exceed the cost thereof, the surplus shall be paid
67 into the sinking fund to be established for payment of
68 the principal and interest of such bonds as hereinafter
69 provided. Prior to the preparation of definitive bonds,
70 the board may, under like restrictions, issue temporary
71 bonds with or without coupons, exchangeable for defini-
72 tive bonds upon their issuance. The term "cost", as used
73 in this section, shall be deemed to include all of the
74 items contemplated by the use of this term in section
75 one of this article.

CHAPTER 16

(House Bill No. 639—By Mr. Seibert)

[Passed February 12, 1970; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article twelve-a,
chapter eighteen of the code of West Virginia, one thou-

sand nine hundred thirty-one, as amended, relating to revenue bonds for capital improvements at Marshall University.

Be it enacted by the Legislature of West Virginia:

That section three, article twelve-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 12A. REVENUE BONDS FOR MARSHALL UNIVERSITY
CAPITAL IMPROVEMENTS.**

§18-12A-3. Issuance of revenue bonds.

1 The issuance of bonds under the provisions of this
2 article shall be authorized by a resolution of the board
3 of regents, which shall recite an estimate by the board
4 of the cost of the proposed building or buildings, im-
5 provements and land; and shall provide for the issuance
6 of bonds in an amount sufficient, when sold as herein-
7 after provided, to provide moneys sufficient to pay such
8 cost, less the amount of revenue paid into the special
9 Marshall University capital improvements fund which
10 is used to pay any part of the cost of providing such
11 classroom and office building, addition to the library,
12 renovation of administration building and additional land
13 for a new student center building for Marshall Univer-
14 sity as authorized by section two of this article and less
15 the amount of any other funds available for the con-
16 struction or acquisition of the building or buildings, im-
17 provements and land from any appropriation, grant, gift
18 or contribution therefor. Such resolution shall prescribe
19 the rights and duties of the bondholders and the board,
20 and for such purpose may prescribe the form of the trust
21 agreement hereinafter referred to. The bonds shall be
22 of such series, bear such date or dates, mature at such
23 time or times not exceeding thirty years from their re-
24 spective dates, bear interest at such rate or rates, not
25 exceeding seven per centum per annum, payable semi-
26 annually; be in such denominations; be in such form,
27 either coupon or fully registered without coupons, carry-
28 ing such registration exchangeability and interchange-
29 ability privileges; be payable in such medium of pay-
30 ment and at such place or places; be subject to such

31 terms of redemption at such prices not exceeding one
32 hundred five percent of the principal amount thereof,
33 and be entitled to such priorities on the revenues paid
34 into the special Marshall University capital improvements
35 fund as may be provided in the resolution authorizing
36 the issuance of the bonds or in any trust agreement
37 made in connection therewith. The bonds shall be signed
38 by the governor, and by the president of the board of
39 regents, under the great seal of the state, attested
40 by the secretary of state, and the coupons attached
41 thereto shall bear the facsimile signature of the president
42 of the board. In case any of the officers whose signatures
43 appear on the bonds or coupons cease to be such of-
44 ficers before the delivery of such bonds, such signatures
45 shall nevertheless be valid and sufficient for all pur-
46 poses the same as if such officers had remained in office
47 until such delivery.

48 Such bonds shall be sold in such manner as the board
49 may determine to be for the best interests of the state,
50 taking into consideration the financial responsibility of
51 the purchaser, the terms and conditions of the purchase,
52 and especially the availability of the proceeds of the
53 bonds when required for payment of the cost of such
54 building or buildings, improvements and land, such sale
55 to be made at a price not lower than a price, which when
56 computed upon standard tables of bond values, will
57 show a net return of not more than eight percent per
58 annum to the purchaser upon the amount paid therefor.
59 The proceeds of such bonds shall be used solely for
60 the payment of the cost of such building or buildings,
61 improvements and land, and shall be deposited in the
62 state treasury in a special fund and checked out as pro-
63 vided by law for the disbursement of other state funds.
64 If the proceeds of such bonds, by error in calculation
65 or otherwise, shall, together with any other funds used
66 therefor as hereinbefore in this article authorized, be
67 less than the cost of such building or buildings, im-
68 provements and land, additional bonds may in like man-
69 ner be issued to provide the amount of the deficiency,
70 but in no case to exceed five million seven hundred
71 thousand dollars less the amount of any other funds

72 used therefor as hereinbefore in this article authorized;
73 and unless otherwise provided for in the resolution or
74 trust agreement hereinafter mentioned, shall be deemed
75 to be of the same issue, and shall be entitled to pay-
76 ment from the same fund, without preference or priority,
77 as the bonds before issued for such building or build-
78 ings. If the proceeds of bonds issued for such building
79 or buildings, improvements and land shall, together with
80 the amount of any other funds used therefor as herein-
81 before in this article authorized, exceed the cost thereof,
82 the surplus shall be paid into the sinking fund or reserve
83 fund to be established for payment of the principal and
84 interest of such bonds as hereinafter provided. Prior
85 to the preparation of definitive bonds, the board may,
86 under like restrictions, issue temporary bonds with or
87 without coupons, exchangeable for definitive bonds upon
88 their issuance.

89 The bonds issued under the provisions of this article
90 shall be and have all the qualities of negotiable instru-
91 ments under the law merchant and the Uniform Com-
92 mercial Code of this state.

CHAPTER 17

(Senate Bill No. 76—By Mr. Carrigan)

[Passed February 12, 1970; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section sixteen, article twenty-three, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to removing interest rate limitations on dormitory revenue bond issues.

Be it enacted by the Legislature of West Virginia:

That section sixteen, article twenty-three, 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 23. ADDITIONAL POWERS, DUTIES AND RESPONSIBILITIES OF GOVERNING BOARDS OF STATE INSTITUTIONS OF HIGHER EDUCATION.

§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 reve-
6 nue bonds of the state, by a resolution of the board which
7 shall recite an estimate by the board of such cost, the
8 principal and interest of which bonds shall be payable
9 solely from the special fund herein provided for such
10 payment. The board, after any such issue of bonds or
11 simultaneously therewith, may issue further issues of
12 bonds to pay the cost of any other one or more of such
13 dormitories, homes or refectories, in the manner and sub-
14 ject to all of the provisions herein contained as to the
15 bonds first mentioned in this section. All such bonds shall
16 have and are hereby declared to have all the qualities
17 of negotiable instruments under the Uniform Commercial
18 Code. Such bonds shall bear interest, payable semi-
19 annually, and shall mature in not more than thirty years
20 from their date or dates and may be made redeemable
21 at the option of the state, to be exercised by the governing
22 boards, at such price and under such terms and condi-
23 tions as they may fix prior to the issuance of such bonds.
24 They shall determine the form of such bonds, including
25 coupons to be attached thereto to evidence the right of
26 interest payments, which bonds shall be signed by the
27 governor and the president of the appropriate governing
28 board, under the great seal of the state, attested by the
29 secretary of state, and the coupons attached thereto
30 shall bear the facsimile signature of the president of the
31 appropriate board. In case any of the officers whose signa-
32 tures appear on the bonds or coupons shall cease to be
33 such officers before the delivery of such bonds, such
34 signatures shall nevertheless be valid and sufficient for
35 all purposes the same as if they had remained in office
36 until such delivery. The governing boards shall fix the

37 denominations of such bonds, the principal and interest
38 of which shall be payable at the office of the treasurer of
39 the state of West Virginia, at the capitol of said state, or,
40 at the option of the holder, at some bank or trust company
41 in the city of New York to be named in the bonds, either
42 in lawful money or in gold coin of the United States of
43 America, of or equal to the then current standard of
44 weight and fineness, as may be determined by the govern-
45 ing boards. Such bonds shall be exempt from taxation
46 by the state of West Virginia or any county, school dis-
47 trict or municipality therein. The governing boards may
48 provide for the registration of such bonds in the name of
49 the owner as to principal alone and as to both principal
50 and interest under such terms and conditions as the
51 governing boards may determine, and shall sell such
52 bonds in such manner as they may determine to be for
53 the best interest of the state, taking into consideration
54 the financial responsibility of the purchaser and the terms
55 and conditions of the purchase and especially the avail-
56 ability of the proceeds of the bonds when required for
57 payment of the cost of the dormitories, homes or
58 refectories.

59 The proceeds of such bonds shall be used solely for
60 the payment of the cost of such dormitories, homes or
61 refectories, and shall be checked out by the president
62 of the appropriate governing board and the treasurer
63 thereof and under such further restrictions, if any, as
64 the board may provide. If the proceeds of such bonds,
65 by error or otherwise, shall be less than the cost of such
66 dormitories, homes or refectories, additional bonds may
67 in like manner be issued to provide the amount of such
68 deficit, and, unless otherwise provided in the trust agree-
69 ment hereinafter mentioned, shall be deemed to be of
70 the same issue and shall be entitled to payment from
71 the same fund, without preference or priority of the
72 bonds first issued for the same dormitory or dormitories,
73 home or homes, or refectory or refectories. If the pro-
74 ceeds of bonds issued for any such dormitories, homes
75 or refectories shall exceed the cost thereof, the surplus
76 shall be paid into the fund hereinafter provided for pay-

77 ment of the principal and interest of such bonds. Such
78 fund may be used for the purchase of any of the out-
79 standing bonds payable from such fund at the market
80 price, but not exceeding the price, if any, at which such
81 bonds shall in the same year be redeemable, and all
82 bonds redeemed or purchased shall forthwith be can-
83 celled and shall not again be issued.

84 Prior to the preparation of definitive bonds, the
85 governing boards may under like restrictions issue tem-
86 porary bonds with or without coupons, exchangeable
87 for definitive bonds upon the issuance of the latter. Such
88 revenue bonds may be issued without any other proceed-
89 ings or the happening of any other conditions and things
90 than those proceedings, conditions and things which are
91 specified and required by this article or by the con-
92 stitution of the state.

CHAPTER 18

(Com. Sub. for Senate Bill No. 114—Originating in the
Senate Committee on Finance)

[Passed February 4, 1970; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article twenty-four, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to increasing the interest rate limitation on student union revenue bond issues to eight percent.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 24. FEES AND OTHER MONEY COLLECTED AT STATE INSTITUTIONS OF HIGHER EDUCATION.

§18-24-6. Disposition and use of student union fees; issuance of revenue bonds.

1 Wherever the term "student union building" is used in
2 this section the same shall mean a student union build-

3 ing or a combination student union building and dining
4 hall building; and wherever the term "building fund" is
5 used in this section the same shall mean the respective
6 special student union building funds created as provided
7 in section one of this article for each state educational
8 institution which has imposed student union fees pur-
9 suant to section one of this article, to be expended by
10 the West Virginia board of regents for the benefit of
11 the state educational institutions under its control.

12 The West Virginia board of regents may make expendi-
13 tures from such building funds at the various state educa-
14 tional institutions under its 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 pur-
17 poses: (1) The construction and acquisition of new stu-
18 dent union buildings. (2) The acquisition, renovation and
19 improvement of existing buildings to be used as student
20 union buildings. (3) The construction of additions, ex-
21 tensions and improvements to existing student union
22 buildings. (4) The acquisition of furnishings and equip-
23 ment for any existing student union buildings or student
24 union buildings to be constructed or acquired, or the
25 construction of any roads, utilities or other properties,
26 real or personal, or for any other purposes necessary, ap-
27 purtenant or incidental to the construction, acquisition,
28 financing and placing in operation of such student union
29 buildings. (5) The payment of the cost of the operation
30 and maintenance of such student union buildings, subject
31 however to any covenants or agreements made with the
32 holders of revenue bonds heretofore or hereafter issued
33 pursuant to this section or pursuant to section one of
34 this article.

35 The West Virginia board of regents, at its discretion,
36 may use the moneys in such building funds to finance the
37 costs of the above purposes on a cash basis, or may from
38 time to time issue revenue bonds of the state as provided
39 in this section to finance all or part of such purposes and
40 pledge all or any part of the moneys in such building
41 funds for the payment of the principal of and interest on
42 such revenue bonds, and for reserves therefor. Any pledge

43 of such building funds for such revenue bonds shall be
44 a prior and superior charge on such special funds over
45 the use of any of the moneys in such funds to pay for the
46 cost of any of such purposes on a cash basis, or for the
47 payment of the cost of operation and maintenance, or any
48 part thereof, of such student union buildings, under such
49 terms and conditions as shall be provided in the proceed-
50 ings which authorized the issuance of such revenue bonds.

51 Such revenue bonds may be authorized and issued from
52 time to time by the West Virginia board of regents to
53 finance in whole or in part the purposes at any state edu-
54 cational institution under its control provided for in this
55 section in an aggregate principal amount not exceeding
56 the amount which the board shall determine can be paid
57 as to both principal and interest and reasonable margins
58 for a reserve therefor from the moneys in such building
59 funds.

60 The issuance of such revenue bonds shall be authorized
61 by a resolution adopted by the West Virginia board of
62 regents, and such revenue bonds shall bear such date or
63 dates, mature at such time or times not exceeding forty
64 years from their respective dates; bear interest at such
65 rate or rates not exceeding eight per centum per annum;
66 be in such form either coupon or registered, with such ex-
67 changeability and interchangeability privileges; be pay-
68 able in such medium of payment and at such place or
69 places, within or without the state; be subject to such
70 terms of prior redemption at such prices not exceeding
71 one hundred five per centum of the principal amount
72 thereof; and shall have such other terms and provisions
73 as the board shall determine. Such revenue bonds shall
74 be signed by the governor and by the president of the
75 West Virginia board of regents, under the great seal of
76 the state, attested by the secretary of state, and the
77 coupons attached thereto shall bear the facsimile signature
78 of the president of the West Virginia board of regents.
79 Such revenue bonds shall be sold in such manner as the
80 board may determine to be for the best interests of the
81 state.

82 The West Virginia board of regents may enter into

83 trust agreements with banks or trust companies, within
84 or without the state, and in such trust agreements or the
85 resolutions authorizing the issuance of such bonds may
86 enter into valid and legally binding covenants with the
87 holders of such revenue bonds as to the custody, safe-
88 guarding and disposition of the proceeds of such revenue
89 bonds, the moneys in such building funds, sinking funds,
90 reserve funds, or any other moneys or funds; as to the
91 rank and priority, if any, of different issues of revenue
92 bonds issued by the board for the same educational in-
93 stitution under the provisions of this section; as to the
94 maintenance or revision of the amounts of such student
95 union fees, and the terms and conditions, if any, under
96 which any of such student union fees may be reduced;
97 and as to any other matters or provisions which are
98 deemed necessary and advisable by the board in the best
99 interests of the state and to enhance the marketability of
100 such revenue bonds.

101 Any revenues or income derived from the operation
102 of such student union buildings may, in the discretion of
103 the board, be used to pay the cost of the operation and
104 maintenance of such student union buildings, or for the
105 debt service on any bonds issued pursuant to this section
106 or pursuant to any other law.

107 After the issuance of any of such revenue bonds, the
108 student union fees at the state educational institution for
109 which such revenue bonds were issued shall not be re-
110 duced as long as any of such revenue bonds are out-
111 standing and unpaid except under such terms, provisions
112 and conditions as shall be contained in the resolution,
113 trust agreement or other proceedings under which such
114 revenue bonds were issued.

115 Such revenue bonds shall be and constitute negotiable
116 instruments under the Uniform Commercial Code of the
117 state, shall, together with the interest thereon, be exempt
118 from all taxation by the state of West Virginia, or by any
119 county, school district, municipality or political sub-
120 division thereof; and such revenue bonds shall not be
121 deemed to be obligations or debts of the state, and the
122 credit or taxing power of the state shall not be pledged

123 therefor, but such revenue bonds shall be payable only
124 from the student union fees pledged therefor as provided
125 in this section.

126 The provisions of this section shall constitute an addi-
127 tional, alternative and complete authority for the exercise
128 of the powers and the issuance of the bonds provided
129 for in this section, but shall not prevent the West Vir-
130 ginia board of regents from exercising similar or related
131 powers or issuing bonds therefor under any other law or
132 laws, but the board, in exercising the powers and issuing
133 the bonds provided for in this section, shall only be re-
134 quired to comply with the provisions of this section and
135 shall not be required to comply with or be subject to the
136 provisions of any other law or laws.

CHAPTER 19

(Senate Bill No. 90—By Mr. Jackson, Mr. President,
and Mr. Carrigan)

[Passed February 12, 1970; in effect July 1, 1970. Approved by the Governor.]

AN ACT to amend and reenact sections eight, twenty-one, twenty-three and twenty-five, article two, chapter fourteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the court of claims, the number of judges of the court of claims constituting a quorum for the hearing of claims before the court or the transaction of any business of the court, the compensation of the judges and the maximum number of days each judge may serve in any fiscal year; providing that the periods of limitations as to claims before the court shall be the same as would be applicable under the provisions of the code of West Virginia and that such periods of limitation cannot be waived or extended; relating to the inclusion of awards in the budget; and relating to the reports of the court, the filing thereof with the clerks of both houses of the Legislature, the governor and the attorney general and the publication of such reports.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. CLAIMS AGAINST THE STATE.

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

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

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

§14-2-25. Reports of the court.

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

1 Each judge of the court shall receive seventy-five
2 dollars for each day actually served, and actual ex-
3 penses incurred in the performance of his duties. The
4 number of days served by each judge shall not ex-
5 ceed one hundred fifty in any fiscal year, except by
6 authority of the joint committee on government and
7 finance. Requisitions for compensation and expenses shall
8 be accompanied by sworn and itemized statements,
9 which shall be filed with the auditor and preserved
10 as public records. For the purpose of this section, time
11 served shall include time spent in the hearing of claims,
12 in the consideration of the record, in the preparation
13 of opinions, and in necessary travel.

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

1 The court shall not take jurisdiction of any claim,
2 whether accruing before or after the effective date of this
3 article (July one, one thousand nine hundred sixty-seven),
4 unless notice of such claim be filed with the clerk within
5 such period of limitation as would be applicable under the
6 pertinent provisions of the code of West Virginia, one
7 thousand nine hundred thirty-one, as amended, if the
8 claim were against a private person, firm or corporation
9 and the constitutional immunity of the state from suit
10 were not involved and such period of limitation may not
11 be waived or extended. The foregoing provision shall not
12 be held to limit or restrict the right of any person, firm or
13 corporation who or which had a claim against the state
14 or any state agency, pending before the attorney general

15 on the effective date of this article (July one, one thousand
16 nine hundred sixty-seven), from presenting such claim to
17 the court of claims, nor shall it limit or restrict the right
18 to file such a claim which was, on the effective date of this
19 article (July one, one thousand nine hundred sixty-seven),
20 pending in any court of record as a legal claim and which,
21 after such date was or may be adjudicated in such court to
22 be invalid as a claim against the state because of the con-
23 stitutional immunity of the state from suit.

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

1 The clerk shall certify to the department of finance and
2 administration, on or before the twentieth day of Novem-
3 ber of each year, a list of all awards recommended by the
4 court to the Legislature for appropriation. The clerk may
5 certify supplementary lists to the governor to include sub-
6 sequent awards made by the court. The governor shall
7 include all awards so certified in his proposed budget bill
8 transmitted to the Legislature.

§14-2-25. Reports of the court.

1 The clerk shall be the official reporter of the court. He
2 shall collect and edit the approved claims, awards and
3 statements, shall prepare them for submission to the Leg-
4 islature in the form of an annual report and shall prepare
5 them for publication.

6 Claims and awards shall be separately classified as fol-
7 lows:

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

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

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

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

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

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

22 The court shall transmit its annual report to the presid-
23 ing officer of each house of the Legislature, and a copy
24 shall be made available to any member of the Legislature
25 upon request therefor. The reports of the court shall be
26 published biennially by the clerk as a public document.
27 The biennial report shall be filed with the clerk of each
28 house of the Legislature, the governor and the attorney
29 general.

CHAPTER 20

(House Bill No. 713—By Mr. Buck and Mr. Kincaid)

[Passed February 12, 1970; 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 payments thereof.

Be it enacted by the Legislature of West Virginia:

§1. Finding and declaring certain claims against the state department of highways; state board of education; department of welfare; department of mental health; board of governors of West Virginia University; division of vocational rehabilitation; adjutant general; office of federal-state relations; and alcohol beverage control commissioner, to be moral obligations of the state, and directing payment thereof.

1 The Legislature has considered the findings of fact
2 and recommendations reported to it by the 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 such claim in the amount specified below, and
8 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 Department of Highways:

12	(1)	Howard Arbogast.....	\$ 300.00
13	(2)	Allstate Plumbing Service.....	1,200.00
14	(3)	Bates & Rogers Construction Co....	2,500.00
15	(4)	R. L. Beranak	149.51
16	(5)	Ray Bice	760.29
17	(6)	J. N. Caldwell & A. M. Caldwell,	
18		d/b/a Caldwell's Hardware.....	581.24
19	(7)	Michael & Evangeline Catsos.....	101.41
20	(8)	Warren N. Connon	8.24
21	(9)	S. P. Davidson, H. H. Davidson, and	
22		A. L. Davidson, d/b/a Davidson	
23		Brothers	567.88
24	(10)	Fredrick Engineering Company....	21,720.00
25	(11)	Carl W. and Ellen Grubbs.....	159.59
26	(12)	Fred and Ruth Hendricks	498.00
27	(13)	Johnson Welders Supply, Inc.....	788.33
28	(14)	King's Jewelry	437.24
29	(15)	The Kroger Company	226.33
30	(16)	Gene R. Monk	69.79
31	(17)	Mountain State Construction	
32		Company	53,966.95
33	(18)	Mountaineer Highway Abrasives,	
34		Inc.	16,976.28
35	(19)	Ralph Myers Contracting	
36		Corporation	33,979.32
37	(20)	S. J. Neathawk Lumber, Inc.....	315.94
38	(21)	Creed Samples, Administrator of the	
39		Estate of Fonda Samples,	
40		Deceased	11,065.49
41	(22)	Creed L. Samples	699.84
42	(23)	Jo Ann Samples	3,861.43
43	(24)	Leta Samples, a minor, who sues by	
44		her father and next friend,	
45		Creed L. Samples	1,250.00

46	(25)	Penny Samples, a minor, who sues	
47		by Creed Samples, her father	
48		and next friend	5,434.00
49	(26)	Thomas Company	18,956.23
50	(27)	John C. Varner, Administrator of	
51		the Estate of Julia M. Varner,	
52		Deceased	8,201.30
53	(28)	R. C. Wetherall, Jr. and Paul Price	20,847.75
54	(29)	Lawrence H. Young, Jr.	249.26
55	(b)	Claims versus the State Board of	
56		Education:	
57	(1)	Hibbard, O'Connor & Weeks, Inc.	57,450.00
58	(2)	Shepherdstown Register, Inc.	922.50
59	(3)	Smith, Joe L., d/b/a Biggs-	
60		Johnston-Withrow	727.30
61	(c)	Claims versus the Department of Welfare:	
62	(1)	Harlan Hall	226.00
63	(d)	Claims versus the Department of Mental	
64		Health:	
65	(1)	Allergy Rehabilitation Foundation,	
66		Inc.	1,703.87
67	(2)	M. C. Hicks, Committee for	
68		Lucy K. Hicks	201.00
69	(3)	Raymond Mathison	247.50
70	(e)	Claims versus the Board of Governors of	
71		West Virginia University:	
72	(1)	City of Morgantown	40,886.22
73	(f)	Claims versus the West Virginia	
74		Vocational Rehabilitation Division:	
75	(1)	Drs. Heilman, Anderson and	
76		Abplanalp	116.50
77	(2)	Harmarville Rehabilitation Center ..	411.00
78	(3)	Drs. Squire, Francke and Goodwin ..	134.50
79	(g)	Claims versus the Adjutant General:	
80	(1)	John L. Rolfe, a subrogation	
81		assigned to Harleysville Insurance	
82		Company	275.67

83	(2) Interstate Lumber Company	2,011.00
84	(h) Claims versus the Office of Federal-	
85	State Relations:	
86	(1) William J. Twigger, d/b/a R. L.	
87	Swearer Company	1,128.89
88	(i) Claims versus the Alcohol Beverage	
89	Control Commissioner:	
90	(1) Joe L. Smith d/b/a Biggs-	
91	Johnston-Withrow	4,907.70
92	The Legislature finds that the above moral obliga-	
93	tions and the appropriations made in satisfaction thereof	
94	shall be the full compensation for all claimants, and that	
95	prior to the payment to any claimant provided for in this	
96	bill, the court of claims shall receive a release from said	
97	claimant releasing any and all claims for moral obliga-	
98	tions arising from the matters considered by the Legisla-	
99	ture in the finding of the moral obligations and the mak-	
100	ing of the appropriations for said claimant. The court	
101	of claims shall deliver all releases obtained from claim-	
102	ants to the department against which the claim was	
103	allowed.	

CHAPTER 21

(House Bill No. 661—By Mr. Myles and Mr. Files)

[Passed February 12, 1970; In effect ninety days from passage. Approved by the Governor.]

AN ACT to provide for the submission to the voters of the state of an amendment to the constitution of the state of West Virginia, amending section five, article twelve thereof, relating to support of free schools, and repealing section two, article ten thereof, relating to capitation tax.

Be it enacted by the Legislature of West Virginia:

CAPITATION TAX REPEAL AMENDMENT.

§1. Submitting an amendment to the state constitution.

- §2. Amendment to be known as the "Capitation Tax Repeal Amendment"; summary of purpose.
- §3. Publication of proposed amendment by governor.
- §4. Form of ballot; election.
- §5. Certificates of election commissioners; canvass of vote; certifying result.
- §6. Proclamation of result of election by governor.
- §1. Submitting an amendment to the state constitution.

That the question of the ratification or rejection of an amendment to the constitution of West Virginia, proposed in accordance with the provisions of section two, article fourteen of said constitution, shall be submitted to the voters of the state at the next general election, to be held in the year one thousand nine hundred seventy, which proposed amendment is as follows:

That section two, article ten of the constitution of the state of West Virginia be repealed and that section five, article twelve be amended to read as follows:

"ARTICLE XII. EDUCATION.

"§5. Support of free schools.

1 "The Legislature shall provide for the support of free
2 schools by appropriating thereto the interest of the in-
3 vested "school fund", the net proceeds of all forfeitures
4 and fines accruing to this state under the laws thereof
5 and by general taxation of persons and property or other-
6 wise. It shall also provide for raising in each county
7 or district, by the authority of the people thereof, such
8 a proportion of the amount required for the support
9 of free schools therein as shall be prescribed by general
10 laws."

§2. Amendment to be known as the "Capitation Tax Repeal Amendment"; summary of purpose.

1 In accordance with the provisions of section thirteen,
2 article six, chapter three of the code of West Virginia,
3 one thousand nine hundred thirty-one, as amended, said
4 proposed amendment is hereby designated as the "Capita-
5 tion Tax Repeal Amendment" and the purpose of the
6 proposed amendment is summarized as follows: "To
7 abolish the capitation, or 'head' tax."

§3. Publication of proposed amendment by governor.

1 The governor shall cause the said proposed amendment,
2 with the proper designation and the summary of the pur-
3 pose for the same as hereinbefore adopted and stated,
4 to be published one time at least three months before
5 such election in some newspaper in every county in which
6 a newspaper is printed, and the cost of such advertising,
7 determined in accordance with the provisions of section
8 three, article three, chapter fifty-nine of the code of West
9 Virginia, one thousand nine hundred thirty-one, as
10 amended, shall in the first instance, if found necessary by
11 him, be paid out of the governor's contingent fund, and
12 be afterwards repaid to such fund by appropriation of
13 the Legislature.

§4. Form of ballot; election.

1 For the purpose of enabling the voters of the state
2 to vote on the question of said proposed amendment
3 to the constitution and any other proposed amendments
4 to the constitution which may be submitted at the said
5 general election to be held in the year one thousand nine
6 hundred seventy, the board of ballot commissioners of
7 each county is hereby required to place upon and at the
8 foot of the official ballot to be voted at that election,
9 under the heading reading "Ballot on Constitutional
10 Amendment(s)," in the first position under said heading,
11 the following:

12 No. 1. Capitation Tax Repeal Amendment.

13 ☐ For

14 ☐ Against

15 The said election on the proposed amendment at each
16 place of voting shall be superintended, conducted and
17 returned, and the result thereof ascertained by the same
18 officers and in the same manner as the election of offi-
19 cers to be voted for at said election, and all the provisions
20 of the law relating to general elections, including all
21 duties to be performed by any officer or board, as far
22 as practicable, and not inconsistent with anything herein
23 contained, shall apply to the election held under the
24 provisions of this act, except when it is herein other-

25 wise provided. The ballots cast on the question of said
26 proposed amendment shall be counted as other ballots
27 cast at said election.

**§5. Certificates of election commissioners; canvass of vote;
certifying result.**

1 As soon as the result is ascertained, the commissioners,
2 or a majority of them, and the canvassers (if there be
3 any), or a majority of them, at each place of voting,
4 shall make out and sign two certificates thereof in the
5 following form or to the following effect:

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

15 "Amendment No. 1. Capitation Tax Repeal Amend-
16 ment.

17 "For ratification _____ votes.

18 "Against ratification _____ votes.

19 "Given under our hands this _____ day of _____,
20 one thousand nine hundred seventy."

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

31 The said certificates, together with the ballots cast
32 on the question of said proposed amendment, shall be
33 laid before the commissioners of the county court at
34 the courthouse at the same time the ballots, poll books

35 and the certificates of election of the members of the
36 Legislature are laid before them; and as soon as the
37 result of said election in the county upon the question
38 of such ratification or rejection is ascertained, two cer-
39 tificates of such result shall be made out and signed by
40 said commissioners as a board of canvassers, in the form
41 or to the following effect:

42 "We, the board of canvassers of the county of _____ ,
43 having carefully and impartially examined the returns
44 of the election held in said county, in each district
45 thereof, on the _____ day of November, one thousand
46 nine hundred seventy, do certify that the result of the
47 election in said county, on the question of the ratifi-
48 cation or rejection of the proposed amendment is as fol-
49 lows:

50 "Amendment No. 1. Capitation Tax Repeal Amend-
51 ment.

52 "For ratification _____ votes.

53 "Against ratification _____ votes.

54 "Given under our hands this _____ day of _____ ,
55 one thousand nine hundred seventy."

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

§6. Proclamation of result of election by governor.

1 On the twenty-fifth day after the election is held,
2 or as soon thereafter as practicable, the said certificates
3 shall be laid before the governor, whose duty it shall
4 be to ascertain therefrom the result of said election in
5 the state, and declare the same by proclamation pub-
6 lished in one or more newspapers printed at the seat of
7 government, the cost of such publication to be determined
8 in accordance with the provisions of section three, article
9 three, chapter fifty-nine of the code of West Virginia, one
10 thousand nine hundred thirty-one, as amended. If a
11 majority of the votes cast at said election upon said

12 question be for ratification of said amendment, the pro-
13 posed amendment so ratified shall be in force and effect
14 from and after the time of such ratification as part of
15 the constitution of the state.

CHAPTER 22

(House Bill No. 669—By Mr. Speaker, Mr. Boiarsky,
and Mr. Seibert)

[Passed February 12, 1970; in effect ninety days from passage. Approved by the
Governor.]

AN ACT to provide for submitting to the voters 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.

Be it enacted by the Legislature of West Virginia:

LEGISLATIVE IMPROVEMENT AMENDMENT.

- §1. Submitting an amendment to the state constitution.
- §2. Amendment to be known as the "Legislative Improvement Amendment"; summary of purpose.
- §3. Publication of proposed amendment by governor.
- §4. Form of ballot; election.
- §5. Certificates of election commissioners; canvass of vote; certifying result.
- §6. Proclamation of result of election by governor.
- §1. Submitting an amendment to the state constitution.

That the question of the ratification or rejection of an amendment to the constitution of West Virginia, proposed in accordance with the provisions of section two, article fourteen of said constitution, shall be submitted to the voters of the state at the next general election, to be held in the year

one thousand nine hundred 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.

1 "No person holding any other lucrative office or em-
2 ployment under this state, the United States, or any
3 foreign government; no member of Congress; and no per-
4 son who is sheriff, constable, or clerk of any court of rec-
5 ord, shall be eligible to a seat in the Legislature.

"§18. Time and place of assembly of Legislature.

1 "The Legislature shall assemble annually at the seat
2 of government, and not oftener unless convened by the
3 Governor. Regular sessions of the Legislature shall com-
4 mence on the second Wednesday of January of each
5 year. Upon the convening of the Legislature in each
6 odd-numbered year, each House shall proceed to organize
7 by the election of its officers for two-year terms and both
8 Houses shall then in joint assembly open and publish
9 the election returns delivered to the Legislature as pre-
10 scribed by other provisions of this Constitution and by
11 general law. When all of these matters have been com-
12 pleted in the year one thousand nine hundred seventy-
13 three and every fourth year thereafter, the Legislature
14 shall adjourn until the second Wednesday of February
15 following. Notwithstanding the provisions of section
16 fifty-one of this article and any other provisions of this
17 Constitution, on and after the effective date hereof, there
18 shall be submitted by the Governor to the Legislature,
19 on the second Wednesday of February in the year one
20 thousand nine hundred seventy-three and every fourth
21 year thereafter, and on the second Wednesday of January
22 of all other years, unless a later time in any year be
23 fixed by the Legislature, a budget for the next ensuing
24 fiscal year and a bill for the proposed appropriations
25 of such budget.

“§22. Length of legislative session.

1 “The regular session of the Legislature held in the year
2 one thousand nine hundred seventy-three and every
3 fourth year thereafter shall, in addition to the meeting
4 days preceding the adjournment provided for in section
5 eighteen of this article, not exceed sixty calendar days
6 computed from and including the second Wednesday of
7 February, and the regular session held in all other years
8 shall not exceed sixty calendar days computed from and
9 including the second Wednesday of January. Any regular
10 session may be extended by a concurrent resolution
11 adopted by a two-thirds vote of the members elected to
12 each House determined by yeas and nays and entered on
13 the Journals.

“§24. Rules governing legislative proceedings.

1 “A majority of the members elected to each House of
2 the Legislature shall constitute a quorum. But a smaller
3 number may adjourn from day to day, and shall be
4 authorized to compel the attendance of absent members,
5 as each House may provide. Each House shall determine
6 the rules of its proceedings and be the judge of the
7 elections, returns and qualifications of its own members.
8 The Senate shall choose, from its own body, a President;
9 and the House of Delegates, from its own body, a Speaker.
10 Each House shall appoint its own officers, and remove
11 them at pleasure. The oldest Delegate in point of con-
12 tinuous service present at the assembly of the Legislature
13 at which officers thereof are to be selected, and if there
14 be two or more such Delegates with equal continuous
15 service the one agreed upon by such Delegates or chosen
16 by such Delegates by lot, shall call the House to order,
17 and preside over it until the Speaker thereof shall have
18 been chosen, and have taken his seat. The oldest member
19 of the Senate in point of continuous service present at
20 the assembly of the Legislature at which officers thereof
21 are to be selected, and if there be two or more such
22 members with equal continuous service the one agreed
23 upon by such members or chosen by such members by
24 lot, shall call the Senate to order, and preside over the

25 same until a President of the Senate shall have been
26 chosen, and have taken his seat.

“§33. Compensation and expenses of members.

1 “Members of the Legislature shall receive such com-
2 pensation in connection with the performance of their
3 respective duties as members of the Legislature and such
4 allowances for travel and other expenses in connection
5 therewith as shall be (1) established in a resolution
6 submitted to the Legislature by the Citizens Legislative
7 Compensation Commission hereinafter created, and (2)
8 thereafter enacted into general law by the Legislature
9 at a regular session thereof, subject to such require-
10 ments and conditions as shall be prescribed in such gen-
11 eral law. The Legislature may in any such general law
12 reduce but shall not increase any item of compensation
13 or expense allowance established in such resolution. All
14 voting on the floor of both Houses on the question of
15 passage of any such general law shall be by yeas and
16 nays to be entered on the Journals.

17 “The Citizens Legislative Compensation Commission is
18 hereby created. It shall be composed of seven members
19 who have been residents of this state for at least ten years
20 prior to the date of appointment, to be appointed by the
21 Governor within twenty days after ratification of this
22 amendment, no more than four of whom shall be members
23 of the same political party. The members shall be broadly
24 representative of the public at large. Members of the Leg-
25 islature and officers and employees of the state or of any
26 county, municipality or other governmental unit of the
27 state shall not be eligible for appointment to or to serve as
28 members of the Commission. Each member of the Com-
29 mission shall serve for a term of seven years, except of the
30 members first appointed, one member shall be appointed
31 for a term of one year, and one each for terms ending two,
32 three, four, five, six and seven years after the date of ap-
33 pointment. As the term of each member first appointed
34 expires, a successor shall be appointed for a seven-year
35 term. Any member may be reappointed for any number
36 of terms, and any vacancy shall be filled by the Gover-
37 nor for the unexpired term. Any member of the Com-

38 mission may be removed by the Governor prior to the
39 expiration of such member's term for official miscon-
40 duct, incompetency or neglect of duty. The Governor
41 shall designate one member of the Commission as chair-
42 man. The members of the Commission shall serve with-
43 out compensation, but shall be entitled to be reimbursed
44 for all reasonable and necessary expenses actually in-
45 curred in the performance of their duties as such mem-
46 bers.

47 "The Commission shall meet as often as may be neces-
48 sary and shall within fifteen days after the beginning
49 of the regular session of the Legislature in the year
50 one thousand nine hundred seventy-one and within
51 fifteen days after the beginning of the regular session
52 in each fourth year thereafter submit by resolution to the
53 Legislature its determination of compensation and ex-
54 pense allowances, which resolution must be concurred
55 in by at least four members of the Commission.

56 "Notwithstanding any other provision of this Constitu-
57 tion, such compensation and expense allowances as may
58 be provided for by any such general law shall be paid
59 on and after the effective date of such general law. Until
60 the first such general law becomes effective, the pro-
61 visions of this section in effect immediately prior to the
62 ratification of this amendment shall continue to govern.

"ARTICLE VII. EXECUTIVE DEPARTMENT.

"§14. Governor's approval or disapproval of bills passed by the Legislature.

1 "Subject to the provisions of section fifteen of this
2 article, every bill passed by the Legislature shall, before
3 it becomes a law, be presented to the Governor. If he
4 approves, he shall sign it, and thereupon it shall become
5 a law; but if not, he shall return it, with his objections,
6 to the House in which it originated, which House shall
7 enter the objections at large upon its Journal, and may
8 proceed to reconsider the returned bill. Notwithstanding
9 the provisions of section fifty-one, article six of this
10 Constitution, any such bill may be reconsidered even if
11 the Legislature is at the time in extended session for

12 the sole purpose of considering the budget bill, as
13 specified in said section fifty-one. If, after any such
14 reconsideration, a majority of the members elected to
15 that House agree to pass the bill, it shall be sent, to-
16 gether with the objections of the Governor to the other
17 House, by which it may likewise be reconsidered, and if
18 approved by a majority of the members elected to that
19 House, it shall become a law, notwithstanding the objec-
20 tions of the Governor. If upon any such reconsideration
21 the bill is amended and reenacted, then it shall be again
22 sent to the Governor and he shall act upon it as if it
23 were before him for the first time. In all cases, the vote
24 of each House shall be determined by yeas and nays
25 to be entered on the Journal.

26 "Any bill which shall not be returned by the Governor
27 within five days, Sundays excepted, after it shall have
28 been presented to him shall be a law, in the same manner
29 as if he had signed it, unless the Legislature shall, by
30 adjournment sine die, prevent its return, in which case
31 it shall be filed with his objections in the office of the
32 Secretary of State within fifteen days, Sundays excepted,
33 after such adjournment, or become a law.

"§15. Governor's approval or disapproval of bills making appropriations of money.

1 "A bill passed by the Legislature making appropriations
2 of money must be submitted to the Governor for his
3 approval or disapproval to the extent and only to the
4 extent required by section fifty-one, article six of this
5 Constitution, and any provision therein contained as to
6 such approval or disapproval shall govern and control
7 as to any such bill."

§2. Amendment to be known as the "Legislative Improvement Amendment"; summary of purpose.

1 In accordance with the provisions of section thirteen,
2 article six, chapter three of the code of West Virginia,
3 one thousand nine hundred thirty-one, as amended, said
4 proposed amendment is hereby designated as the "Legis-
5 lative Improvement Amendment." Principal purposes of
6 the proposed amendment are summarized as follows: "To

7 provide for a sixty-day session of the Legislature each
8 year, and to provide for a citizens legislative compensa-
9 tion commission composed of seven citizens appointed by
10 the governor."

§3. Publication of proposed amendment by governor.

1 The governor shall cause the said proposed amend-
2 ment, with the proper designation and the summary of
3 the purposes for the same as hereinbefore adopted and
4 stated, to be published one time at least three months
5 before such election in some newspaper in every county
6 in which a newspaper is printed, and the cost of such
7 advertising, determined in accordance with the provisions
8 of section three, article three, chapter fifty-nine of the
9 code of West Virginia, one thousand nine hundred thirty-
10 one, as amended, shall in the first instance, if found neces-
11 sary by him, be paid out of the governor's contingent fund
12 and be afterwards repaid to such fund by appropriation
13 of the Legislature.

§4. Form of ballot; election.

1 For the purpose of enabling the voters of the state
2 to vote on the question of said proposed amendment
3 to the constitution and any other proposed amendments
4 to the constitution which may be submitted at the said
5 general election to be held in the year one thousand nine
6 hundred seventy, the board of ballot commissioners of
7 each county is hereby required to place upon and at the
8 foot of the official ballot to be voted at that election, under
9 the heading reading "Ballot on Constitutional Amend-
10 ment(s)," in the second position under said heading, the
11 following:

12 No. 2. Legislative Improvement Amendment.

13 ☐ For

14 ☐ Against

15 The said election on the proposed amendment at each
16 place of voting shall be superintended, conducted and
17 returned, and the result thereof ascertained by the same
18 officers and in the same manner as the election of officers
19 to be voted for at said election, and all the provisions
20 of the law relating to general elections, including all

21 duties to be performed by any officer or board, as far
22 as practicable, and not inconsistent with anything herein
23 contained, shall apply to the election held under the
24 provisions of this act, except when it is herein other-
25 wise provided. The ballots cast on the question of said
26 proposed amendment shall be counted as other ballots
27 cast at said election.

**§5. Certificates of election commissioners; canvass of vote;
certifying result.**

1 As soon as the result is ascertained, the commissioners,
2 or a majority of them, and the canvassers (if there be
3 any), or a majority of them, at each place of voting,
4 shall make out and sign two certificates thereof in the
5 following form or to the following effect:

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

15 "Amendment No. 2. Legislative Improvement Amend-
16 ment.

17 "For ratification _____ votes.

18 "Against ratification _____ votes.

19 "Given under our hands this _____ day of _____,
20 one thousand nine hundred seventy."

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

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

42 "We, the board of canvassers of the county of _____,
43 having carefully and impartially examined the returns
44 of the election held in said county, in each district
45 thereof, on the _____ day of November, one thousand
46 nine hundred seventy, do certify that the result of the
47 election in said county, on the question of the ratifica-
48 tion or rejection of the proposed amendment is as fol-
49 lows:

50 "Amendment No. 2. Legislative Improvement Amend-
51 ment.

52 "For ratification _____ votes.

53 "Against ratification _____ votes.

54 "Given under our hands this _____ day of _____,
55 one thousand nine hundred seventy."

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

§6. Proclamation of result of election by governor.

1 On the twenty-fifth day after the election is held,
2 or as soon thereafter as practicable, the said certificates
3 shall be laid before the governor, whose duty it shall
4 be to ascertain therefrom the result of said election in
5 the state, and declare the same by proclamation pub-
6 lished in one or more newspapers printed at the seat of
7 government, the cost of such publication to be determined

8 in accordance with the provisions of section three, article
9 three, chapter fifty-nine of the code of West Virginia, one
10 thousand nine hundred thirty-one, as amended. If a ma-
11 jority of the votes cast at said election upon said question
12 be for ratification of said amendment, the proposed
13 amendment so ratified shall be in force and effect from
14 and after the time of such ratification as part of the con-
15 stitution of the state.

CHAPTER 23

(House Bill No. 715—By Mr. Speaker, Mr. Boiarsky,
and Mr. Watson)

[Passed February 12, 1970; in effect ninety days from passage. Approved by the
Governor.]

AN ACT to provide for the submission to the voters of the
state of an amendment to the constitution of the state
of West Virginia, amending section four, article seven
thereof, relating to eligibility of the governor to serve
two terms.

Be it enacted by the Legislature of West Virginia:

GOVERNORS SUCCESSION AMENDMENT.

- §1. Submitting an amendment to the state constitution.
- §2. Amendment to be known as the "Governors Succession Amendment"; summary of purpose.
- §3. Publication of proposed amendment by governor.
- §4. Form of ballot; election.
- §5. Certificates of election commissioners; canvass of vote; certifying result.
- §6. Proclamation of result of election by governor.

§1. Submitting an amendment to the state constitution.

That the question of the ratification or rejection of an amendment to the constitution of West Virginia, proposed in accordance with the provisions of section two, article fourteen of said constitution, shall be submitted to the voters of the state at the next general election, to be held in the year one thousand nine hundred seventy, which proposed amend-

ment is that section four, article seven of the constitution of the state of West Virginia, be amended to read as follows:

"ARTICLE VII. EXECUTIVE DEPARTMENT.

"§4. Eligibility.

1 "None of the executive officers mentioned in this article
2 shall hold any other office during the term of his service.
3 A person who has been elected or who has served as
4 governor during all or any part of two consecutive terms
5 shall be ineligible for the office of governor during any
6 part of the term immediately following the second of
7 the two consecutive terms. The person holding the
8 office of governor when this section is ratified shall not
9 be prevented from holding the office of governor during
10 the term immediately following the term he is then
11 serving."

§2. Amendment to be known as the "Governors Succession Amendment"; summary of purpose.

1 In accordance with the provisions of section thirteen,
2 article six, chapter three of the code of West Virginia, one
3 thousand nine hundred thirty-one, as amended, said pro-
4 posed amendment is hereby designated as the "Governors
5 Succession Amendment" and the purpose of the proposed
6 amendment is summarized as follows: "To provide that
7 a person can serve as governor two consecutive terms."

§3. Publication of proposed amendment by governor.

1 The governor shall cause the said proposed amend-
2 ment, with the proper designation and the summary of
3 the purpose for the same as hereinbefore adopted and
4 stated, to be published one time at least three months
5 before such election in some newspaper in every county
6 in which a newspaper is printed, and the cost of such
7 advertising, determined in accordance with the provisions
8 of section three, article three, chapter fifty-nine of the
9 code of West Virginia, one thousand nine hundred thirty-
10 one, as amended, shall in the first instance, if found
11 necessary by him, be paid out of the governor's con-
12 tingent fund and be afterwards repaid to such fund by
13 appropriation of the Legislature.

§4. Form of ballot; election.

1 For the purpose of enabling the voters of the state
2 to vote on the question of said proposed amendment to the
3 constitution and any other proposed amendments to the
4 constitution which may be submitted at the said general
5 election to be held in the year one thousand nine hundred
6 seventy, the board of ballot commissioners of each county
7 is hereby required to place upon and at the foot of the
8 official ballot to be voted at that election, under the head-
9 ing reading "Ballot on Constitutional Amendment (s)," in
10 the fourth position under said heading, the following:

11 No. 4. Governors Succession Amendment.

12 ☐ For

13 ☐ Against

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

§5. Certificates of election commissioners; canvass of vote; certifying result.

1 As soon as the result is ascertained, the commissioners,
2 or a majority of them, and the canvassers (if there be
3 any), or a majority of them, at each place of voting,
4 shall make out and sign two certificates thereof in the
5 following form or to the following effect:

6 "We, the undersigned, who acted as commissioners
7 (or canvassers, as the case may be) of the election held
8 at Precinct No. _____, in the district of _____,
9 in the county of _____, on the _____
10 day of _____, one thousand nine

11 hundred seventy, upon the question of the ratification
12 or rejection of the proposed constitutional amendment,
13 do hereby certify that the result of said election is as
14 follows:

15 "Amendment No. 4. Governors Succession Amend-
16 ment.

17 "For ratificationvotes.

18 "Against ratificationvotes.

19 "Given under our hands this day of
20 one thousand nine hundred seventy."

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

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

42 "We, the board of canvassers of the county of.....,
43 having carefully and impartially examined the returns
44 of the election held in said county, in each district
45 thereof, on the day of November, one thousand
46 nine hundred seventy, do certify that the result of the
47 election in said county, on the question of the ratifica-
48 tion or rejection of the proposed amendment is as fol-
49 lows:

50 "Amendment No. 4. Governors Succession Amend-
51 ment.

52 "For ratification _____ votes.

53 "Against ratification _____ votes.

54 "Given under our hands this _____ day of _____,
55 one thousand nine hundred seventy."

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

§6. Proclamation of result of election by governor.

1 On the twenty-fifth day after the election is held, or
2 as soon thereafter as practicable, the said certificates
3 shall be laid before the governor, whose duty it shall be
4 to ascertain therefrom the result of said election in the
5 state, and declare the same by proclamation published
6 in one or more newspapers printed at the seat of gov-
7 ernment, the cost of such publication to be determined
8 in accordance with the provisions of section three, article
9 three, chapter fifty-nine of the code of West Virginia, one
10 thousand nine hundred thirty-one, as amended. If a
11 majority of the votes cast at said election upon said
12 question be for ratification of said amendment, the pro-
13 posed amendment so ratified shall be in force and effect
14 from and after the time of such ratification as part of the
15 constitution of the state.

CHAPTER 24

(House Bill No. 628—By Mr. Speaker, Mr. Boiarsky,
and Mr. Watson)

[Passed February 3, 1970; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections three and five, article
fourteen, chapter thirty-one of the code of West Virginia,

one thousand nine hundred thirty-one, as amended, relating to the capital stock and corporate powers of West Virginia business development corporations.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 14. WEST VIRGINIA BUSINESS DEVELOPMENT CORPORATIONS.

§31-14-3. Authorized capital stock; description of shares; consideration for sale of shares.

§31-14-5. Corporate powers.

§31-14-3. Authorized capital stock; description of shares; consideration for sale of shares.

1 The agreement of incorporation shall set forth the
2 total amount of authorized capital stock, the number of
3 shares in which it is divided, the par value of each of
4 such shares and the amount of capital stock with which
5 it will commence business and, if there be more than
6 one class of stock, the total number of shares of all
7 classes of stock which the corporation shall have author-
8 ity to issue, with a description of the different classes
9 and all other information with respect thereto required
10 by section six, article one of this chapter. No corpora-
11 tion organized hereunder shall sell its shares for any
12 consideration other than money.

§31-14-5. Corporate powers.

1 In furtherance of the purposes set out in section two
2 of this article, and to aid in providing an effective pro-
3 gram to alleviate conditions of substantial and persistent
4 unemployment, underemployment, and lack of stable
5 economic development, by taking effective steps in plan-
6 ning and financing economic redevelopment, utilizing
7 such facilities and resources as are provided by the
8 provisions of the federal "Area Redevelopment Act of
9 1961," as amended, the federal "Public Works and Eco-
10 nomic Development Act of 1965," as amended, the fed-

11 eral "Appalachian Regional Development Act of 1965,"
12 as amended, the federal "Housing Act of 1968," as
13 amended, the "West Virginia Housing Fund Develop-
14 ment Act of 1968," as amended, and the "West Virginia
15 Industrial Development Authority Act of 1961," as
16 amended, and in addition to the powers conferred on
17 business corporations by the provisions of this chapter,
18 such corporation shall, subject to the restrictions and
19 limitations herein contained, have the following
20 powers:

21 (a) To enter into contracts and incur liabilities for
22 any purposes of the corporation; except that the cor-
23 poration shall not incur any secondary liability by way
24 of guaranty or endorsement of the obligations of any
25 person, firm, corporation, joint-stock company, associa-
26 tion or trust, or in any other manner.

27 (b) To borrow money for any of the purposes of
28 the corporation, including, but without implied limita-
29 tion, the right to obtain loans under the provisions of
30 "Title V of the Small Business Investment Act of 1958,"
31 as amended, or from any other similar governmental
32 agency; to issue therefor its bonds, debentures, notes
33 or other evidences of indebtedness, whether secured or
34 unsecured, and to secure the same by mortgage, pledge,
35 deed of trust or other lien on its property, franchises,
36 rights and privileges of every kind and nature or any
37 part thereof or interest therein, without securing stock-
38 holder or member approval.

39 (c) To make loans to any person, firm, corporation,
40 joint-stock company, association or trust, and to estab-
41 lish and regulate the terms and conditions with respect
42 to any such loans and the charges for interest and
43 services connected therewith; however, no loans shall
44 be made hereunder unless the loan applied for is not
45 otherwise available through ordinary banking channels,
46 private lenders, or other governmental agencies, on rea-
47 sonable terms.

48 (d) To purchase, receive, hold, lease, or otherwise
49 acquire and to sell, convey, transfer, lease, or otherwise
50 dispose of real and personal property, together with such

51 rights and privileges as may be incidental and appurte-
52 nant thereto and the use thereof, including, but not re-
53 stricted to, any real or personal property acquired by
54 the corporation from time to time in the satisfaction
55 of debts or enforcement of obligations.

56 (e) To acquire, by gift or purchase, the good will,
57 business, rights, real and personal property, both tan-
58 gible and intangible, and other assets, or any part
59 thereof, or interest therein, from any persons, firms,
60 partnerships, corporations, joint-stock companies, asso-
61 ciations or trusts, and to assume, undertake or pay the
62 obligations, debts and liabilities of any such person, firm,
63 partnership, corporation, joint-stock company, associa-
64 tion or trust; to acquire improved or unimproved real
65 estate for the purpose of constructing industrial plants
66 or other business establishments thereon or for the pur-
67 pose of disposing of such real estate to others for the
68 construction of industrial plants or other business estab-
69 lishments; and to acquire, construct or reconstruct, alter,
70 repair, maintain, operate, sell, convey, transfer, lease
71 or otherwise dispose of industrial plants or business
72 establishments.

73 (f) To acquire, subscribe for, own, hold, sell, assign,
74 transfer, mortgage, pledge or otherwise dispose of the
75 stock, shares, bonds, debentures, notes or other securities
76 and evidences of interest in, or indebtedness of, any
77 person, firm, corporation, joint-stock company, associa-
78 tion or trust, and while the owner or holder thereof to
79 exercise all the rights, powers and privileges of owner-
80 ship, including the right to vote any such shares of
81 stock.

82 (g) To mortgage, pledge, or otherwise encumber any
83 property, right or thing of value, acquired pursuant to
84 the powers contained in subdivisions (d), (e) or (f),
85 as security for the payment of any part of the purchase
86 price thereof.

87 (h) To cooperate with and avail itself of the facili-
88 ties of the department of commerce and the office of
89 commissioner of commerce of this state, the West Vir-
90 ginia industrial development authority, the federal area

91 redevelopment administrator, and any similar federal
92 and state governmental agencies and officers; and to
93 cooperate with and assist, and otherwise encourage
94 organizations in the various communities of the state
95 in the promotion, assistance, and development of the
96 business prosperity and economic welfare of such com-
97 munities or of this state or any part thereof.

98 (i) To do all acts and things necessary or convenient
99 to carry out the powers expressly granted in this article.

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CHAPTER 25

(House Bill No. 600—By Mr. Speaker, Mr. Boiarsky,
and Mr. Watson)

[Passed February 12, 1970; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two, six, nine and twenty, article eighteen, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the West Virginia housing development fund, legislative findings and purposes, the addition of new legislative findings and purposes relating to the need for long-term federally insured mortgage loans to sponsors of residential housing for persons and families of low and moderate income and to persons and families of low and moderate income, the powers of the fund and the addition of the power to make long-term federally insured mortgage loans to sponsors of residential housing for persons and families of low and moderate income and to persons and families of low and moderate income, and the addition of the power to take as collateral security, invest in, purchase, acquire, sell and take assignments of notes and mortgages evidencing such long-term loans, repealing the requirement that the amount borrowed and evidenced by negotiable bonds not exceed the amount reasonably estimated, at time of issuance, to be required for the purpose of making federally insured construction

loans for a period of two years, providing that no negotiable bonds shall be issued to mature more than fifty years from date of issuance, authorizing the fund to borrow up to one hundred thirty million dollars and to issue its negotiable bonds and notes up to such principal amount as evidence of such borrowing, and providing that the aggregate principal amount of such bonds and notes outstanding at any one time, other than bonds or notes refunded or to be refunded, shall not exceed one hundred thirty million dollars.

Be it enacted by the Legislature of West Virginia:

That sections two, six, nine and twenty, article eighteen, 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 18. WEST VIRGINIA HOUSING DEVELOPMENT FUND.

§31-18-2. Legislative findings and purpose.

§31-18-6. Corporate powers.

§31-18-9. Borrowing of money.

§31-18-20. Authorized limit on borrowing.

§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 activi-
4 ties, and as a result of the spread of slum conditions and
5 blight to formerly sound urban and rural neighborhoods,
6 there exists in the state of West Virginia a serious short-
7 age of sanitary, decent and safe residential housing avail-
8 able at low prices or rentals to persons and families of low
9 and moderate income. This shortage is severe in certain
10 urban areas of the state, is especially critical in the
11 rural areas of West Virginia, and is inimical to the health,
12 welfare and prosperity of all residents of the state and to
13 the sound growth of West Virginia communities.

14 (b) The Legislature hereby finds and declares further
15 that private enterprise and investment have not been
16 able to produce, without assistance, the needed construc-
17 tion of sanitary, decent and safe residential housing at
18 low prices or rentals which persons and families of low

19 and moderate income can afford, to provide sufficient
20 long-term mortgage financing for residential housing for
21 occupancy by persons and families of low and moderate
22 income, or to achieve the urgently needed rehabilitation
23 of much of the present low and moderate income housing
24 stock. It is imperative that the supply of residential
25 housing for persons and families displaced by public ac-
26 tions or natural disaster be increased; and that private
27 enterprise and investment be encouraged both to spon-
28 sor land development for residential housing for such
29 persons and families and to sponsor, build and rehabili-
30 tate residential housing for such persons and families,
31 and that private financing be supplemented by financing
32 as in this article provided, to help prevent the recurrence
33 of slum conditions and blight and assist in their perma-
34 nent elimination throughout West Virginia.

35 (c) The Legislature hereby finds and declares further
36 that its intention by enacting this legislation is to pro-
37 vide for the creation and establishment of the West Vir-
38 ginia housing development fund, the corporate purpose
39 of which is to provide temporary financing for develop-
40 ment costs, land development and residential housing
41 construction to public and private sponsors of land de-
42 velopment for residential housing or residential housing,
43 new or rehabilitated, for sale or rental to persons and
44 families of low and moderate income; further to pro-
45 vide long-term federally insured mortgage financing to
46 public and private sponsors of residential housing for
47 occupancy by persons and families of low and moderate
48 income and to persons and families of low and moderate
49 income who may purchase such housing; further to pro-
50 vide technical, consultative and project assistance ser-
51 vices to public and private sponsors of such land develop-
52 ment of residential housing; further to increase the con-
53 struction of low and moderate income housing through
54 the purchase or investment in long-term federal mort-
55 gages or federally insured mortgages on housing for
56 persons and families of low and moderate income con-
57 structed in this state thereby increasing the supply of
58 long-term mortgage financing and freeing funds avail-

59 able therefor for use in short-term construction financing;
60 and finally to assist in coordinating federal, state, regional
61 and local public and private efforts and resources to
62 otherwise increase the supply of such residential housing.

63 (d) The Legislature hereby finds and declares further
64 that in accomplishing this purpose, the West Virginia
65 housing development fund, created and established by
66 this article, is acting in all respects for the benefit of the
67 people of the state of West Virginia to serve a public pur-
68 pose in improving and otherwise promoting their health,
69 welfare and prosperity, and that the West Virginia hous-
70 ing development fund, so created and established, is em-
71 powered, hereby, to act on behalf of the state of West
72 Virginia and its people in serving this public purpose
73 for the benefit of the general public.

§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
10 and moderate income who are eligible or potentially
11 eligible for federally insured mortgages or federal
12 mortgages. Such loans shall be made only upon deter-
13 mination by the housing development fund that con-
14 struction loans are not otherwise available, wholly or
15 in part, from private lenders upon reasonably equivalent
16 terms and conditions;

17 (2) To make temporary loans, with or without in-
18 terest, but with such security for repayment as the
19 housing development fund determines reasonably neces-
20 sary and practicable, from the operating loan fund, if
21 created, established, organized and operated in accor-
22 dance with the provisions of section nineteen of this
23 article, to defray development costs to sponsors of land

24 development for residential housing for occupancy by
25 persons and families of low and moderate income or
26 residential housing construction for occupancy by per-
27 sons and families of low and moderate income which
28 is eligible or potentially eligible for federally insured
29 construction loans, federally insured mortgages or fed-
30 eral mortgages;

31 (3) To make or participate in the making of long-
32 term federally insured mortgage loans to sponsors of
33 residential housing for occupancy by persons and fam-
34 ilies of low and moderate income, or to persons and
35 families of low and moderate income who may pur-
36 chase such residential housing who are eligible or po-
37 tentially eligible for federally insured mortgages or
38 federal mortgages. Such loans shall be made only upon
39 determination by the housing development fund that
40 long-term mortgage loans are not otherwise available,
41 wholly or in part, from private lenders upon reasonably
42 equivalent terms and conditions;

43 (4) To accept appropriations, gifts, grants, bequests
44 and devises, and to utilize or dispose of the same to
45 carry out its corporate purpose;

46 (5) To make and execute contracts, releases, com-
47 promises, compositions and other instruments necessary
48 or convenient for the exercise of its powers, or to carry
49 out its corporate purpose;

50 (6) To collect reasonable fees and charges in con-
51 nection with making and servicing its loans, notes, bonds,
52 obligations, commitments and other evidences of in-
53 debtedness, and in connection with providing technical,
54 consultative and project assistance services. Such fees
55 and charges shall be limited to the amounts required
56 to pay the costs of the housing development fund, in-
57 cluding operating and administrative expenses, and rea-
58 sonable allowances for losses which may be in-
59 curred;

60 (7) To invest any funds not required for immediate
61 disbursement in obligations of the state of West Vir-
62 ginia or in direct obligations of the United States gov-
63 ernment or in obligations the principal of which and

- 64 interest on which are guaranteed by the state of West
65 Virginia, or the United States government or any in-
66 strumentality thereof;
- 67 (8) To sue and be sued;
- 68 (9) To have a seal and alter the same at will;
- 69 (10) To make and, from time to time, amend and
70 repeal bylaws, rules and regulations not inconsistent
71 with the provisions of this article;
- 72 (11) To appoint such officers, employees and con-
73 sultants as it deems advisable and to fix their compen-
74 sation and prescribe their duties;
- 75 (12) To acquire, hold and dispose of personal prop-
76 erty for its corporate purposes;
- 77 (13) To enter into agreements or other transactions
78 with any federal or state agency, any person and any
79 domestic or foreign partnership, corporation, association
80 or organization;
- 81 (14) To acquire real property, or an interest therein,
82 in its own name, by purchase or foreclosure, where such
83 acquisition is necessary or appropriate to protect any
84 loan in which the housing development fund has an
85 interest and to sell, transfer and convey any such prop-
86 erty to a buyer and, in the event such sale, transfer
87 or conveyance cannot be effected with reasonable prompt-
88 ness or at a reasonable price, to lease such prop-
89 erty to a tenant;
- 90 (15) To sell, at public or private sale, any mortgage
91 or other negotiable instrument or obligation securing
92 a construction, land development, mortgage or tempo-
93 rary loan;
- 94 (16) To procure insurance against any loss in con-
95 nection with its property in such amounts, and from
96 such insurers, as may be necessary or desirable;
- 97 (17) To consent, whenever it deems it necessary or
98 desirable in the fulfillment of its corporate purpose,
99 to the modification of the rate of interest, time of pay-
100 ment or any installment of principal or interest, or
101 any other terms, of any mortgage loan, mortgage loan
102 commitment, construction loan, temporary loan, contract

103 or agreement of any kind to which the housing develop-
104 ment fund is a party;

105 (18) To make and publish rules and regulations re-
106 specting its federally insured mortgage lending, con-
107 struction lending and temporary lending to defray de-
108 velopment costs and any such other rules and regu-
109 lations as are necessary to effectuate its corporate pur-
110 pose;

111 (19) To borrow money to carry out and effectuate
112 its corporate purpose and to issue its negotiable bonds
113 or notes as evidence of any such borrowing in such prin-
114 cipal amounts and upon such terms as shall be neces-
115 sary to provide sufficient funds for achieving its cor-
116 porate purpose, except that no negotiable notes shall
117 be issued to mature more than ten years from date of
118 issuance and no negotiable bonds shall be issued to
119 mature more than fifty years from date of issuance;

120 (20) To issue renewal notes, to issue bonds to pay
121 notes and, whenever it deems refunding expedient,
122 to refund any bonds by the issuance of new bonds,
123 whether the bonds to be refunded have or have not
124 matured except that no such renewal notes shall be
125 issued to mature more than ten years from date of issu-
126 ance of the notes renewed and no such refunding bonds
127 shall be issued to mature more than fifty years from
128 date of issuance;

129 (21) To apply the proceeds from the sale of renewal
130 notes or refunding bonds to the purchase, redemption,
131 or payment of the notes or bonds to be refunded;

132 (22) To provide technical services to assist in the
133 planning, processing, design, construction or rehabili-
134 tation of residential housing for occupancy by persons
135 and families of low and moderate income or land de-
136 velopment for residential housing for occupancy by per-
137 sons and families of low and moderate income;

138 (23) To provide consultative project assistance ser-
139 vices for residential housing for occupancy by persons
140 and families of low and moderate income and for land
141 development for residential housing for occupancy by

142 persons and families of low and moderate income, and
143 for the residents thereof with respect to management,
144 training and social services;

145 (24) To promote research and development in scien-
146 tific methods of constructing low cost residential hous-
147 ing of high durability; and

148 (25) To participate in the making of or to make loans
149 to qualified federally approved mortgagees and in con-
150 nection therewith, or independently thereof, to take
151 as collateral security, invest in, purchase, acquire, sell
152 or participate in the sale of, or take assignments of,
153 notes and mortgages, evidencing loans for the construc-
154 tion, rehabilitation, purchase, or refinancing of housing
155 for persons and families of low and moderate income
156 in this state: *Provided*, That the fund shall obtain such
157 written assurances as shall be satisfactory to it that
158 the proceeds of such loans, investments or purchases
159 will be used, as nearly as practicable, for the making
160 of or investment in long-term federally insured mort-
161 gage loans or federally insured construction loans for
162 low and moderate income housing in this state or that
163 other moneys in an amount approximately equal to such
164 proceeds shall be committed and used for such purpose.

§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 ten
7 years from the date of issue of such original note, and,
8 in the case of any such bond, not exceeding fifty years
9 from the date of issue, as such resolution or resolutions
10 may provide. The notes and bonds shall bear interest
11 at such rate or rates, be in such denominations, be in
12 such form, either coupon or registered, carry such regis-
13 tration privileges, be executed in such manner, be pay-
14 able in such medium of payment, at such place or places,
15 and be subject to such terms or conditions of redemption
16 as such resolution or resolutions may provide.

§31-18-20. Authorized limit on borrowing.

1 The aggregate principal amount of bonds and notes
2 issued by the housing development fund shall not exceed
3 one hundred thirty million dollars outstanding at any
4 one time: *Provided, however,* That in computing the
5 total amount of bonds and notes which may at any one
6 time be outstanding, the principal amount of any out-
7 standing bonds or notes refunded or to be refunded
8 either by application of the proceeds of the sale of any
9 refunding bonds or notes of the housing development
10 fund or by exchange for any such refunding bonds or
11 notes, shall be excluded.

CHAPTER 26

(House Bill No. 541—By Mr. Shaffer)

[Passed February 4, 1970; in effect ninety days from passage. 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 twenty-six, relating to abandoned refrigerators, food freezers and other airtight appliances; requiring the removal of all entry doors therefrom; providing criminal penalties; and relating to jurisdiction of criminal cases pertaining thereto.

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 twenty-six, to read as follows:

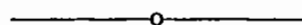
ARTICLE 2. CRIMES AGAINST THE PERSON.**§61-2-26. Doors to be removed from abandoned refrigerators, freezers and other appliances; penalties.**

1 No person shall abandon any refrigerator or food
2 freezer appliance or other airtight appliance having a

3 height or length greater than two feet without first re-
4 moving all entry doors therefrom.

5 Any person violating the provisions of this section shall
6 be guilty of a misdemeanor, and, upon conviction thereof,
7 shall be fined not more than two hundred dollars, or im-
8 prisoned in the county jail not more than six months, or
9 both fined and imprisoned.

10 Justices of the peace shall have jurisdiction of cases
11 arising hereunder concurrent with courts of record.



CHAPTER 27

(Senate Bill No. 152—By Mr. Moreland)

[Passed February 12, 1970; in effect from passage. Approved by the Governor.]

AN ACT to amend article one, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section three-o, authorizing and empowering county courts to construct, reconstruct, establish, acquire, improve, renovate, extend, enlarge, increase, own, equip, repair, replace, maintain and operate transportation terminals, county and other public facilities and motor vehicle parking facilities; providing that the power and authority conferred upon such county courts may be exercised by such county courts directly or may be delegated to commissions or boards; and authorizing the issuance of county general obligation bonds for such purposes if approved by the voters of the county as provided by law.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. COUNTY COURTS GENERALLY.

§7-1-30. Authority to construct and maintain county transportation, parking, and other public facilities; delegation of such authority to board or commission; financing.

1 In addition to all other powers and duties now con-
2 ferred by law upon county courts, such courts are here-
3 by authorized and empowered to construct, reconstruct,
4 establish, acquire, improve, renovate, extend, enlarge,
5 increase, own, equip, repair (including replacement),
6 maintain and operate transportation terminals, county and
7 other public facilities and motor vehicle parking facili-
8 ties (including parking lots, buildings, ramps, curblines
9 parking, meters and other facilities deemed necessary,
10 appropriate, useful, convenient or incidental to the regu-
11 lation, control and parking of motor vehicles).

12 The power and authority conferred upon the county
13 courts in this section may be exercised by the county
14 courts directly or may be delegated to commissions or
15 boards created by the county courts for this purpose.

16 In order to pay for all costs and expenses incurred
17 in carrying out the provisions of this section, any county
18 court is authorized to issue general obligation bonds of
19 the county if the issuance thereof has been authorized
20 by the voters of such county as provided by law.

CHAPTER 28

(House Bill No. 716—By Mr. Hoard)

[Passed February 12, 1970; in effect July 1, 1970. Approved by the Governor.]

AN ACT to amend and reenact sections two-(five), five-(nine-
teen), five-(thirty-one), six-(five), six-(eleven), six-
(twelve), six-(nineteen), six-(thirty-one) and six-(thirty-
six), article seven, chapter seven of the code of West Vir-
ginia, one thousand nine hundred thirty-one, as amended,

all relating to the salary and duties of the clerk of the county court of Brooke county, the salary and duties of the prosecuting attorney of Jefferson and Monongalia counties, the salary and duties of the assistant prosecuting attorney of Brooke, Jefferson and Monongalia counties, the salary and duties of the stenographer and clerk for the prosecuting attorney of Grant, Gilmer, Monongalia and Pendleton counties.

Be it enacted by the Legislature of West Virginia:

That sections two-(five), five-(nineteen), five-(thirty-one), six-(five), six-(eleven), six-(twelve), six-(nineteen), six-(thirty-one) and six-(thirty-six), article seven, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

ARTICLE 7. SALARIES; DEPUTIES AND ASSISTANTS AND THEIR SALARIES.

§7-7-2(5). Salary of county clerk—Brooke county.

§7-7-5(19). Salary of prosecuting attorney—Jefferson county.

§7-7-5(31). Same—Monongalia county.

§7-7-6(5). Assistants, stenographers and clerks to prosecuting attorneys—Brooke county.

§7-7-6(11). Same—Gilmer county.

§7-7-6(12). Same—Grant county.

§7-7-6(19). Same—Jefferson county.

§7-7-6(31). Same—Monongalia county.

§7-7-6(36). Same—Pendleton county.

§7-7-2(5). Salary of county clerk—Brooke county.

1 For the county of Brooke, eight thousand dollars.

§7-7-5(19). Salary of prosecuting attorney—Jefferson county.

1 For the county of Jefferson, nine thousand dollars.

§7-7-5(31). Same—Monongalia county.

1 For the county of Monongalia, not less than seven
2 thousand five hundred dollars nor more than fifteen
3 thousand dollars: *Provided*, That in addition to all other
4 powers and duties now conferred by law upon such
5 prosecuting attorney, he shall provide all necessary legal
6 services for the Valley Counseling Center, Incorporated.

§7-7-6(5). Assistants, stenographers and clerks to prosecuting attorneys—Brooke county.

- 1 For the county of Brooke, one assistant attorney, five
- 2 thousand eight hundred dollars; one stenographer, three
- 3 thousand five hundred dollars.

§7-7-6(11). Same—Gilmer county.

- 1 For the county of Gilmer, one assistant attorney; one
- 2 stenographer, not more than three thousand dollars.

§7-7-6(12). Same—Grant county.

- 1 For the county of Grant, one assistant attorney; one
- 2 stenographer or clerk, not more than four thousand one
- 3 hundred dollars.

§7-7-6(19). Same—Jefferson county.

- 1 For the county of Jefferson, one assistant attorney, not
- 2 more than three thousand dollars; one stenographer, not
- 3 less than one thousand eight hundred dollars nor more
- 4 than five thousand dollars.

§7-7-6(31). Same—Monongalia county.

- 1 For the county of Monongalia, one assistant attorney,
- 2 not less than seven thousand five hundred dollars nor
- 3 more than ten thousand dollars; one stenographer.

§7-7-6(36). Same—Pendleton county.

- 1 For the county of Pendleton, one assistant attorney, two
- 2 thousand four hundred dollars; one stenographer or clerk,
- 3 two thousand four hundred dollars.

CHAPTER 29

(House Bill No. 722—By Mr. Jones, of Kanawha)

[Passed February 12, 1970; in effect July 1, 1970. Approved by the Governor.]

AN ACT to amend and reenact section six-(twenty), article seven, chapter seven of the code of West Virginia, one

thousand nine hundred thirty-one, as amended, relating to the compensation and appointment of additional assistant prosecuting attorneys for Kanawha county.

Be it enacted by the Legislature of West Virginia:

That section six-(twenty), 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(20). Assistant prosecuting attorneys for Kanawha county; salaries.

- 1 For the county of Kanawha, first assistant attorney,
- 2 not less than six thousand nor more than thirteen thou-
- 3 sand dollars; seven assistant attorneys, not less than six
- 4 thousand nor more than thirteen thousand dollars each;
- 5 and stenographers and clerks at a salary to be fixed by
- 6 the county court payable out of the county treasury of
- 7 said county of Kanawha.

CHAPTER 30

(House Bill No. 615—By Mr. Grewe and Mr. Stamp)

[Passed February 3, 1970; in effect July 1, 1970. Approved by the Governor.]

AN ACT to amend and reenact section six-(thirty-five), article seven, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to salaries of assistant prosecuting attorneys and stenographers for the county of Ohio.

Be it enacted by the Legislature of West Virginia:

That section six-(thirty-five), 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(35). Assistant prosecuting attorneys for Ohio county; salaries.

- 1 For the county of Ohio, first assistant attorney, at
- 2 seven thousand five hundred dollars; second assistant
- 3 attorney, at six thousand five hundred dollars; third
- 4 assistant attorney, at six thousand five hundred dollars;
- 5 one stenographer, not more than four thousand five hun-
- 6 dred dollars; second stenographer, not more than one
- 7 thousand two hundred dollars.

CHAPTER 31

(Com. Sub. for House Bill No. 533—Originating in the House
Committee on the Judiciary)

[Passed February 3, 1970; in effect ninety days from passage. Approved by the
Governor.]

AN ACT to amend and reenact section thirteen, article seven, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to allowance for expenses of prosecuting attorney and assistants.

Be it enacted by the Legislature of West Virginia:

That section thirteen, 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.

§7-7-13. Allowance for expenses of prosecuting attorney and assistants.

- 1 In addition to his salary, the prosecuting attorney shall
- 2 be reimbursed for actual traveling expenses within his
- 3 county in the performance of his official duties, and when

4 out of the state for the purpose of taking depositions in
5 cases in which other counsel is not employed by the
6 court under section one, article three, chapter sixty-two
7 of this code; which expenses shall be duly itemized and
8 verified, and shall, if found correct, be allowed by the
9 county court, or tribunal in lieu thereof, and be paid
10 monthly out of the general county fund.

11 In addition, the prosecuting attorney and assistant
12 prosecuting attorneys may be reimbursed for actual ex-
13 penses incurred while attending professional seminars,
14 workshops and other educational functions in or out of
15 the state; any expenses so incurred shall be duly item-
16 ized and verified; and shall, if found correct and if prior
17 approval has been granted by resolution of the county
18 court, be allowed by the county court, or tribunal in
19 lieu thereof, and be paid out of the general county fund.

CHAPTER 32

(House Bill No. 732—By Mrs. Smirl and Mr. Fuller)

[Passed February 12, 1970; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article eleven, chap-
ter seven of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, relating to reducing the
population requirement for a county to be authorized to
create a county parks and recreation commission.

Be it enacted by the Legislature of West Virginia:

That section one, 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.**

1 The county court of any county is hereby authorized
2 and empowered, by order entered of record, to create a

- 3 county parks and recreation commission for the purpose
4 of establishing, improving, developing, administering, op-
5 erating and maintaining a county public parks and rec-
6 reation system or public recreational facilities.

CHAPTER 33

(House Bill No. 751—By Mr. Romine and Mr. Fuller)

[Passed February 12, 1970; in effect July 1, 1970. Approved by the Governor.]

AN ACT to amend and reenact sections two and twenty-four, chapter twenty-eight, acts of the Legislature, regular session, one thousand eight hundred ninety-three, as last amended and reenacted by chapter two hundred eight, acts of the Legislature, regular session, one thousand nine hundred sixty-seven, all relating to the jurisdiction and judge's salary of the common pleas court of Cabell county.

Be it enacted by the Legislature of West Virginia:

That sections two and twenty-four, chapter twenty-eight, acts of the Legislature, regular session, one thousand eight hundred ninety-three, as last amended and reenacted by chapter two hundred eight, acts of the Legislature, regular session, one thousand nine hundred sixty-seven, be amended and reenacted, all to read as follows:

COMMON PLEAS COURT OF CABELL COUNTY.

§2. Jurisdiction.

§24. Salary of judge.

§2. Jurisdiction.

- 1 That said common pleas court of Cabell county shall
2 have original jurisdiction within said county of all crimes,
3 felonies, misdemeanors, criminal proceedings, and all
4 matters in anywise relating thereto, and all civil actions,
5 civil matters and proceedings in anywise relating there-
6 to.
7 Such jurisdiction of said common pleas court shall be
8 general, common and concurrent with the jurisdiction

9 of the circuit court of such county in all and every re-
10 spect as the same is constituted and set forth in section
11 twelve, article eight of the constitution of West Virginia,
12 and by the laws and statutes of the state of West Vir-
13 ginia, except where the matters in controversy in civil
14 suits or proceedings shall exceed the sum of one hundred
15 thousand dollars.

§24. Salary of judge.

1 The judge of the common pleas court of Cabell county
2 shall receive for his services twenty thousand dollars
3 annually, payable monthly in installments beginning on
4 the first day of July, one thousand nine hundred seventy,
5 which amount shall be provided for and paid by the
6 county court, out of the treasury of said county, which
7 provision as to salary shall not repeal the existing pro-
8 vision until the said first day of July, one thousand nine
9 hundred seventy.

10 All acts or parts of acts inconsistent or in conflict with
11 this act are hereby repealed.

CHAPTER 34

(House Bill No. 752—By Mr. Romine and Mr. Fuller)

[Passed February 12, 1970; in effect July 1, 1970. 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 one hundred fifty-four, acts of the Legislature, regular session, one thousand nine hundred sixty-nine; and to amend and reenact section four of said chapter one hundred sixty-eight, as last amended and reenacted by chapter two hundred nine, acts of the Legislature, regular session, one thousand nine hundred sixty-seven, all relating to the jurisdiction and judge's salary of 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 one hundred fifty-four, acts of the Legislature, regular session, one thousand nine hundred sixty-nine; and that section four of said chapter one hundred sixty-eight, 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, all to read as follows:

DOMESTIC RELATIONS COURT OF CABELL COUNTY.

§2. Jurisdiction.

§4. Salary of judge.

§2. Jurisdiction.

1 The said domestic relations court shall have jurisdic-
2 tion within the said county of Cabell, concurrent with
3 the circuit court, of all matters and causes arising out of
4 or pertaining to annulment of marriages, separate mainte-
5 nance suits, divorce, alimony, the custody and mainte-
6 nance of children of litigants and the adjudication of
7 property rights arising out of the same, and all other
8 matters and causes coming within the purview of chap-
9 ter forty-eight of the code of West Virginia, one thou-
10 sand nine hundred thirty-one, and all amendments and
11 reenactments thereof concerning domestic relations,
12 habeas corpus proceedings; of all matters and causes
13 coming within the purview of chapter forty-nine of the
14 code of West Virginia, one thousand nine hundred thirty-
15 one, as enacted by chapter one, acts of the Legislature
16 of West Virginia, one thousand nine hundred thirty-six,
17 and of all amendments and reenactments thereof, com-
18 monly known as the child welfare law; of all matters
19 and causes coming within the purview of chapter eigh-
20 teen of the code of West Virginia, one thousand nine
21 hundred thirty-one, and all amendments and reenact-
22 ments thereof, commonly called the general school law;
23 of all matters and causes coming within the purview
24 of chapter forty-eight of the code of West Virginia, one
25 thousand nine hundred thirty-one, and of all amend-

ments and reenactments thereof, commonly known as the reciprocal dependency law; of all matters and causes coming within the purview of chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, and all amendments and reenactments thereof, commonly known as the adoption law; and of all matters and causes coming within the purview of chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, and of all amendments and reenactments thereof, commonly known as the change of name law; and of all matters and causes coming within the purview of chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, and of all amendments and reenactments thereof, commonly known as the maintenance of illegitimate children law; and of all matters and causes coming within the purview of chapter forty-four, article ten, section fourteen of the code of West Virginia, one thousand nine hundred thirty-one, and of all amendments and reenactments thereof, commonly known as the approval of the compromising of infants' claims for damages; and of all matters and causes coming within the purview of chapter forty-eight, article one, section six-c of the code of West Virginia, one thousand nine hundred thirty-one, and of all amendments and reenactments thereof, commonly known as the issuance of marriage license in case of emergency or extraordinary circumstances; and of all matters and causes coming within the purview of chapter thirty-seven of the code of West Virginia, one thousand nine hundred thirty-one, and of all amendments and reenactments thereof, commonly known as the approval of the sale, lease or mortgage of infants' lands; and of all matters and causes coming within the purview of chapter sixty-one, article seven, section two, commonly known as license to carry weapons; how obtained; and shall have, concurrent with the circuit court of Cabell county, supervision and control of proceedings before justices and other inferior tribunals by mandamus, prohibition and certiorari, and of all matters and causes coming within the purview of all other or future acts of the Legislature touching the

67 subject matter of any and all said laws and acts, and
68 the amendments and reenactments thereof, and of the
69 common law of said state relating to the subject matter
70 thereof. Independently of any of the foregoing matters,
71 the said domestic relations court shall also have and is
72 hereby given what was heretofore recognized as general
73 equity jurisdiction concurrent with the circuit court,
74 excepting in cases involving the enforcement of crim-
75 inal laws and labor disputes, and excepting cases where
76 it shall appear from the pleadings that matter or thing
77 in controversy exceeds in value the sum of three hundred
78 fifty thousand dollars. The proceedings and modes of
79 procedure and power and jurisdiction conferred by law
80 upon the circuit court or the common pleas court in
81 any and all of said matters and causes are hereby con-
82 ferred upon and shall be exercised by said domestic re-
83 lations court.

84 The court is authorized and empowered to appoint
85 and discharge one chief probation officer at a yearly
86 salary of eight thousand seven hundred fifty dollars
87 and a probation officer at a yearly salary of eight thou-
88 sand five hundred dollars, which said salaries shall be
89 paid by the county court monthly, and in addition
90 thereto the said county court shall reimburse the said
91 probation officers of their necessary expenses actually
92 incurred monthly in the performance of official duties
93 including an allowance of ten cents per mile for their
94 automobile driven in the performance of official duties.
95 The court is further authorized and empowered to appoint
96 and discharge such medical, clerical and secretarial
97 assistance as shall enable it to discharge all of the duties
98 required of it under the provisions of this act and the
99 general laws of the state and such person or persons shall
100 be paid by the county court monthly upon the written
101 approval of the judge of the said court.

§4. Salary of judge.

1 The judge of the domestic relations court of Cabell
2 county shall receive for his services twenty thousand
3 dollars, annually, payable monthly in installments be-
4 ginning on the first day of July, one thousand nine

5 hundred seventy, which amount shall be provided for
6 and paid by the county court, out of the treasury of said
7 county, which provision as to salary shall not repeal
8 the existing provision until the said first day of July,
9 one thousand nine hundred seventy.

10 All acts or parts of acts inconsistent or in conflict with
11 this act are hereby repealed.

CHAPTER 35

(Senate Bill No. 153—By Mr. Tompos)

[Passed February 12, 1970; in effect from passage. Approved by the Governor.]

AN ACT to create and establish in the county of Hancock a court of record of limited jurisdiction to be known and designated as "The Common Pleas Court of Hancock County," and defining its jurisdiction, salary and procedures.

Be it enacted by the Legislature of West Virginia:

HANCOCK COUNTY COMMON PLEAS COURT.

- §1. Court created and established.
- §2. Jurisdiction.
- §3. Contempt.
- §4. Judge; qualifications, term and election.
- §5. Salary.
- §6. Clerk; powers, duties and compensation.
- §7. Sheriff; powers and duties.
- §8. Prosecuting attorney; powers and duties.
- §9. Juvenile officer; powers and duties.
- §10. Transfer of pending cases; certification of matters to other court.
- §11. Terms of court; maturity of causes; procedure.
- §12. Supplies, finances, seal, courtrooms and officers.
- §13. Appeals.
- §14. Separability; repeal.

§1. Court created and established.

- 1 There is hereby created and established in and for the
- 2 county of Hancock, with authority and jurisdiction co-
- 3 extensive with the county, a court of record of limited
- 4 jurisdiction to be known and designated as "The Common

5 Pleas Court of Hancock County," to be held and presided
6 over by a judge to be appointed or elected as provided by
7 this act. Wherever and whenever the word "court" is
8 hereinafter in this act used, it shall be taken to mean and
9 refer to the common pleas court of Hancock county, un-
10 less the context clearly indicates otherwise.

§2. Jurisdiction.

1 The court shall have jurisdiction within Hancock county,
2 concurrent with the circuit court of said county of causes,
3 matters, proceedings and suits relating to: (a) Adoption
4 proceedings arising out of article four, chapter forty-eight
5 of the code of West Virginia, one thousand nine hundred
6 thirty-one, as amended; (b) proceedings for a change of
7 name arising out of article five, said chapter forty-eight,
8 as amended; (c) the enforcement of support of dependents
9 arising out of article nine, said chapter forty-eight, as
10 amended; (d) all civil actions or proceedings at law, ex-
11 cept where it shall appear from the pleadings that
12 the matter in controversy exceeds the value of fifty
13 thousand dollars; (e) all cases arising under articles
14 five, six and seven, chapter forty-nine of the code of
15 West Virginia, one thousand nine hundred thirty-one,
16 as amended; (f) appellate jurisdiction in all cases, civil
17 and criminal, from judgments of justices of the peace in
18 said county, police judges or mayors of any incorporated
19 city, town or village, or of any inferior tribunal therein,
20 wherein an appeal, writ of error, supersedeas or writ of
21 certiorari may be allowed; (g) all proceedings under
22 article one, chapter thirty-seven of the code of West Vir-
23 ginia, one thousand nine hundred thirty-one, as amended;
24 (h) any and all other matters arising under the present
25 and future laws of the state of West Virginia, common or
26 statutory, incidental to the foregoing, including, but not
27 limited to, the disposition of property and property inter-
28 ests involved in any such matters, and, as well, the adjudi-
29 cation of any and all rights, titles and interests necessary
30 or incidental to a full determination of all such matters
31 pending in said court.

32 The court shall have general equity jurisdiction in
33 causes, matters, proceedings and suits before it within its

34 jurisdiction with power to grant injunctions and to re-
35 quire and take recognizances.

36 The proceedings, modes of procedures, power and juris-
37 diction conferred by law upon the circuit court of Hancock
38 county in any and all said causes, matters, proceedings
39 and suits are hereby conferred upon and shall be exer-
40 cised by the court of common pleas of Hancock county.

41 The judge of said court shall have the same powers in
42 vacation as to any and all of said causes, matters, proceed-
43 ings and suits that are conferred upon the judges of the
44 circuit court of Hancock county.

45 It shall not be necessary in any such causes or proceed-
46 ings to set forth upon the record the facts authorizing said
47 court to take jurisdiction thereof, but jurisdiction shall be
48 presumed unless the contrary plainly appears from the
49 record.

§3. Contempt.

1 Said court shall have the same powers to punish for
2 contempt as are conferred by law upon said circuit court.

§4. Judge; qualifications, term and election.

1 The principal presiding officer of said court shall be a
2 judge whose qualifications, term and election shall be as
3 follows: The person elected to the office of judge or ap-
4 pointed to fill a vacancy in such office shall be a member
5 of the West Virginia State Bar and a resident of Hancock
6 county. Notwithstanding the provisions of section seven,
7 article five, chapter three of the code of West Virginia,
8 one thousand nine hundred thirty-one, as amended, per-
9 sons filing as candidates for nomination for election as a
10 judge of said court at said general election to be held in
11 the year one thousand nine hundred seventy may file their
12 certificates of candidacy not later than the twenty-eighth
13 day of February, one thousand nine hundred seventy,
14 which certificates must be received by the clerk of the
15 circuit court before midnight, eastern standard time, of
16 that day or, if mailed, shall be postmarked before that
17 hour. An election for the purpose of electing a judge for
18 the court of common pleas shall be held on the same date
19 and in the same manner as now provided by law for elec-

tion of circuit court judges. At the general election to be held on the Tuesday after the first Monday in November, one thousand nine hundred seventy, some person qualified as aforesaid shall be elected as provided by law for the election of circuit court judges to be judge of said court for the next ensuing term of six years beginning the first day of January, next following such election. At the general election regularly held on the Tuesday after the first Monday in November, one thousand nine hundred seventy-six, and thereafter at intervals of eight years, some person qualified as aforesaid shall be elected to be the judge of said court for the next ensuing term of eight years, beginning on the first day of January, next following such election. The judge of said court may be removed from office for the same reasons and in the same manner as judges of the circuit court and shall be, except as to his term of office and jurisdiction, subject to the laws in force governing circuit judges. If from any cause the office shall become vacant, the vacancy shall be filled in the same manner as in the case of a vacancy in the office of the judge of a circuit court. Any judge so appointed shall continue in such office until his successor is elected and qualified. Such judge, during his tenure in office, shall not engage in the practice of law.

§5. Salary.

The judge of said court shall, for his services receive the sum of twenty thousand dollars per annum, to be paid in monthly installments out of the treasury of Hancock county. The county court shall annually make provision by appropriate levy and appropriation for the payment of said salary.

§6. Clerk; powers, duties and compensation.

The clerk of the circuit court of Hancock county shall, ex officio, be, act as and perform the duties of the clerk of the said court and shall exercise the same power and duties arising within the jurisdiction of said court as are performed by him as clerk of the circuit court. All processes, rules and orders of the court, in the exercise of its jurisdiction, shall be signed by the clerk thereof to be

8 directed to the sheriffs of the proper counties wherein the
9 same are to be executed in like manner and with the
10 same effect as processes issuing from the circuit court of
11 Hancock county. For his services under and pursuant to
12 this act, the clerk shall receive no compensation in addi-
13 tion to his annual salary as provided by law.

§7. Sheriff; powers and duties.

1 The sheriff of Hancock county and the sheriffs of the
2 several counties in the state shall, by themselves or their
3 deputies, execute all processes of said court, issued by the
4 clerk thereof, directed to them respectively, and all
5 processes emanating from said court shall be directed to
6 and be executed by them in the same manner as is pro-
7 vided by law as to processes issuing from the circuit court
8 of said county. The sheriff of Hancock county shall per-
9 form the same duties and services for said court as he is
10 now by law required to perform for the circuit court of
11 Hancock county. In the execution of processes, rules and
12 orders of the court, the sheriff shall have the same powers
13 and rights, be subject to the same liabilities, govern him-
14 self by the same rules and principles of law and the
15 statutes of the state, as though said processes issued from
16 the circuit court of Hancock county.

§8. Prosecuting attorney; powers and duties.

1 The prosecuting attorney of Hancock county shall at-
2 tend the terms of said court, either by himself or an
3 assistant, and shall perform the duties of his office as
4 required by law.

§9. Juvenile officer; powers and duties.

1 The probation officer appointed by the circuit judges of
2 Hancock county shall attend said court and shall perform
3 the duties of juvenile officer of said court as required
4 by law.

§10. Transfer of pending cases; certification of matters to other court.

1 The judges of the circuit court of said county may, in
2 their discretion, certify to said court on and after the first

3 day of January, one thousand nine hundred seventy-one,
4 any portion or all of the causes, matters, proceedings and
5 suits within the herein defined jurisdiction of said court
6 pending in said circuit court on the first day of January,
7 one thousand nine hundred seventy-one, or thereafter in-
8 stituted therein, and all causes, matters, proceedings and
9 suits so certified to said court shall be docketed and there-
10 after proceeded with therein according to law. The judges
11 of said circuit court, in their discretion, may also direct
12 the clerk of said circuit court to certify to and docket in
13 said court all such causes, matters, proceedings and suits
14 properly within the jurisdiction of said court as may be
15 instituted on and after the first day of January, one thou-
16 sand nine hundred seventy-one, in said circuit court. In
17 the event of the absence or disqualification of the judges
18 of said circuit court or the judge of said common pleas
19 court, any matter coming within the purview of this act
20 pending in either court may be certified to the other court,
21 docketed therein and proceeded with according to law.

§11. Terms of court; maturity of causes; procedure.

1 For the purpose of maturing, docketing, hearing and
2 determining all causes, matters, proceedings and suits
3 properly determinable in said court there shall be regular-
4 ly continued and held three terms of court each year, be-
5 ginning on the second Monday in March, July and Novem-
6 ber. Special and adjourned terms of said court may be
7 called and held whenever, in the discretion of the judge
8 of said court, public interest requires such special or ad-
9 journed terms. The judge of said court shall have like
10 jurisdiction and authority in vacation of said court to
11 make and enter such proper orders in any cause, matter,
12 proceeding or suit pending in said court as the judges of
13 the circuit court have under the laws of the state.

14 The mode of procedure in causes instituted in said court
15 shall be the same as that prescribed for the circuit court
16 in similar causes. The court is authorized and empowered
17 to appoint such additional officers, commissioners, special
18 commissioners, jury commissioners, and such clerical and
19 secretarial assistants as shall enable said court to dis-
20 charge all the duties required of it under the provisions

21 of this act and the general laws of the state. Such ap-
22 pointments shall be made by the judge and the appointees
23 shall serve during the pleasure of the judge.

24 The judge of said court shall have power to make and
25 promulgate such rules for the transaction of the business
26 of the court as may be necessary, but all such rules shall
27 be in conformity with the laws of the state of West Vir-
28 ginia and with the rules promulgated by the supreme
29 court of appeals of this state, and such rules shall be
30 filed in the office of the clerk of said supreme court of
31 appeals.

§12. Supplies, finances, seal, courtrooms and offices.

1 It shall be the duty of the county court of Hancock
2 county to provide all record and other books and sta-
3 tionery, postage and supplies that may be necessary for
4 said court. Likewise a seal for said court shall be pro-
5 vided 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 Hancock county shall likewise
10 furnish rooms, furniture and equipment for the prop-
11 er conduct and administration of said court and shall,
12 through annual levy and appropriations, make pro-
13 vision for the payment for all such rooms, supplies
14 and equipment. It shall be the duty of the county court
15 of Hancock county to pay the salary of a full-time sec-
16 retary in the office of the judge of said court, to be
17 appointed by him, whose compensation shall be not
18 less than three thousand six hundred dollars nor more
19 than four thousand eight hundred dollars annually, to
20 be determined by the judge.

§13. Appeals.

1 Appeals from, or writs of error or supersedeas to,
2 any judgment, decree or order of said court shall be
3 governed by and subject to the provisions of article four,
4 chapter fifty-eight of the code of West Virginia, one thou-
5 sand nine hundred thirty-one, as amended, pertaining to
6 the subject of "Appeals from Courts of Record of Limited
7 Judisdiction."

§14. Separability; repeal.

1 The provisions of this act shall be construed as sep-
2 arable and severable and should any provision or part
3 hereof be held unconstitutional or for any reason in-
4 valid, the remaining provisions or parts shall not be
5 thereby affected.

6 All acts or parts of acts in conflict herewith are here-
7 by repealed.

CHAPTER 36

(House Bill No. 656—By Mr. Speaker, Mr. Boiarsky,
and Mr. Potter)

[Passed February 12, 1970; in effect July 1, 1970. Approved by the Governor.]

AN ACT to amend and reenact section three, chapter thirty-two, acts of the Legislature, regular session, one thousand nine hundred sixty-four; and to amend and reenact section ten, chapter thirty-two, acts of the Legislature, regular session, one thousand nine hundred sixty-four, as last amended and reenacted by chapter two hundred fourteen, acts of the Legislature, regular session, one thousand nine hundred sixty-seven, relating to the jurisdiction of the court of common pleas of Kanawha county and to the duties and salary of the judges thereof.

Be it enacted by the Legislature of West Virginia:

That section three, chapter thirty-two, acts of the Legislature, regular session, one thousand nine hundred sixty-four, and that section ten, chapter one hundred thirty-two, acts of the Legislature, regular session, one thousand nine hundred sixty-four, as last amended and reenacted by chapter two hundred fourteen, acts of the Legislature, regular session, one thousand nine hundred sixty-seven, be amended and reenacted to read as follows:

COURT OF COMMON PLEAS OF KANAWHA COUNTY.

§3. Jurisdiction of court; right of appeal to the circuit court of Kanawha county.

§10. Salary of judges; payment from county treasury.

§3. Jurisdiction of court; right of appeal to the circuit court of Kanawha county.

1 The said court shall continue to have original juris-
2 diction within the county of Kanawha concurrent with
3 the circuit court of said county in all suits and proceedings
4 in equity, in all actions of ejectment, and in all civil
5 actions or proceedings at law, except where it shall
6 appear from the pleadings that the matter or thing in
7 controversy in any such civil action or proceeding at
8 law exceeds in value the sum of five hundred thousand
9 dollars; and also of appeals from the judgments of justices
10 of the peace in said county in civil cases when such
11 appeals shall be to said court in the same manner and
12 under the same regulations as provided in the general
13 law for appeals from justices and shall also continue to
14 have jurisdiction concurrent with the circuit court of
15 said county as to the supervision and control of all pro-
16 ceedings before justices of the peace or municipal courts
17 of said county in civil cases, by mandamus, prohibition,
18 habeas corpus or certiorari, subject to the right of appeal
19 to the circuit court of Kanawha county, as hereinafter
20 provided.

21 The court shall also have original jurisdiction within
22 the county of Kanawha, concurrent with the circuit court
23 of said county and concurrent with any other court of
24 record of limited jurisdiction within said county having
25 jurisdiction of same, of petitions or proceedings for the
26 adoption of adults and children. Each judge of said
27 court shall each year forward to the judicial council
28 provided for in article eleven, chapter fifty-six of the code
29 of West Virginia, one thousand nine hundred thirty-one,
30 as amended, and without request therefor by such council,
31 his proposals for any legislative or rule changes which
32 he believes will make the administration of justice
33 more efficient.

§10. Salary of judges; payment from county treasury.

1 After the first day of July, one thousand nine hundred
2 seventy, each of said judges shall for their services re-
3 ceive twenty thousand dollars per annum, to be paid
4 in monthly installments out of the county treasury of
5 Kanawha county, out of funds of said treasury, in the
6 manner provided by statute. The salary of the judge of
7 said court whose present term began on January one,
8 one thousand nine hundred sixty-five, shall continue as
9 provided in chapter thirty-two, acts of the Legislature,
10 regular session, one thousand nine hundred sixty-four,
11 and the salary of the judge of said court whose term
12 began on January one, one thousand nine hundred sixty-
13 nine, shall continue as provided in chapter two hundred
14 fourteen, acts of the Legislature, regular session, one
15 thousand nine hundred sixty-seven, until the first day
16 of July, one thousand nine hundred seventy.

CHAPTER 37

(House Bill No. 654—By Mr. Speaker, Mr. Boiarsky,
and Mr. Potter)

[Passed February 12, 1970; in effect July 1, 1970. Approved by the Governor.]

AN ACT to amend and reenact section two, chapter one hundred seventy-two, acts of the Legislature, regular session, one thousand nine hundred forty-seven, as last amended and reenacted by chapter two hundred six, acts of the Legislature, regular session, one thousand nine hundred fifty-one; and to amend and reenact section four, chapter one hundred seventy-two, acts of the Legislature, regular session, one thousand nine hundred forty-seven, as last amended and reenacted by chapter two hundred fifteen, acts of the Legislature, regular session, one thousand nine hundred sixty-seven, relating to the jurisdiction of the domestic relations court of Kanawha county and to the duties and salary of the judge thereof.

Be it enacted by the Legislature of West Virginia:

That section two, chapter one hundred seventy-two, acts of the Legislature, regular session, one thousand nine hundred forty-seven, as last amended and reenacted by chapter two hundred six, acts of the Legislature, regular session, one thousand nine hundred fifty-one, and that section four, chapter one hundred seventy-two, acts of the Legislature, regular session, one thousand nine hundred forty-seven, as last amended and reenacted by chapter two hundred fifteen, acts of the Legislature, regular session, one thousand nine hundred sixty-seven, be amended and reenacted to read as follows:

DOMESTIC RELATIONS COURT OF KANAWHA COUNTY.

§2. Jurisdiction.

§4. Salary.

§2. Jurisdiction.

1 The court shall have jurisdiction within Kanawha
2 county, concurrent with the circuit court of said county,
3 of actions, suits, causes and proceedings relating to an-
4 nulment of marriages, affirmation of marriages, separate
5 maintenance, divorces, alimony, the adoption of adults
6 and children, and any and all other matters arising under
7 the laws of the state of West Virginia, common or stat-
8 utory, incidental to the foregoing, including, but not
9 limited to, the disposition of property and property in-
10 terests involved in any such causes and matters and, as
11 well, the adjudication of any and all rights, titles and
12 interests necessary or incidental to a full determination
13 of all such causes and matters pending in said court.
14 The court shall also have jurisdiction within Kanawha
15 county, concurrent with the circuit court of said county,
16 of petitions or proceedings for a change of name filed
17 or instituted under the provisions of article five, chapter
18 forty-eight of the code of West Virginia, one thousand
19 nine hundred thirty-one, as amended, and of statutory
20 summary proceedings for the compromise and settlement
21 of claims by a guardian for injuries to the person or
22 property of his infant ward, instituted pursuant to the
23 provisions of section fourteen, article ten, chapter forty-
24 four of said code. The judge of said court shall each

25 year forward to the judicial council provided for in
26 article eleven, chapter fifty-six of said code, and without
27 request therefor by such council, his proposals for any
28 legislative or rule changes which he believes will make
29 the administration of justice more efficient.

30 The court shall have general equity jurisdiction in any
31 causes or proceedings before it, with full power to grant
32 injunctions in matters involving the care, preservation
33 and protection of persons or property in such causes or
34 proceedings.

35 The court shall also have concurrent jurisdiction with
36 the circuit court of said county over all habeas corpus
37 proceedings involving children under the age of twenty-
38 one years.

39 The manner and modes of procedure, power and
40 jurisdiction conferred by law upon the circuit court of
41 Kanawha county in any and all of the foregoing matters
42 and causes are hereby conferred upon and shall be
43 exercised by the domestic relations court of Kanawha
44 county.

45 It shall not be necessary in any such cause or pro-
46 ceeding to set forth upon the record the facts authorizing
47 the court to take jurisdiction thereof, but jurisdiction
48 shall be presumed unless the contrary plainly appears
49 from the record.

§4. Salary.

1 The judge of the domestic relations court of Kanawha
2 county, West Virginia, shall, from and after the first day
3 of July, one thousand nine hundred seventy, receive
4 for his services a salary in the amount of twenty thousand
5 dollars per annum, to be paid in monthly installments
6 out of the county treasury of Kanawha county, out of
7 the funds of said treasury, in the manner provided by
8 statute. The salary of said judge shall continue as pro-
9 vided in chapter thirty-three, acts of the Legislature,
10 regular session, one thousand nine hundred sixty-four,
11 until the first day of July, one thousand nine hundred
12 seventy.

CHAPTER 38

(House Bill No. 655—By Mr. Speaker, Mr. Boiarsky,
and Mr. Potter)

[Passed February 12, 1970; in effect July 1, 1970. Approved by the Governor.]

AN ACT to amend and reenact section two, chapter twenty-five, acts of the Legislature, regular session, one thousand nine hundred seven, as last amended by chapter twenty-eight, acts of the Legislature, regular session, one thousand nine hundred nine; and to amend and reenact section nine, chapter twenty-five, acts of the Legislature, regular session, one thousand nine hundred seven, as last amended and reenacted by chapter two hundred sixteen, acts of the Legislature, regular session, one thousand nine hundred sixty-seven, relating to the jurisdiction of the intermediate court of Kanawha county and to the duties and salary of the judge thereof.

Be it enacted by the Legislature of West Virginia:

That section two, chapter twenty-five, acts of the Legislature, regular session, one thousand nine hundred seven, as last amended by chapter twenty-eight, acts of the Legislature, regular session, one thousand nine hundred nine, and that section nine, chapter twenty-five, acts of the Legislature, regular session, one thousand nine hundred seven, as last amended and reenacted by chapter two hundred sixteen, acts of the Legislature, regular session, one thousand nine hundred sixty-seven, be amended and reenacted to read as follows:

INTERMEDIATE COURT OF KANAWHA COUNTY.

§2. Jurisdiction.

§9. Salary.

§2. Jurisdiction.

- 1 The said court shall have jurisdiction within the county
- 2 of Kanawha concurrent with the circuit court of said
- 3 county, of all felonies, misdemeanors, and offenses com-
- 4 mitted within the said county; and also of all matters
- 5 at law where the amount in controversy, exclusive of
- 6 interest and costs, does not exceed five hundred dollars.

7 And also of appeals from the judgments of the justices
8 of said county when such appeals shall lie to said court
9 in the same manner and under the same regulations,
10 as provided in the general law for appeals from justices;
11 also for the trial of all cases concurrent with the circuit
12 court, for the maintenance of illegitimate children, as
13 provided by chapter forty-eight of the code of West Vir-
14 ginia, one thousand nine hundred thirty-one, as amended.
15 And the court shall also have jurisdiction concurrent with
16 the circuit court of said county as to the supervision and
17 control of all proceedings before justices of said county,
18 or the mayor or police judge or police court of any in-
19 corporated city, town or village of said county, by appeals,
20 mandamus, prohibition and certiorari. Said court shall
21 also have jurisdiction concurrent with said circuit court,
22 of appeals from the police judge or the police court of
23 the city of Charleston in said county. The court shall also
24 have jurisdiction within Kanawha county, concurrent
25 with the circuit court of said county, of statutory sum-
26 mary proceedings for the sale, lease or mortgage of or
27 trust deed upon the estate of minors, insane persons and
28 convicts instituted pursuant to the provisions of section
29 eleven, article one, chapter thirty-seven of the code of
30 West Virginia, one thousand nine hundred thirty-one, as
31 amended. The judge of said court shall each year forward
32 to the judicial council provided for in article eleven, chap-
33 ter fifty-six of said code, and without request therefor by
34 such council, his proposals for any legislative or rule
35 changes which he believes will make the administration
36 of justice more efficient.

§9. Salary.

1 The judge of the intermediate court of Kanawha county,
2 West Virginia, shall, from and after the first day of July,
3 one thousand nine hundred seventy, receive for his ser-
4 vices a salary in the amount of twenty thousand dollars
5 per annum, to be paid in monthly installments out of the
6 county treasury of Kanawha county, out of the funds
7 of said treasury, in the manner provided by statute. The
8 salary of said judge shall continue as provided in chapter
9 one hundred sixty-eight, acts of the Legislature, regular

10 session, one thousand nine hundred sixty-five, until the
11 first day of July, one thousand nine hundred seventy.

CHAPTER 39

(House Bill No. 696—By Mr. Watson and Mr. Fantasia)

[Passed February 11, 1970; in effect July 1, 1970. Approved by the Governor.]

AN ACT to amend and reenact section four, chapter sixty-nine, acts of the Legislature, regular session, one thousand nine hundred nineteen, as last amended by chapter thirty-five, acts of the Legislature, regular session, one thousand nine hundred sixty-four, relating to the salary of the judge of the criminal court of Marion county.

Be it enacted by the Legislature of West Virginia:

That section four, chapter sixty-nine, acts of the Legislature, regular session, one thousand nine hundred nineteen, as last amended by chapter thirty-five, acts of the Legislature, regular session, one thousand nine hundred sixty-four, be amended and reenacted to read as follows:

CRIMINAL COURT OF MARION COUNTY.

§4. Salary of Marion county criminal court judge.

1 The judge of said criminal court shall receive for his
2 services a salary of seventeen thousand five hundred dol-
3 lars per year, said amount to be fixed and paid from year
4 to year, in equal monthly installments, by the county
5 court of said county, out of the funds of said county, as
6 provided by statute.

CHAPTER 40

(Senate Bill No. 159—By Mr. Carrigan)

[Passed February 12, 1970; in effect July 1, 1970. Approved by the Governor.]

AN ACT to amend and reenact sections two and six, chapter one hundred seventy-two, acts of the Legislature, regular

session, one thousand nine hundred sixty-five; and to amend and reenact section five, chapter two hundred nineteen, acts of the Legislature, regular session, one thousand nine hundred sixty-seven, all relating to the jurisdiction and salary of the judge of the common pleas court of Marshall county, and the powers, duties and compensation of the clerk of the common pleas court of Marshall county.

Be it enacted by the Legislature of West Virginia:

That sections two and six, chapter one hundred seventy-two, acts of the Legislature, regular session, one thousand nine hundred sixty-five, be amended and reenacted; and that section five, chapter two hundred nineteen, acts of the Legislature, regular session, one thousand nine hundred sixty-seven, be amended and reenacted, all to read as follows:

COMMON PLEAS COURT OF MARSHALL COUNTY.

§2. Jurisdiction.

§5. Salary of judge.

§6. Clerk; powers, duties and compensation.

§2. Jurisdiction.

- 1 The court shall have jurisdiction within Marshall coun-
- 2 ty, concurrent with the circuit court of said county, of
- 3 causes, matters, proceedings and suits relating to (a)
- 4 affirmation of marriages, annulment of marriages, separ-
- 5 ate maintenance, divorce, alimony, the care, custody,
- 6 maintenance and education of children of litigants and
- 7 the adjudication of property rights arising out of same,
- 8 and all other causes and matters arising within the pro-
- 9 visions of chapter forty-eight, article two of the official
- 10 code of West Virginia, commonly known as "the divorce
- 11 law," and of all amendments and reenactments thereof;
- 12 (b) adoption proceedings arising out of article four of
- 13 the chapter last aforesaid, and of all amendments and re-
- 14 enactments thereof; (c) proceedings for a change of name
- 15 arising out of article five of the chapter last aforesaid, and
- 16 of all amendments and reenactments thereof; (d) the
- 17 enforcement of support of dependents arising out of
- 18 article nine of the chapter last aforesaid, and of all amend-
- 19 ments and reenactments thereof; (e) of all civil actions
- 20 or proceedings at law, except where it shall appear from

21 the pleadings that the matter in controversy exceeds the
22 value of two hundred thousand dollars; (f) of all cases
23 arising under chapter forty-nine, articles five, six and
24 seven of the official code of West Virginia, and all amend-
25 ments and reenactments thereof; (g) appellate jurisdiction
26 in all cases, civil and criminal, from judgments of justices
27 of the peace in said county, police judges or mayors of
28 any incorporated city, town or village, or of any inferior
29 tribunal therein, wherein an appeal, writ of error, super-
30 sedeas or writ of certiorari may be allowed; (h) all pro-
31 ceedings under article one, chapter thirty-seven of the
32 official code of West Virginia, and all amendments and
33 reenactments thereof; (i) all proceedings by prohibition,
34 mandamus, quo warranto, habeas corpus or certiorari; (j)
35 proceedings under section six-c, article one, chapter forty-
36 eight of the official code of West Virginia, as amended; (k)
37 all proceedings under article seven, chapter forty-eight
38 of the official code of West Virginia, as amended; (l) all
39 proceedings under section four, article ten, chapter fifty-
40 six and sections eight through fifteen, inclusive, article
41 ten, chapter forty-four of the official code of West Vir-
42 ginia, as amended; (m) compulsory school attendance
43 and truancy arising out of chapter eighteen, article eight
44 of the official code of West Virginia, and of all amend-
45 ments and reenactments thereof; (n) the release of per-
46 sons from jail, as provided by chapter sixty-two, article
47 ten, section four of the official code of West Virginia, and
48 of all amendments and reenactments thereof; (o) any
49 and all other matters arising under the present and future
50 laws of the state of West Virginia, common or statutory,
51 incidental to the foregoing, including, but not limited to,
52 the disposition of property and property interests involved
53 in any such matters, and, as well, the adjudication of any
54 and all rights, titles and interests necessary or incidental
55 to a full determination of all such matters pending in said
56 court.

57 Said court shall have general equity jurisdiction in
58 causes, matters, proceedings and suits before it within
59 its jurisdiction with power to grant injunctions and to
60 require and take recognizances.

61 The proceedings, modes of procedures, power and juris-
62 diction conferred by law upon the circuit court of Mar-
63 shall county in any and all said causes, matters, proceed-
64 ings and suits, are hereby conferred upon and shall be
65 exercised by said court.

66 The judge of said court shall have the same powers
67 in vacation as to any and all of said causes, matters, pro-
68 ceedings and suits that are conferred upon the judge of
69 the circuit court of said county.

70 It shall not be necessary in such causes or proceedings
71 to set forth upon the record the facts authorizing said
72 court to take jurisdiction thereof, but jurisdiction shall
73 be presumed unless the contrary plainly appears from
74 the record.

§5. Salary of judge.

1 The judge of said court shall, for his services, receive
2 the sum of seventeen thousand dollars per annum, to be
3 paid in monthly installments out of the treasury of
4 Marshall county, from and after the first day of July, one
5 thousand nine hundred seventy. The salary of said judge
6 shall continue, as provided in chapter two hundred nine-
7 teen, acts of the Legislature, regular session, one thousand
8 nine hundred sixty-seven, until the first day of July, one
9 thousand nine hundred seventy. The county court shall
10 annually make provision by appropriate levy and appro-
11 priation for the payment of said salary.

§6. Clerk; powers, duties and compensation.

1 The clerk of the circuit court of Marshall county shall,
2 ex officio, be, act as and perform the duties of the clerk
3 of the said court and shall exercise the same power and
4 duties arising within the jurisdiction of said court as are
5 performed by him as clerk of the circuit court. All proc-
6 esses, rules and orders of the court, in the exercise of its
7 jurisdiction, shall be signed by the clerk thereof to be di-
8 rected to the sheriffs of the proper counties wherein the
9 same are to be executed in like manner and with the same
10 effect as processes issuing from the circuit court of Mar-
11 shall county. For his services under and pursuant to this

12 act, said clerk shall receive an annual salary of eighteen
13 hundred dollars payable in equal monthly payments.

CHAPTER 41

(House Bill No. 652—By Mr. Stamp and Mr. Companion)

[Passed February 6, 1970; in effect July 1, 1970. Approved by the Governor.]

AN ACT to amend and reenact section nine, chapter one hundred twenty, acts of the Legislature, regular session, one thousand nine hundred twenty-five, as last amended and reenacted by chapter one hundred eighty, acts of the Legislature, regular session, one thousand nine hundred sixty-five, relating to the salary of the judge of the intermediate court of Ohio county.

Be it enacted by the Legislature of West Virginia:

That section nine, chapter one hundred twenty, acts of the Legislature, regular session, one thousand nine hundred twenty-five, as last amended and reenacted by chapter one hundred eighty, acts of the Legislature, regular session, one thousand nine hundred sixty-five, be amended and reenacted to read as follows:

INTERMEDIATE COURT OF OHIO COUNTY.

§9. Salary of judge.

1 The judge shall, from and after the first day of Janu-
2 ary, one thousand nine hundred seventy-three, for his
3 services receive eighteen thousand dollars per annum,
4 to be paid out of the county treasury of the county of Ohio.
5 For the remainder of the current term, the judge shall
6 receive fifteen thousand dollars per annum for his ser-
7 vices, payable as hereinbefore provided.

CHAPTER 42

(House Bill No. 601—By Mr. Stamp and Mr. Grewe)

[Passed February 4, 1970; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section ten, chapter one hundred twenty, acts of the Legislature, regular session, one thousand nine hundred twenty-five, relating to the terms of court of the intermediate court of Ohio county.

Be it enacted by the Legislature of West Virginia:

That section ten, chapter one hundred twenty, acts of the Legislature, regular session, one thousand nine hundred twenty-five, be amended and reenacted to read as follows:

INTERMEDIATE COURT OF OHIO COUNTY.

§10. Terms of court.

- 1 There shall be three terms of said court held in each
- 2 year, commencing on the second Monday in January,
- 3 April and September. Adjourned and special terms of
- 4 said court may be called and held as provided for special
- 5 and adjourned terms of the circuit court.

CHAPTER 43

(House Bill No. 748—By Mr. Sparacino)

[Passed February 12, 1970; in effect July 1, 1970. Approved by the Governor.]

AN ACT to amend and reenact section two, chapter twenty-nine, acts of the Legislature, regular session, one thousand nine hundred seven; and to amend and reenact section nine, chapter twenty-nine, acts of the Legislature, regular session, one thousand nine hundred seven, as last amended by chapter two hundred twenty-five, acts of the Legislature, regular session, one thousand nine hundred sixty-seven, relating to the jurisdiction of the criminal

court of Raleigh county and to the salary of the judge thereof.

Be it enacted by the Legislature of West Virginia:

That section two, chapter twenty-nine, acts of the Legislature, regular session, one thousand nine hundred seven, and that section nine, chapter twenty-nine, acts of the Legislature, regular session, one thousand nine hundred seven, as last amended and reenacted by chapter two hundred twenty-five, acts of the Legislature, regular session, one thousand nine hundred sixty-seven, be amended and reenacted to read as follows:

CRIMINAL COURT OF RALEIGH COUNTY.

§2. Jurisdiction.

§9. Salary of judge.

§2. Jurisdiction.

1 The said criminal court shall have jurisdiction within
2 the county of Raleigh, concurrent with the circuit court,
3 of all felonies, misdemeanors and offenses committed
4 within the said county, and also for the trial of all cases
5 concurrent with the circuit court, for the maintenance
6 of illegitimate children, as provided by chapter eighty
7 of the code of West Virginia; said court shall also have
8 jurisdiction, concurrent with the circuit court of said
9 county as to the supervision and control of all criminal
10 proceedings before justices of said county, the mayor
11 and recorder of any incorporated city, town or village
12 in said county, by appeal, mandamus, prohibition and
13 certiorari; it shall also have jurisdiction concurrent with
14 said circuit court for the collection of all the recogni-
15 zances taken by said criminal court, and for the collec-
16 tion of all bonds taken by said criminal court, or the
17 clerk thereof in vacation, to secure the payment of
18 judgments for fines and costs rendered by said court
19 and for the collection of all recognizances and bonds
20 taken by the justices of the said county, or the mayor
21 of any incorporated city, town or village in said county,
22 in relation to criminal proceedings before said justices
23 or mayor; it shall also have jurisdiction, concurrent with
24 the circuit court and county court, of all proceedings

25 for the removal from office of all county and district
26 officers, and the same powers to admit attorneys to prac-
27 tice in the courts of this state as the judges of the
28 circuit court. The court shall also have jurisdiction
29 within Raleigh county, concurrent with the circuit court
30 of said county, of statutory summary proceedings for
31 the sale, lease or mortgage upon the estate of minors,
32 insane persons and convicts instituted pursuant to the
33 provisions of section eleven, article one, chapter thirty-
34 seven of the code of West Virginia, one thousand nine
35 hundred thirty-one, as amended, where the value of the
36 estate affected does not exceed two thousand five hun-
37 dred dollars. The judge of said court shall each year
38 forward to the judicial council provided for in article
39 eleven, chapter fifty-six of said code, and without request
40 therefor by such council, his proposals for any legislative
41 or rule changes which he believes will make the adminis-
42 tration of justice more efficient.

§9. Salary of judge.

1 The judge of the criminal court of Raleigh county,
2 West Virginia, shall from and after the first day of July,
3 one thousand nine hundred seventy, receive for his ser-
4 vices a salary in the amount of fifteen thousand dollars
5 per annum, to be paid in monthly installments out of
6 the county treasury of Raleigh county, out of funds of
7 said treasury, in the manner provided by statute.

CHAPTER 44

(House Bill No. 538—By Mr. Speaker, Mr. Boiarsky,
and Mr. Potter)

[Passed February 12, 1970; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section seventeen, article three, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to liabilities incurred for the expenditure of public moneys

which cannot be paid out of current appropriations; authorizing the department of finance and administration to enter into long-term lease agreements containing certain specified provisions; and providing for personal liability.

Be it enacted by the Legislature of West Virginia:

That section seventeen, article three, 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 3. APPROPRIATIONS AND EXPENDITURES.

§12-3-17. Liabilities incurred by state boards, commissions, officers or employees which cannot be paid out of current appropriations; long-term leasing.

1 Except as provided in this section, it shall be unlawful
2 for any state board, commission, officer or employee:
3 (1) To incur any liability during any fiscal year which
4 cannot be paid out of the then current appropriation
5 for such year or out of funds received from an emergency
6 appropriation; or (2) to authorize or to pay any account
7 or bill incurred during any fiscal year out of the appro-
8 priation for the following year, unless a sufficient amount
9 of the appropriation for the fiscal year during which the
10 liability was incurred was canceled by expiration or a
11 sufficient amount of the appropriation remained unex-
12 pended at the end of the year: *Provided, however,* That
13 nothing contained herein shall prohibit entering into a
14 contract or lease for buildings, land and space, the cost of
15 which exceeds the current year's appropriation, even
16 though the amount is not available during the then
17 current year, if the aggregate cost does not exceed the
18 amount then authorized by the Legislature. Nothing con-
19 tained herein shall repeal the provisions of the general
20 law relating to the expiration of appropriations for
21 buildings and land.

22 Subject to the provisions of chapter five-a, article five
23 of the code of West Virginia, one thousand nine hundred
24 thirty-one, as amended, the department of finance and
25 administration is hereby authorized to enter into long-

26 term lease agreements for buildings, land and space for
27 periods longer than one fiscal year. Such long-term lease
28 agreements shall not be for periods in excess of forty
29 years and shall contain, in substance, all the following
30 provisions:

31 (1) That the department of finance and administra-
32 tion, as lessee, shall have the right to cancel the lease
33 without further obligation on the part of the lessee upon
34 giving thirty days' written notice to the lessor, such
35 notice being given at least thirty days prior to the last
36 day of the succeeding month;

37 (2) That the lease shall be considered canceled with-
38 out further obligation on the part of the lessee if the
39 state Legislature or the federal government should sub-
40 sequently fail to appropriate sufficient funds therefor or
41 should otherwise act to impair the lease or cause it to
42 be canceled; and

43 (3) That the lease shall be considered renewed for
44 each ensuing fiscal year during the term of the lease
45 unless it is canceled by the department of finance and
46 administration before the end of the then current fiscal
47 year.

48 Any member of a state board or commission or any
49 officer or employee violating any provision of this sec-
50 tion shall be personally liable for any debt unlawfully
51 incurred or for any payment unlawfully made.

CHAPTER 45

(House Bill No. 520—By Mr. Lohr and Mr. Seibert)

[Passed January 30, 1970; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article five, chapter ten of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the West Virginia broadcasting authority.

Be it enacted by the Legislature of West Virginia:

That section two, article five, 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 5. EDUCATIONAL BROADCASTING AUTHORITY.

§10-5-2. West Virginia educational broadcasting authority; members; organization; officers; employees; meetings; expenses.

1 The West Virginia educational broadcasting authority,
2 heretofore created, is hereby continued as a public benefit
3 corporation. It shall consist of nine members, who shall
4 be citizens and residents of the state, of whom one shall
5 be the state superintendent of schools, one shall be a
6 member of the West Virginia board of education to be
7 selected by it annually, and one shall be the chancellor
8 of the West Virginia board of regents. The other six
9 members shall be appointed by the governor by and
10 with the advice and consent of the Senate for overlapping
11 terms of six years. The present members of the authority
12 shall continue to serve out the terms to which they were
13 appointed. Any vacancy among the appointive members
14 shall be filled by the governor by appointment for the
15 unexpired term.

16 The chairman and vice chairman of the authority as
17 of the effective date of this article (March 10, 1967)
18 shall continue in their respective offices until their suc-
19 cessors are elected. Thereafter, at its first regular meeting
20 in each year the authority shall elect one of its members
21 as chairman and one as vice chairman. The authority
22 is authorized to select an executive secretary and such
23 other personnel as may be necessary to perform its duties
24 and to fix the compensation of such personnel to be paid
25 out of moneys appropriated for this purpose. The ex-
26 ecutive secretary shall keep a record of the proceedings
27 of the authority and shall perform such other duties as
28 it may prescribe. The authority is authorized to estab-
29 lish such office or offices as may be necessary for the
30 proper performance of its duties.

31 The authority shall hold one meeting in July of each
32 year and at least two additional meetings at such times
33 and places as it may prescribe. It may meet at such
34 other times as may be necessary, such meetings to be
35 held upon its own resolution or at the call of the chair-
36 man of the authority. The members shall serve without
37 compensation, but every member may be reimbursed
38 for actual expenses incident to the performance of his
39 duties upon presentation to the chairman of an itemized
40 sworn statement thereof.

CHAPTER 46

(House Bill No. 551—By Mr. Auvil)

[Passed February 12, 1970; in effect July 1, 1970. 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; and to amend and reenact section one, article three, chapter eighteen of said code, all relating to appointment; qualifications; compensation; traveling expenses; and location of office of the state superintendent of schools.

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; and that section one, article three, chapter eighteen of said code be amended and reenacted, all to read as follows:

Chapter

6. General Provisions Respecting Officers.

18. Education.

CHAPTER 6. GENERAL PROVISIONS RESPECTING OFFICERS.

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
4 thousand dollars per year.

5 The salary of the attorney general, the auditor, the
6 state treasurer, the secretary of state and the commis-
7 sioner of agriculture shall each be twenty-two thousand
8 five hundred dollars per year.

9 The salary of each of the judges of the supreme court
10 of appeals shall be twenty-seven thousand five hundred
11 dollars per year.

CHAPTER 18. EDUCATION.

ARTICLE 3. STATE SUPERINTENDENT OF SCHOOLS.

§18-3-1. Appointment; qualifications; compensation; traveling expenses; office and residence.

1 There shall be appointed by the state board of educa-
2 tion a state superintendent of schools. He shall be a per-
3 son of good moral character, of recognized ability as a
4 school administrator, holding at least a master's degree
5 in educational administration, and shall have had not less
6 than five years of experience in public school work. He
7 shall receive an annual salary set by the West Virginia
8 board of education, to be paid monthly, and necessary
9 traveling expenses incident to the performance of his du-
10 ties, the same to be paid out of the general school fund
11 upon warrants of the state auditor. The superintendent
12 shall have his office at the state capital.

CHAPTER 47

(House Bill No. 678—By Mr. Speaker, Mr. Boiarsky, and Mr. Lohr)

[Passed February 12, 1970; in effect July 1, 1970. Approved by the Governor.]

AN ACT to amend and reenact sections three, fourteen, sixteen and twenty-six, article seven-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to definitions, contributions taken from members, transfer of appropriations and computation of retirement allowance for certain annuitants.

Be it enacted by the Legislature of West Virginia:

That sections three, fourteen, sixteen 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-3. Definitions.

§18-7A-14. Contributions by members.

§18-7A-16. Transfer of appropriations.

§18-7A-26. Computation of annuities.

§18-7A-3. Definitions.

1 "Teacher" shall include the following persons, if reg-
2 ularly employed for at least half-time service: (a) Any
3 person employed for instructional service in the public
4 schools of West Virginia; (b) principals; (c) public
5 school librarians; (d) county superintendents of schools
6 and assistant county superintendents of schools; (e) any
7 county school attendance director holding a West Vir-
8 ginia teacher's certificate; (f) the executive secretary
9 of the retirement board; (g) members of the research,
10 extension, administrative, or library staffs of the public
11 schools; (h) the state superintendent of schools, heads,
12 and assistant heads of the divisions under his supervision,
13 or any other employee thereunder performing services
14 of an educational nature; (i) employees of the state board
15 of education who are performing services of an educa-
16 tional nature; (j) any person employed in a nonteaching
17 capacity by the state board of education, the board of
18 governors of West Virginia University, any county board
19 of education, the state department of education or the
20 teachers retirement board, if such person was formerly
21 employed as a teacher in the public schools; (k) all class-
22 room teachers, principals and educational administrators
23 in schools under the supervision of the state commis-
24 sioner of public institutions; (l) employees of the state
25 board of school finance if such person was formerly em-
26 ployed as a teacher in the public schools.

27 "Members of the administrative staff of the public
28 schools" shall include deans of instruction, deans of men,

29 deans of women, and financial and administrative sec-
30 retaries.

31 "Members of the extension staff" of the public schools
32 shall include every agricultural agent, boys' and girls'
33 club agent, and every member of the agricultural ex-
34 tension staff whose work is not primarily stenographic,
35 clerical, or secretarial.

36 "Retirement system" shall mean the state teachers
37 retirement system provided for in this article.

38 "Present teacher" shall mean any person who was a
39 teacher within the twenty-seven years beginning July
40 first, one thousand nine hundred thirty-four, and whose
41 membership in the retirement system has been con-
42 tinuous.

43 "New entrant" shall mean a teacher who is not a pres-
44 ent teacher.

45 "Present member" shall mean a present teacher who
46 is a member of the retirement system.

47 "Total service" shall mean all service as a teacher
48 while a member of the retirement system since last
49 becoming a member and, in addition thereto, his credit
50 for prior service, if any.

51 "Prior service" shall mean all service as a teacher
52 completed prior to July first, one thousand nine hundred
53 forty-one, and all service of a present member who was
54 employed as a teacher, and did not contribute to retire-
55 ment account because he was legally ineligible for mem-
56 bership during such service.

57 "Average final salary" shall mean the average annual
58 salary earned as a teacher during the last fifteen years
59 of prior service, including military service, as provided
60 herein, or if prior service is less than fifteen years, the
61 average annual salary for that period. If the records for
62 determining each annual salary needed cannot reason-
63 ably be established by the retirement board, then the
64 term shall mean the average annual salary of the teacher
65 for years for which records are available.

66 "Accumulated contributions" shall mean all deposits
67 and all deductions from the earnable compensation of

68 a contributor minus the total of all supplemental fees
69 deducted from his compensation.

70 "Regular interest" shall mean interest at three per-
71 cent compounded annually, or a higher earnable rate
72 if approved by the retirement board.

73 "Refund interest" shall mean the interest on refunds
74 of the accumulated contributions and deposits payable
75 to former members or to the beneficiaries of deceased
76 members, as provided in this article. The rate for re-
77 fund interest shall be the average annual rate of interest,
78 calculated to one decimal place, earned on retirement
79 board investments in effect at the end of the fiscal year
80 for which the interest is due, according to the sworn
81 statement of the fund custodian required by section
82 nineteen of this article.

83 "Employer" shall mean the agency of and within the
84 state which has employed or employs a member.

85 "Contributor" shall mean a member of the retirement
86 system who has an account in the teachers accumula-
87 tion fund.

88 "Beneficiary" shall mean the recipient of annuity pay-
89 ments made under the retirement system.

90 "Refund beneficiary" shall mean the estate of a de-
91 ceased contributor, or such person as he shall have
92 nominated as beneficiary of his contributions by written
93 designation duly executed and filed with the retirement
94 board.

95 "Earnable compensation" shall mean the full com-
96 pensation actually received by members for service as
97 teachers whether or not a part of such compensation
98 is received from other funds, federal or otherwise, than
99 those provided by the state or its subdivisions. Allow-
100 ances from employers for maintenance of members
101 shall be deemed a part of earnable compensation of such
102 members.

103 "Annuities" shall mean the annual retirement pay-
104 ments for life granted beneficiaries in accordance with
105 this article.

106 "Member" shall mean a member of the retirement
107 system.

108 "Public schools" shall mean all publicly supported
109 schools, including normal schools, colleges, and univer-
110 sities in this state.

111 "Deposit" shall mean a voluntary payment to his ac-
112 count by a member.

113 The masculine gender shall be construed so as to
114 include the feminine.

115 Age in excess of seventy years shall be deemed to
116 be seventy years.

§18-7A-14. Contributions by members.

1 At the end of each month every member of the re-
2 tirement system shall contribute six percent of his
3 monthly earnable compensation to the retirement board:
4 *Provided*, That in no case shall the contribution of any
5 member employed by the West Virginia board of regents
6 at an institution of higher education under its control,
7 exceed two hundred eighty-eight dollars in any fiscal
8 year.

9 Such contributions shall be deemed to include the
10 annual supplementary fee of the contributor, determined
11 as hereinafter provided, which fee shall be used to help
12 finance the additional retirement benefit provided for
13 in subdivision (e) of Plan A of section twenty-six of
14 this article. Annually, the contributions of each mem-
15 ber, minus his supplementary fee, shall be credited to
16 his account in the teachers accumulation fund. The
17 contributions shall be deducted from the salaries of the
18 members as herein prescribed, and every member shall
19 be deemed to have given his consent to such deduc-
20 tions. No deductions, however, shall be made from
21 the earnable compensation of any teacher who retired
22 because of age or service, and then resumed service as
23 a teacher.

24 The retirement board shall each year determine to
25 the nearest dollar the amount of the supplementary fee
26 to be paid by each member, so that the sum of such
27 fees paid by all members shall be sufficient to defray
28 one half of the cost of the retirement benefit provided
29 for in subdivision (e) of Plan A of section twenty-six
30 of this article. The amount so fixed shall not exceed

31 twenty dollars, nor shall it in any case exceed one sixth
32 of the annual contribution of the member. All supple-
33 mentary fees shall be 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
38 shall be credited to the employers accumulation fund,
39 from which fund an amount equaling annually the
40 supplementary fees of members shall be transferred to
41 the 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
45 full discharge of the employer's contractual obligation
46 as to 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
50 and other data needed by the retirement board. Upon
51 notice from the retirement board to the employer that
52 a contributor has failed to file such forms as prescribed,
53 the employer shall withhold the salary of the contrib-
54 utor until the needed form is filed with the retirement
55 board.

§18-7A-16. Transfer of appropriations.

1 The retirement board, on receipt of contributions from
2 teachers deducted and remitted by employers as pro-
3 vided in the preceding section, shall make requisition
4 on the state auditor for an amount equaling seventy-
5 five percent of such contributions. On receipt of the
6 requisitions duly certified, the state auditor shall transfer
7 the amount so requisitioned from the general state reve-
8 nue fund to the employers accumulation fund, such
9 transfers not to exceed the amount appropriated for the
10 employers accumulation fund.

11 At the beginning of each quarter the governor shall
12 transfer to the benefit fund one fourth of the annual
13 appropriations therefor.

§18-7A-26. Computation of annuities.

1 Annuitants whose annuities were approved by the re-
2 tirement board prior to July first, one thousand nine
3 hundred sixty-three, shall be paid the annuities which
4 were approved by the retirement board. Annuities ap-
5 proved by the board after the effective date of this ar-
6 ticle (July 1, 1970) shall 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
14 to the time of his retirement, with regular interest;

15 (b) The actuarial equivalent of the contributions of the
16 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,
20 an allowance of one and one-half percent of the mem-
21 ber's average final salary multiplied by the number of
22 years of prior service credited to him;

23 (d) The actuarial equivalent of the amounts that would
24 have accumulated under subdivisions (a) and (b) of
25 Plan A, if the member had contributed to his individual
26 account until he was fifty years old, at the annual rate
27 of his past actual contributions, but this subdivision shall
28 apply only as additional income to members who qual-
29 ify for disability retirement before they are fifty years
30 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
34 allowances 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 effec-

39 tive on and after July first, one thousand nine hundred
40 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 sal-
46 ary;

47 (2) Average final salary for this purpose shall in
48 no case exceed two thousand five hundred dollars, nor
49 shall it be less than twelve hundred dollars.

50 Plan B shall be computed as follows:

51 (a) Two percent of the member's average salary mul-
52 tiplied by his total service credit as a teacher. In this
53 paragraph "average salary" shall mean the average of
54 the highest annual salaries received by the member dur-
55 ing any five years contained within his last fifteen years
56 of total service credit: *Provided*, That the highest an-
57 nual salary used in this calculation for members em-
58 ployed by the West Virginia board of regents at insti-
59 tutions of higher education under its control, shall be
60 four thousand eight hundred dollars;

61 (b) The actuarial equivalent of the deposits of the
62 member in his individual account up to the time of
63 his retirement, with regular interest.

64 The disability annuities of all teachers retired for
65 disability 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 pay-
75 ments. In computing such monthly payments, frac-
76 tions of a cent shall be deemed a cent. Such monthly
77 payments shall cease with the payment for the month
78 within which the beneficiary dies, and shall begin with

79 the payment for the month succeeding the month with-
80 in which the annuitant became eligible under this arti-
81 cle for the annuity granted; in no case, however, shall
82 an annuitant receive more than four monthly payments
83 which are retroactive after the board receives his appli-
84 cation for annuity.

85 In case the retirement board receives data affecting
86 the approved annuity of a retired teacher, the annuity
87 shall be changed in accordance with such data, the
88 change being effective with the payment for the month
89 within which the board received the new data.

90 An annuity application shall be canceled immedi-
91 ately if the applicant dies before the retirement board
92 approves 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 48

(House Bill No. 677—By Mr. Speaker, Mr. Boiarsky, and Mr. Lohr)

[Passed February 12, 1970; in effect July 1, 1970. 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-d, 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-d, to read as follows:

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.**§18-7A-26d. 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 July one, one
4 thousand nine hundred seventy, shall receive, upon appli-
5 cation, an amount equal to twenty-five percent of his
6 present retirement allowance.

CHAPTER 49

(House Bill No. 625—By Mr. Speaker, Mr. Boiarsky,
and Mr. Myles)

[Passed February 11, 1970; in effect July 1, 1970. Approved by the Governor.]

AN ACT to amend and reenact section twenty-seven, article two, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to voter registration transfers.

Be it enacted by the Legislature of West Virginia:

That section twenty-seven, 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.**§3-2-27. Registration transfers.**

1 Whenever a voter removes his residence from one place
2 to another within the same county he shall request that
3 the change be made on his registration record. Such
4 request shall be made by filling in, and, if he is able,
5 signing under oath or affirmation the necessary form,
6 which may be procured in person or by mail from the
7 office of the clerk of the county court, or from the regis-
8 trars during the biennial checkup. The form of such
9 notice shall be prescribed by the secretary of state.

10 Upon receipt of such notice the clerk of the county
11 court shall cause the signature thereon to be compared
12 with the signature of the applicant upon his registration
13 card and, if such signatures correspond, shall make entry
14 of such change of residence upon all the registration
15 records and the necessary transfers in the files. If the
16 clerk of the county court is not satisfied as to the genuine-
17 ness of the signature on the notice of change of resi-
18 dence, and if the right of such applicant to register is
19 challenged according to the procedure herein prescribed,
20 such transfers shall not be made.

21 Transfers of the registration record may be made
22 throughout the year except during the thirty days im-
23 mediately preceding any election, and if any voter shall
24 move from one precinct to another within the county
25 within the thirty-day period, he shall, for that election
26 only, vote in the precinct from which he moved. If any
27 voter shall move from one place to another within the
28 precinct in which he is registered, whether within or
29 more than thirty days preceding any election, he shall
30 be permitted to vote in that precinct, and the election
31 commissioners upon request of the registrant shall make
32 entry of such change of residence upon the voter's regis-
33 tration record in accordance with procedures prescribed
34 by the secretary of state.

CHAPTER 50

(House Bill No. 624—By Mr. Speaker, Mr. Boiarsky,
and Mr. Myles)

[Passed February 11, 1970; in effect July 1, 1970. Approved by the Governor.]

AN ACT to amend and reenact article three; and section twenty, article four, all of chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating generally to voting by absentees and the disposition and recording of absent voters' ballots and

particularly to persons eligible to vote absent voters' ballots; absentee voting methods; voting an absent voter's ballot by personal appearance; assistance to a voter in voting an absent voter's ballot by personal appearance; voting an absent voter's ballot by mail; assistance to a voter in voting an absent voter's ballot by mail; delivery of absent voters' ballots, forms and supplies to polling places; disposition and counting of absent voters' ballots at the polling places; voting in person after having received and after having voted an absent voter's ballot; challenging of absent voters' ballots; preparation, number and handling of absent voters' ballots; rules, regulations, orders, instructions, forms, lists and records pertaining to absentee voting; absentee voting in municipal elections; recording and disposition of absent voters' ballots in voting machine counties; and providing penalties for certain violations.

Be it enacted by the Legislature of West Virginia:

That article three; and section twenty, article four, all of chapter 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

3. Voting by Absentees.

4. Voting Machines.

ARTICLE 3. VOTING BY ABSENTEES.

- §3-3-1. Persons eligible to vote absent voters' ballots.
- §3-3-2. Absentee voting methods.
- §3-3-2a. Voting booths to be provided by the clerk.
- §3-3-3. Voting an absent voter's ballot by personal appearance.
- §3-3-4. Assistance to voter in voting an absent voter's ballot by personal appearance.
- §3-3-5. Voting an absent voter's ballot by mail.
- §3-3-6. Assistance to voter in voting an absent voter's ballot by mail.
- §3-3-7. Delivery of absent voters' ballots to polling places.
- §3-3-8. Disposition and counting of absent voters' ballots at the polling places.
- §3-3-9. Voting in person after having received and after having voted an absent voter's ballot.
- §3-3-10. Challenging of absent voters' ballots.
- §3-3-11. Preparation, number and handling of absent voters' ballots.
- §3-3-12. Rules, regulations, orders, instructions, forms, lists and records pertaining to absentee voting.
- §3-3-13. Absentee voting in municipal elections.

§3-3-1. Persons eligible to vote absent voters' ballots.

1 The following persons who are duly registered and
2 otherwise qualified to vote may vote an absent voter's
3 ballot in any primary, general or special election in
4 accordance with the provisions of this article:

5 (1) Any person who by reason of physical disabil-
6 ity, illness or injury will be unable to vote in person
7 at the polls in such election.

8 (2) Any person who is (a) a member of the armed
9 forces while in the active service, and his spouse and
10 dependents, or (b) a member of the merchant marine
11 of the United States, and his spouse and dependents,
12 or (c) a citizen of the United States temporarily resid-
13 ing outside the territorial limits of the United States and
14 the District of Columbia and his spouse and dependents
15 when residing with or accompanying him.

16 (3) Any person, other than a person meeting the
17 qualifications described in subdivision (2), who is re-
18 quired to be absent from the county in which he is regis-
19 tered to vote during the entire time the polls are open
20 in such election.

21 (4) Any person who has been appointed to serve as
22 an election commissioner or poll clerk in a precinct other
23 than the one in which he is registered to vote.

§3-3-2. Absentee voting methods.

1 An absent voter's ballot may be voted by mail or by
2 personal appearance at the office of the clerk of the circuit
3 court as provided in this section.

4 Any person described in subdivisions (1), (2) and
5 (4) of section one of this article may vote an absent
6 voter's ballot by mail; and any person described in sub-
7 division (3) of section one of this article may vote an
8 absent voter's ballot by mail if (a) his application for
9 an absent voter's ballot directs that the absent voter's
10 ballot be mailed to an out-of-county address, (b) the
11 envelope in which his absent voter's ballot is mailed is
12 postmarked at an address outside the county, and (c)
13 he is required to be absent from the county in which he
14 is registered to vote during regular business hours of the

15 office of the clerk of the circuit court of said county
16 throughout the period, or throughout the remainder of
17 the period, of voting an absent voter's ballot by personal
18 appearance at said clerk's office.

19 Any person described in subdivisions (2), (3) and (4)
20 of section one of this article, and any person described
21 in subdivision (1) of section one of this article whose
22 physical disability on the date of the election is antici-
23 pated by reason of commitment to a hospital, institution
24 or other confinement for childbirth or other medical
25 reasons, may vote an absent voter's ballot by personal
26 appearance at the office of the clerk of the circuit court.

§3-3-2a. Voting booths to be provided by the clerk.

1 Throughout the period during which absent voter
2 ballots may be voted in the clerk's office as provided
3 elsewhere in this article, the clerk shall provide or main-
4 tain in his office one or more booths or compartments,
5 each containing a table, counter or shelf, and furnished
6 with proper supplies for preparing ballots, at or in which
7 voters may conveniently prepare their ballots, so that
8 in the preparation thereof they may be secure from the
9 observation of others.

§3-3-3. Voting an absent voter's ballot by personal appearance.

1 A person desiring to vote an absent voter's ballot by
2 personal appearance may appear during regular business
3 hours at the office of the clerk of the circuit court of
4 the county in which he is registered to vote not more
5 than fifteen days before the election and on any day
6 thereafter up to and including the Saturday next pre-
7 ceding the date of the primary or general election or,
8 in the case of special elections, up to and including the
9 third day next preceding the day of any such special
10 election (in computing such third day, the day of con-
11 ducting the special election shall be excluded), and upon
12 oral request receive an application for an official absent
13 voter's ballot or ballots to be voted at such election,
14 which application shall be prescribed by the secretary of
15 state and shall be in substantially the following form:

16 APPLICATION FOR VOTING AN ABSENT
17 VOTER'S BALLOT BY PERSONAL APPEARANCE
18 KNOWING THAT I CAN BE FINED NOT MORE
19 THAN ONE THOUSAND DOLLARS OR IM-
20 PRISONED IN THE COUNTY JAIL FOR A PERIOD
21 OF NOT MORE THAN ONE YEAR OR BOTH SUCH
22 FINE AND IMPRISONMENT FOR KNOWINGLY MAK-
23 ING A FALSE STATEMENT OR REPRESENTATION
24 HEREIN, I, _____, hereby declare
25 that I am now, or will have been a resident of the state of
26 West Virginia for twelve months, and of the county of
27 _____ for sixty days, next preceding
28 the date of the ensuing election to be held on the _____ day
29 of _____, 19 ____; that I now reside at _____,
30 _____ (give full address)
31 in the magisterial district of _____,
32 in said county; that I am a duly qualified voter entitled
33 to vote in such election; that I am registered in the
34 precinct of my residence as provided by law; that I am
35 registered as a _____;
36 (state political party if ballot is for primary election)
37 and that (strike out numbered paragraphs not applicable
38 and complete the numbered paragraph which is ap-
39 plicable):
40 (1) I expect to be absent from the aforementioned
41 county in which I am registered to vote during the en-
42 tire time the polls are open in such election, and I am
43 (check one applicable):
44 ☐ A member of the armed forces in the active service.
45 ☐ A spouse or dependent of a member of the armed
46 forces in the active service.
47 ☐ A member of the merchant marine of the United
48 States.
49 ☐ A spouse or dependent of a member of the mer-
50 chant marine of the United States.
51 ☐ A citizen of the United States temporarily residing
52 outside the territorial limits of the United States and the
53 District of Columbia.
54 ☐ A spouse or dependent residing with or accompany-
55 ing a citizen of the United States temporarily residing

56 outside the territorial limits of the United States and
57 the District of Columbia.

58 (2) I am required to be absent from the aforemen-
59 tioned county in which I am registered during the entire
60 time the polls are open in such election for the reason
61 or reasons hereafter stated, and I am not in any of the
62 categories referred to in paragraph (1) above:.....

63
64 (here state specific reason or reasons for required absence)

65 (3) I anticipate commitment to a hospital, institution
66 or other confinement on or about the ____ day of
67, 19....., for the following medical reasons
68 , as
69 evidenced below by the statement of a duly licensed
70 physician or chiropractor, and by reason thereof will not
71 be able to vote in person at the polls in such election.

72 (4) I have been appointed.....
73

74 (specify whether an election commissioner or poll clerk)
75 in precinct no. in said election, which precinct
76 is not the precinct in which I am registered to vote.

77 In consideration of the foregoing qualifications, I here-
78 by make application for an official absent voter's ballot
79 (or ballots if more than one are to be used) to be voted
80 by me at such election.

81 I hereby declare, under the penalties for false swearing
82 as provided in section three, article nine, chapter three
83 of the code of West Virginia, one thousand nine hundred
84 thirty-one, as amended, that the statements and declara-
85 tions contained in this application are true and correct
86 to the best of my knowledge and belief.

87
88 Signature of Applicant
89 (or in case the applicant is illiterate he
90 shall make his mark and have it wit-
91 nessed on the following lines:)

92
93 Mark of Applicant

94
95 Signature of Witness

96 If the person applying for an absent voter's ballot by
97 personal appearance be unable to sign his application
98 because of illiteracy, he shall make his mark on the
99 signature line above provided for an illiterate applicant
100 which mark shall be witnessed.

101 The following declaration must be completed and
102 signed if the reason specified in the above application for
103 being unable to vote in person at such election is antici-
104 pated commitment to a hospital, institution or other con-
105 finement for medical reasons:

106 DECLARATION OF PHYSICIAN (CHIROPRACTOR)

107 I, _____, hereby
108 declare that I am a physician (chiropractor), duly li-
109 censed to practice in the state of _____;
110 that I last examined _____,
111 the applicant whose signature appears on the application
112 above on the ____ day of _____, 19____;
113 and that in my opinion said applicant will, because of
114 _____

115 (state medical reasons)
116 be committed to _____,
117 (state hospital, institution or other confinement)
118 on or about the ____ day of _____, 19____,
119 and will because of such reasons not be able to go to
120 the polls on the ____ day of _____, 19____,
121 the date of the election.

122 _____
123 Signature of Physician (Chiropractor)

124 The application shall be completed by the applicant in
125 his own handwriting, or in the handwriting of the witness
126 to his mark in the event of illiteracy, in the office of
127 the clerk of the circuit court; in no event shall the ap-
128 plicant remove an application for voting an absent voter's
129 ballot by personal appearance from said office except
130 when such is necessary to have a physician or chiro-
131 practor to complete and sign the declaration of a physi-
132 cian or chiropractor when such is required.

133 Immediately upon receipt of a completed application
134 for voting an absent voter's ballot by personal appearance,
135 the clerk of the circuit court shall determine (1)

136 whether such application has been completed as required
137 by law; (2) whether he has evidence that any of the
138 statements or declarations contained in the application
139 are not true; (3) whether the applicant is in fact duly
140 registered in the precinct of his residence as provided by
141 law and insofar as registration is concerned would be per-
142 mitted to vote at the polls in such election. If the de-
143 termination of the clerk of the circuit court as to (1)
144 or (3) is in the negative or as to (2) is in the affirma-
145 tive, the clerk shall, if the applicant insists, permit
146 the applicant to vote an absent voter's ballot by personal
147 appearance, but the clerk shall challenge the absent
148 voter's ballot on the basis of such determination.

149 Upon determination by the clerk of the circuit court
150 that the applicant is entitled to vote an absent voter's
151 ballot by personal appearance or in case the applicant
152 determines to vote an absent voter's ballot challenged
153 by the clerk of the circuit court as provided in the im-
154 mediately preceding paragraph, the clerk of the circuit
155 court shall hand to him the following absentee voting
156 supplies:

157 (a) One official absent voter's ballot (or ballots if
158 more than one are to be used) which has been prepared
159 in accordance with law for use in such election; such
160 ballot in the case of a primary election shall be of the
161 party of applicant's affiliation as indicated on his reg-
162 istration record or in case the applicant is not found to
163 be registered by the clerk but insists upon voting a chal-
164 lenged ballot, the ballot shall be of the party designated
165 by the applicant in his application.

166 (b) One Absent Voter's Ballot Envelope No. 1, un-
167 sealed, which shall have no writing thereon except the
168 designation "Absent Voter's Ballot Envelope No. 1".

169 (c) One Absent Voter's Ballot Envelope No. 2, un-
170 sealed.

171 The voter shall thereupon retire alone to the booth
172 or compartment provided in said clerk's office for voting
173 absent voters' ballots and there mark his ballot: *Pro-*
174 *vided*, That the voter may have assistance in voting his
175 absent voter's ballot in accordance with the provisions

176 of the next succeeding section of this article. After the
177 voter has voted his absent voter's ballot, he shall (1) en-
178 close the same in Absent Voter's Ballot Envelope No. 1,
179 and seal that envelope; (2) enclose sealed Absent Voter's
180 Ballot Envelope No. 1 in Absent Voter's Ballot Envelope
181 No. 2 and seal that envelope; (3) complete and sign the
182 forms, if any, on Absent Voter's Ballot Envelope No. 2 ac-
183 cording to the instructions thereon; and (4) transmit pos-
184 session of sealed Absent Voter's Ballot Envelope No. 2 to
185 the clerk of the circuit court.

186 Upon receipt of such sealed envelope, the clerk shall
187 (1) enter onto the envelope such information as may
188 be required of him according to the instructions thereon;
189 (2) enter his challenge, if any, to the absent voter's
190 ballot; (3) enter the required information into a record
191 of persons making an application for and voting an ab-
192 sent voter's ballot by personal appearance or by mail
193 (the form of which record and the information to be
194 entered thereon shall be prescribed by the secretary of
195 state); and (4) place such sealed envelope in a secure
196 location in his office, there to remain until delivered to
197 the polling place in accordance with the provisions of
198 this article or in case of a challenged ballot to the county
199 court sitting as a board of canvassers.

**§3-3-4. Assistance to voter in voting an absent voter's ballot
by personal appearance.**

1 No voter shall receive any assistance in voting an
2 absent voter's ballot in the office of the clerk of the
3 circuit court unless (1) (a) his registration record indi-
4 cates that because of illiteracy, he is unable to read the
5 names on the ballot, or that he has a physical disability
6 which renders him unable to see or mark the ballot,
7 the exact nature of the physical disability being re-
8 corded on the registration record, or (b) he shall make
9 an affidavit at the time he makes application for an ab-
10 sent voter's ballot, the form of which shall be prescribed
11 by the secretary of state, that because of illiteracy he is
12 unable to read the names on the ballot, or that he has
13 a physical disability which renders him unable to see
14 or mark the ballot, the exact nature of the physical

15 disability being stated therein; and (2) the clerk of
16 the circuit court determines that he is illiterate or suf-
17 fers from the physical disability stated on his registra-
18 tion record or in his affidavit and that such physical
19 disability renders him then unable to see or mark the
20 ballot.

21 Any voter determined by the clerk of the circuit court
22 to be qualified to receive assistance in voting an absent
23 voter's ballot under the provisions of this section shall
24 be permitted by such clerk to select any person who
25 is a registered voter in the county in which the voter
26 is registered to assist in voting such ballot: *Provided*,
27 That no person shall provide assistance to more than
28 two voters in any election in voting an absent voter's
29 ballot.

30 Any voter who requests assistance in voting an absent
31 voter's ballot but who is determined by the clerk of the
32 circuit court not to be qualified for such assistance under
33 the provisions of this section shall nevertheless be per-
34 mitted to vote a challenged absent voter's ballot with
35 the assistance of any person herein authorized to ren-
36 der assistance. The clerk of the circuit court shall in
37 such case challenge the absent voter's ballot on the
38 basis of such determination.

39 Any one or more of the election commissioners or poll
40 clerks in the precinct to which an absent voter's ballot
41 has been sent may challenge such ballot on the ground
42 that the voter thereof received assistance in voting it
43 when in his or their opinion (1) either the registration
44 record or affidavit of the person who received the assist-
45 ance in voting the absent voter's ballot does not indi-
46 cate a legally sufficient reason for such assistance, or
47 (2) the person who received the assistance in voting
48 did not make an affidavit when required by this sec-
49 tion to qualify for assistance, or (3) the person who
50 provided the assistance in voting did not make an affi-
51 davit as required by this section, or (4) the person who
52 received assistance in voting is not so illiterate as to have
53 been unable to read the names on the ballot or that he
54 did not have such a physical disability as to have been

55 unable to see or mark the absent voter's ballot. The
56 election commissioner or poll clerk or commissioners
57 or poll clerks making such challenge shall enter the
58 challenge and reason therefor on the form and in the
59 manner prescribed or authorized by this article.

60 Before entering the voting booth or compartment,
61 the person who intends to provide a voter assistance
62 in voting shall make an affidavit, the form of which
63 shall be prescribed by the secretary of state, that he
64 will not in any manner request, or seek to persuade,
65 or induce the voter to vote any particular ticket or for
66 any particular candidate or for or against any public
67 question, and that he will not keep or make any memo-
68 randum or entry of anything occurring within the vot-
69 ing booth or compartment, and that he will not, directly
70 or indirectly, reveal to any person the name of any
71 candidate voted for by the voter, or which ticket he had
72 voted, or how he had voted on any public question, or
73 anything occurring within the voting booth or compart-
74 ment or voting machine booth, except when required
75 pursuant to law to give testimony as to such matter in
76 a judicial proceeding.

77 In accordance with instructions issued by the secre-
78 tary of state, the clerk of the circuit court shall pro-
79 vide a form entitled "List of Assisted Voters," the form
80 of which list shall likewise be prescribed by the secre-
81 tary of state, which list shall be divided into two parts.
82 Part A shall be entitled "Unchallenged Assisted Voters"
83 and Part B shall be entitled "Challenged Assisted Voters."
84 Under Part A the clerk shall enter the name of each
85 voter receiving unchallenged assistance in voting an
86 absent voter's ballot, the address of the voter assisted,
87 the nature of the disability which qualified the voter
88 for assistance in voting an absent voter's ballot, the fact
89 that such voter made and subscribed to the oath re-
90 quired by this section, the name of the person provid-
91 ing the voter with assistance in voting an absent voter's
92 ballot, the fact that the person rendering the assistance
93 in voting made and subscribed to the oath required by
94 this section, and the signature of the clerk of the cir-
95 cuit court certifying to the fact that he had determined

96 that the voter who received assistance in voting an absent
97 voter's ballot was qualified to receive such assistance
98 under the provisions of this section. Under Part B the
99 clerk shall enter the name of each voter receiving chal-
100 lenged assistance in voting, the address of the voter
101 receiving such challenged assistance, the reason for the
102 challenge, and the name of the person providing the
103 challenged voter with assistance in voting. At the close
104 of the period provided for voting an absent voter's bal-
105 lot by personal appearance, the clerk of the circuit court
106 shall make and subscribe to an oath on such list that the
107 list is correct in all particulars; if no voter shall have
108 been assisted in voting an absent voter's ballot as here-
109 in provided, the clerk of the circuit court shall likewise
110 make and subscribe to an oath of that fact on such list.
111 The "List of Assisted Voters" shall be available for pub-
112 lic inspection in the office of the clerk of the circuit court
113 during regular business hours throughout the period
114 provided for voting an absent voter's ballot by personal
115 appearance, and unless otherwise directed by the secre-
116 tary of state, (the clerk of the circuit court) shall trans-
117 mit such list, together with the affidavits, applications and
118 absent voters' ballots, to the precincts on election day.

119 Following the election, the affidavits required by this
120 section from assisted voters and from persons providing
121 assistance in voting, together with the "List of Assisted
122 Voters", shall be returned by the election commissioners
123 to the clerk of the county court along with the elec-
124 tion supplies, records and returns, who shall make such
125 oaths and list available for public inspection and who
126 shall preserve the same until their destruction or other
127 disposition is authorized or directed by the secretary of
128 state.

129 Any person making an affidavit required under the
130 provisions of this section who shall therein knowingly
131 swear falsely, or any person who shall counsel, or advise,
132 aid or abet another in the commission of false swear-
133 ing under this section, shall be guilty of a misdemeanor,
134 and, upon conviction thereof, shall be fined not more than
135 one thousand dollars or imprisoned in the county jail

136 for a period of not more than one year, or both such fine
137 and imprisonment.

138 Any person who provides a voter assistance in voting an
139 absent voter's ballot in the office of the clerk of the cir-
140 cuit court who is not qualified or permitted by this sec-
141 tion to provide such assistance shall be guilty of a mis-
142 demeanor, and, upon conviction thereof, shall be fined
143 not more than one thousand dollars or imprisoned in the
144 county jail for a period of not more than one year, or both
145 such fine and imprisonment.

146 Any clerk of the circuit court, election commissioner
147 or poll clerk who authorizes or allows a voter to receive
148 or to have received unchallenged assistance in voting an
149 absent voter's ballot when such voter is known to the
150 clerk of the circuit court or election commissioner or poll
151 clerk not to be or have been authorized by the provisions
152 of this section to receive or to have received assistance in
153 voting shall be guilty of a misdemeanor, and, upon con-
154 viction thereof, shall be fined not more than one thousand
155 dollars or imprisoned in the county jail for a period of
156 not more than one year, or both such fine and imprison-
157 ment.

158 The term "assistance in voting" as used in this section
159 shall mean assistance in physically marking the official
160 absent voter's ballot for a voter, or reading or directing
161 the voter's attention to any part of the official absent
162 voter's ballot.

163 The term "physical disability" as used in this section
164 shall mean only blindness or such degree of blindness as
165 will prevent the voter from seeing the names on the bal-
166 lot, or amputation of both hands, or such disability of
167 both hands that neither can be used to make cross marks
168 on the absent voter's ballot.

§3-3-5. Voting an absent voter's ballot by mail.

1 A person desiring to vote an absent voter's ballot by
2 mail, may, not more than sixty days prior to the date of
3 any primary, general or special election, make application
4 by mail to the clerk of the circuit court of the county
5 in which he is registered to vote for an official absent

6 voter's ballot or ballots to be voted at such election, ex-
7 cept that the clerk of the circuit court shall not honor any
8 such application for an absent voter's ballot received
9 by him after the fourth day next preceding the date
10 of the election. In computing such fourth day, the day
11 of conducting the election shall be excluded. The
12 application to be used by persons who wish to vote an
13 absent voter's ballot by mail shall be prescribed by the
14 secretary of state and shall be in substantially the fol-
15 lowing form:

16 APPLICATION FOR VOTING AN ABSENT
17 VOTER'S BALLOT BY MAIL

18 KNOWING THAT I CAN BE FINED NOT MORE
19 THAN ONE THOUSAND DOLLARS OR IMPRISONED
20 IN THE COUNTY JAIL FOR A PERIOD OF NOT MORE
21 THAN ONE YEAR OR BOTH SUCH FINE AND IM-
22 PRISONMENT FOR KNOWINGLY MAKING A FALSE
23 STATEMENT OR REPRESENTATION HEREIN, I,
24 _____, hereby declare that I am now,
25 or will have been a resident of the state of West Virginia
26 for twelve months, and of the county of _____, for
27 sixty days, next preceding the date of the ensuing election
28 to be held on the _____ day of _____, 19 ____;
29 that I now reside at _____

30 (give full address)

31 in the magisterial district of _____
32 in said county; that I am a duly qualified voter entitled
33 to vote in such election; that I am registered in the
34 precinct of my residence as provided by law; that I am
35 registered as a _____;

36 (state political party if ballot is for pri-
37 mary election)

38 and that (strike out the numbered paragraphs not appli-
39 cable and complete the numbered paragraph which is
40 applicable):

41 (1) I will be unable to vote in person at the polls on
42 election day because of _____,

43 (state particulars of physical dis-
44 ability, illness or injury)

45 as evidenced below by the statement of a duly licensed
46 physician or chiropractor.

47 (2) I anticipate commitment to a hospital, institution
48 or other confinement on or about the day of
49, 19....., for the following medi-
50 cal reasons
51 as evidenced below by the statement of a duly licensed
52 physician or chiropractor, and by reason thereof will
53 not be able to vote in person at the polls in such elec-
54 tion.

55 (3) I expect to be absent from the aforementioned
56 county in which I am registered to vote during the en-
57 tire time the polls are open in such election, and I am
58 (check one applicable):

59 ☐ A member of the armed forces in the active ser-
60 vice.

61 ☐ A spouse or dependent of a member of the armed
62 forces in active service.

63 ☐ A member of the merchant marine of the United
64 States.

65 ☐ A spouse or dependent of a member of the mer-
66 chant marine of the United States.

67 ☐ A citizen of the United States temporarily re-
68 siding outside the territorial limits of the United States
69 and the District of Columbia.

70 ☐ A spouse or dependent residing with or accom-
71 panying a citizen of the United States temporarily re-
72 siding outside the territorial limits of the United States
73 and the District of Columbia.

74 (4) I am required to be absent from the aforemen-
75 tioned county in which I am registered during the en-
76 tire time the polls are open in such election for the rea-
77 son or reasons hereafter stated; I am not in any of the
78 categories referred to in paragraph (3) above; I am
79 required to be absent from said county during regular
80 business hours of the clerk of the circuit court of said
81 county throughout the period or throughout the re-
82 mainder of the period of voting an absent voter's ballot
83 by personal appearance at said office.

84
85 (state reason or reasons for required absence from
86 county on election day)

87 (5) I have been appointed.....
88 (state whether an election commissioner or
89 poll clerk)
90 in precinct no. in said election, which pre-
91 cinct is not the precinct in which I am registered to
92 vote.

93 In consideration of the foregoing qualifications, I
94 hereby make application for an official absent voter's
95 ballot (or ballots if more than one are to be used) to
96 be voted by me at such election, and request that such
97 ballot or ballots be mailed to me at the following ad-
98 dress:

99 (give full address for mailing purposes)

100 (Complete the following paragraph only if assistance
101 will be needed in voting absent voter's ballot):

102 I further declare that I will need assistance in vot-
103 ing an absent voter's ballot for the following reasons

104
105 (specify illiteracy or exact nature of physical disability,
106
107 illness or injury)

108 I hereby declare under the penalties for false swear-
109 ing as provided in section three, article nine, chapter
110 three of the code of West Virginia, one thousand nine
111 hundred thirty-one, as amended, that the statements
112 and declarations contained in this application are true
113 and correct to the best of my knowledge and belief.

114
115 Signature of Applicant
116 (or in case the applicant is illiterate he
117 shall make his mark and have it wit-
118 nessed on the following lines:)

119
120 Mark of Applicant

121
122 Signature of Witness

123 If the person applying for an absent voter's ballot
124 by mail be unable to sign his application because of
125 illiteracy, he shall make his mark on the signature line

126 above provided for an illiterate applicant which mark
127 shall be witnessed.

128 The following declaration must be completed and signed
129 if the reason specified in the above application for being
130 unable to vote in person at such election is physical dis-
131 ability, illness or injury, or is anticipated confinement
132 in a hospital, institution or other place for medical rea-
133 sons.

134 STATEMENT OF PHYSICIAN (CHIROPRACTOR)

135 I, _____, hereby de-
136 clare that I am a physician (chiropractor) duly licensed
137 to practice in the state of _____;
138 that I last examined _____,
139 the applicant whose signature appears on the application
140 above on the _____ day of _____, 19____;
141 and that in my opinion (strike out numbered paragraph
142 not applicable and complete the numbered paragraph
143 which is applicable).

144 (1) The applicant will, because of _____
145 (state particulars of physical disability,
146 _____, be unable to go to the
147 illness or injury)
148 polls on the _____ day of _____, 19____,
149 the date of the election.

150 (2) The applicant will, because of _____
151 (state for what
152 _____, be confined in _____,
153 medical reasons) (specify hospital,
154 _____, on or about the _____
155 institution or other place)
156 day of _____, 19____, and will because of
157 such reasons not be able to go to the polls on the _____
158 day of _____, 19____, the date of the elec-
159 tion.

160 (Complete the following paragraph if applicant for
161 absent voter's ballot will need assistance in voting
162 such ballot, based upon physical disability, illness
163 or injury.)

164 I am of the further opinion that applicant _____/
165 (will)

166 , because of the aforementioned physical
167 (will not)
168 disability, illness or injury need assistance in voting an
169 absent voter's ballot.

170
171 Signature of Physician (Chiropractor)

172 In lieu of the application for an absent voter's ballot
173 provided above, those persons specified in subdivision (2)
174 of section one of this article may use the application for
175 absentee ballot form recommended by, and issued under
176 authority of, The Federal Voting Assistance Act of 1955,
177 as amended.

178 Upon receipt of a properly completed copy of such
179 form, the clerk of the circuit court shall process the same
180 as he would any other application for an absent voter's
181 ballot by mail. Any such properly completed copy may
182 be returned only to the clerk of the circuit court of the
183 county in which the applicant is a registered voter.

184 Immediately upon receipt of a completed application
185 for voting an absent voter's ballot by mail, the clerk
186 of the circuit court shall determine (1) whether the
187 application for voting such ballot has been completed
188 as required by law; (2) whether he has evidence that
189 any of the statements contained in the application are not
190 true; and (3) whether the applicant is in fact duly reg-
191 istered in the precinct of his residence as provided by
192 law and insofar as registration is concerned would be
193 permitted to vote at the polls in such election. If the
194 determination of the clerk of the circuit court as to (1)
195 or (3) is in the negative or as to (2) is in the affirma-
196 tive, the clerk shall notify the applicant at the time he
197 mails the absent voter's ballot to him that he will chal-
198 lenge the applicant's privilege to vote an absent voter's
199 ballot by mail for reasons which he shall indicate, and
200 upon receipt of the applicant's absent voter's ballot the
201 clerk shall challenge such ballot.

202 Upon determination by the clerk of the circuit court
203 that the applicant is entitled to vote an absent voter's
204 ballot by mail or that the applicant will be permitted
205 to vote an absent voter's ballot by mail with such ballot

206 to be challenged by the clerk, the clerk shall between
207 the thirtieth day and the fourth day next prior to the
208 election in which the absent voter's ballot is to be used
209 mail to the applicant the following absentee voting sup-
210 plies: *Provided*, That the clerk shall not, after the fif-
211 teenth day next prior to such election, mail such ballot
212 to an applicant whose address is shown to be outside the
213 continental limits of the United States:

214 (a) One official absent voter's ballot (or ballots if
215 more than one are to be used) which has been prepared
216 in accordance with law for use in such election; such bal-
217 lot in the case of a primary election shall be of the
218 party of the applicant's affiliation as indicated on his
219 registration card or in the case the applicant is not found
220 to be registered by the clerk, but votes a ballot challenged
221 by the clerk, the clerk shall send to the applicant an
222 absent voter's ballot of the party designated by the appli-
223 cant in his application.

224 (b) One Absent Voter's Ballot Envelope No. 1, un-
225 sealed, which shall have no writing thereon except the
226 designation "Absent Voter's Ballot Envelope No. 1".

227 (c) One Absent Voter's Ballot Envelope No. 2, un-
228 sealed.

229 Upon receipt of an absent voter's ballot by mail, the
230 voter shall mark the ballot: *Provided*, That the voter
231 may have assistance in voting his absent voter's ballot
232 in accordance with the provisions of the next succeeding
233 section of this article.

234 After the voter has voted his absent voter's ballot, he
235 shall (1) enclose the same in Absent Voter's Ballot En-
236 velope No. 1, and seal that envelope, (2) enclose sealed
237 Absent Voter's Ballot Envelope No. 1 in Absent Voter's
238 Ballot Envelope No. 2 and seal that envelope, (3) com-
239 plete and sign the forms, if any, on Absent Voter's
240 Ballot Envelope No. 2 according to the instructions
241 thereon, and (4) mail, postage prepaid, sealed Absent
242 Voter's Ballot Envelope No. 2 to the clerk of the circuit
243 court of the county in which he is registered to vote.

244 Upon receipt of such sealed envelope, the clerk shall
245 (1) enter onto the envelope such information as may

246 be required of him according to the instructions thereon;
247 (2) enter his challenge, if any, to the absent voter's
248 ballot; (3) enter the required information into a record
249 of persons making application for and voting an absent
250 voter's ballot by personal appearance or by mail (the
251 form of which record and the information to be entered
252 therein shall be prescribed by the secretary of state);
253 and (4) place such sealed envelope in a secure location
254 in his office, there to remain until delivered to the polling
255 place in accordance with the provisions of this article
256 or in case of a challenged ballot to the county court
257 sitting as a board of canvassers.

**§3-3-6. Assistance to voter in voting an absent voter's ballot
by mail.**

1 No voter shall receive any assistance in voting an
2 absent voter's ballot by mail unless he shall make a
3 declaration at the time he makes application for an
4 absent voter's ballot that because of illiteracy he is un-
5 able to read the names on the ballot, or that he has a
6 physical disability, illness or injury which renders him
7 unable to see or mark the ballot, the exact nature of
8 the physical disability, illness or injury being stated
9 therein, and in the event assistance in voting is based
10 upon physical disability, illness or injury, a declaration
11 from a physician or chiropractor that because of such
12 physical disability, illness or injury the applicant will
13 need assistance in voting an absent voter's ballot.

14 Upon receipt of an absent voter's ballot by mail, the
15 voter who requires assistance in voting such ballot and
16 who has indicated his need for such assistance and the
17 reasons therefor on his application, and has had the
18 physician's or chiropractor's declaration completed when
19 applicable, may select any person to assist him in
20 voting.

21 The person receiving assistance in voting an absent
22 voter's ballot by mail shall make a declaration either on
23 Absent Voter's Ballot Envelope No. 2, or on a form as
24 may be prescribed by the secretary of state, by whom
25 he was assisted in voting his absent voter's ballot.

26 The term "assistance in voting" as used in this section
27 shall mean assistance in physically marking the official
28 absent voter's ballot for a voter, or reading or directing
29 the voter's attention to any part of the official absent
30 voter's ballot.

§3-3-7. Delivery of absent voters' ballots to polling places.

1 The absent voters' ballots of each precinct, together
2 with the applications therefor, the affidavits made in
3 connection with assistance in voting, and such forms,
4 lists and records as may be designated by the secretary
5 of state, shall be delivered in a sealed carrier envelope
6 to the election commissioner of the precinct at the time
7 he picks up the official ballots and other election sup-
8 plies as provided in section twenty-four, article one of
9 this chapter.

10 An absent voter's ballot shall be delivered by the clerk
11 of the circuit court to the election commissioners of the
12 precinct in which the voter thereof is registered or if
13 not found to be registered to the election commissioner
14 of the precinct in which his residence as stated on the
15 voter's application is located.

16 Absent voters' ballots received after the election com-
17 missioner has picked up the official ballots and other
18 election supplies for the precinct shall be delivered to
19 the election commissioner of the precinct who has been
20 so designated under aforementioned section twenty-four,
21 article one, by the clerk in person, or by messenger,
22 before the closing of the polls, provided such ballots
23 are received by the clerk in time to make such delivery.

§3-3-8. Disposition and counting of absent voters' ballots at the polling places.

1 Immediately after the closing of the polls on election
2 day, and before the operating lever or mechanism of the
3 voting machines (in counties using voting machines)
4 are locked and sealed as provided in section twenty-four,
5 article four of this chapter, the election commissioners
6 and poll clerks of the precinct, in the presence of each
7 other, shall open the carrier envelope in which are en-
8 closed the absent voters' ballots for that precinct.

9 After the carrier envelope has been opened, each of
10 the election commissioners and poll clerks shall examine
11 each of the sealed Absent Voter's Ballot Envelopes No.
12 2 contained therein, as well as the information con-
13 tained thereon, the application for such ballot, the affi-
14 davits, records and lists, if any, made, prepared or au-
15 thorized under the provisions of this article which relate
16 thereto, and make a decision as to each ballot whether
17 a challenge is or is not to be made to such ballot. The
18 appropriate form indicating the challenge shall be com-
19 pleted as to each ballot challenged by one or more of
20 the election commissioners or poll clerks. Each ballot
21 challenged shall remain sealed in Absent Voter's Ballot
22 Envelope No. 2 and be deposited in the box or envelope
23 for challenged ballots.

24 The election commissioners and poll clerks shall next
25 determine whether any challenge has been made to any
26 absent voter's ballot by any registered voter in the county
27 under the provisions of section nine of this article. Each
28 such ballot challenged shall remain sealed in Absent
29 Voter's Ballot Envelope No. 2 and be deposited in the
30 box or envelope for challenged ballots.

31 The election commissioners and poll clerks, in the pres-
32 ence of each other, shall then open, in a manner as not
33 to deface or destroy the information thereon, all of the
34 Absent Voter's Ballot Envelopes No. 2 which contain
35 ballots not challenged and remove therefrom the Absent
36 Voter's Ballot Envelopes No. 1. These envelopes shall
37 then be shuffled and intermingled.

38 The election commissioners and poll clerks, in the
39 presence of each other, shall next open all of the Absent
40 Voter's Ballot Envelopes No. 1 and remove the ballots
41 therefrom. The poll clerks shall write their names on
42 the back of each of such ballots in the same manner as
43 other ballots are required to be endorsed by the poll
44 clerks at precinct voting. The poll clerks shall then in-
45 dicate with the letter "a" in the appropriate place on the
46 registration record the fact that the voter had voted
47 by absent voter's ballot in that election, and shall enter
48 the absent voter's name on the poll book.

49 An election commissioner shall thereupon deposit the
50 absent voters' ballots in the ballot box in those counties
51 not using voting machines. In the counties which have
52 adopted voting machines, the election commissioners
53 shall, before locking and sealing the operating levers
54 or mechanism on the voting machines, record such ballots
55 on the voting machine. Such recording of absent voters'
56 ballots shall be done by one of the election commis-
57 sioners, and the act of casting such votes shall be per-
58 formed in the presence, and under the careful obser-
59 vation and full view, of all election commissioners and
60 poll clerks, and the votes as indicated by voting point-
61 ers fully carries out the intent of the voter as shown
62 by the cross marks on the paper ballots. After the absent
63 voters' ballots have been recorded on the voting ma-
64 chine, they shall be enclosed in a sealed package, prop-
65 erly endorsed, and returned and filed with the state-
66 ment of returns.

**§3-3-9. Voting in person after having received and after hav-
ing voted an absent voter's ballot.**

1 Any person who has applied for and received an ab-
2 sent voter's ballot but has not voted and returned the
3 same to the clerk of the circuit court may vote in person
4 at the polls on election day provided he returns such
5 absent voter's ballot to the election commissioners at
6 the polling place. In such case the absent voter's ballot
7 shall be destroyed by the election commissioners in the
8 presence of the voter, and one of the poll clerks shall
9 make a notation of such fact as directed by instructions
10 issued by the secretary of state. In the event such per-
11 son does not return the absent voter's ballot, he shall
12 have his vote challenged by one or more of the election
13 commissioners or poll clerks.

14 Any person who has voted an absent voter's ballot
15 under authority of subdivision (3) of section one of this
16 article who is present in the county in which he is reg-
17 istered to vote between the opening and closing of the
18 polls on election day, and any person who has voted
19 an absent voter's ballot under authority of subdivision
20 (1) of section one of this article who is or becomes able

21 to vote in person at the polls on election day, shall go
22 to the polling place in the precinct of his residence on
23 election day and vote in person and ask that the absent
24 voter's ballot voted by him be destroyed in his presence.
25 In such case one of the poll clerks shall make a nota-
26 tion of such fact as directed by instructions issued by
27 the secretary of state.

28 In the event a person who has voted an absent voter's
29 ballot votes in person at the polls on election day and
30 fails to notify the election commissioners and poll clerks
31 that he had previously voted an absent voter's ballot
32 in such election and the election commissioners and
33 poll clerks fail to discover such fact at the time of voting
34 in person, they shall, following the closing of the polls,
35 challenge the absent voter's ballot of such person.

36 The absent voter's ballot of any such person described
37 in the second paragraph of this section who fails to go to
38 the polling place in the precinct of his residence on
39 election day and vote in person shall be subject to chal-
40 lenge by any one or more of the election commissioners
41 or poll clerks or by any registered voter in the county
42 who has personal knowledge that such person was either
43 in the county between the opening and closing of the
44 polls on election day or was able to vote in person at
45 the polls on election day, as the case may be: *Provided,*
46 That any such challenge by a registered voter shall be
47 made by affidavit, the form of which shall be prescribed
48 by the secretary of state.

§3-3-10. Challenging of absent voters' ballots.

1 The clerk of the circuit court may challenge an absent
2 voter's ballot on any of the following grounds: (1) That
3 the application for an absent voter's ballot has not been
4 completed as required by law; (2) that any statement
5 or declaration contained in the application for an absent
6 voter's ballot is not true; (3) that the applicant for an
7 absent voter's ballot is not registered to vote in the
8 precinct of his residence as provided by law; (4) that
9 the person voting an absent voter's ballot by personal
10 appearance in his office had assistance in voting such
11 ballot when the person was not qualified for such voting

12 assistance because (a) the affidavit of the person who
13 received such assistance does not indicate a legally suffi-
14 cient reason for such assistance, or (b) the person who
15 received such assistance did not make an affidavit as
16 required by this article, or (c) the person who received
17 such assistance is not so illiterate as to have been unable
18 to read the names on the ballot or that he is not so
19 physically disabled as to have been unable to see or
20 mark the absent voter's ballot; and (5) that the person
21 who voted an absent voter's ballot by mail and received
22 assistance in voting such ballot, was not qualified under
23 the provisions of this article for such assistance.

24 Any one or more of the election commissioners or poll
25 clerks in a precinct may challenge an absent voter's
26 ballot on any of the following grounds: (1) That the
27 application for an absent voter's ballot was not com-
28 pleted as required by law; (2) that any statement or
29 declaration contained in the application for an absent
30 voter's ballot is not true; (3) that the person voting an
31 absent voter's ballot is not registered to vote in the pre-
32 cinct of his residence as provided by law; (4) that the
33 signatures of the person voting an absent voter's ballot
34 as they appear on his registration record, his application
35 for an absent voter's ballot, and the absent voter's ballot
36 envelope are not in the same handwriting; (5) that the
37 absent voter's ballot does not have thereon the official
38 seal of the clerk of the circuit court and all signatures
39 of members of the board of ballot commissioners; (6)
40 that the person voting an absent voter's ballot by per-
41 sonal appearance in the office of the clerk of the circuit
42 court had assistance in voting such ballot when the per-
43 son was not qualified for such assistance because (a)
44 the affidavit of the person who received such assistance
45 does not indicate a legally sufficient reason for such as-
46 sistence, or (b) the person who received such assistance
47 did not make an affidavit as required by this article,
48 or (c) the person who received such assistance is not
49 so illiterate as to have been unable to read the names
50 on the ballot or that he was not so physically disabled
51 as to have been unable to see or mark the absent voter's
52 ballot; (7) that the person voted an absent voter's ballot

53 by mail and received assistance in voting such ballot
54 when not qualified under the provisions of this article
55 for such assistance; (8) that the person who voted the
56 absent voter's ballot voted in person at the polls on elec-
57 tion day; (9) that the person voted an absent voter's
58 ballot under authority of subdivision (3) of section one
59 of this article and is or was present in the county in
60 which he is registered to vote between the opening and
61 closing of the polls on election day; (10) that the person
62 who voted an absent voter's ballot had died before elec-
63 tion day; (11) that the person voted an absent voter's
64 ballot under authority of subdivision (1) of section one
65 of this article and was able to vote at the polls on elec-
66 tion day; and (12) on any other ground or for any rea-
67 son on which or for which the ballot of a voter
68 voting in person at the polls on election day may
69 be challenged.

70 Any registered voter in the county may challenge an
71 absent voter's ballot voted under authority of subdivi-
72 sion (3) of section one of this article on the ground that
73 the voter of such ballot is or was in the county in which
74 he is registered to vote between the opening and closing
75 of the polls on election day and may challenge an absent
76 voter's ballot voted under authority of subdivision (1)
77 of section one of this article on the ground that the
78 voter of such ballot was able to vote at the polls
79 on election day.

80 Forms for, and the manner of, challenging an absent
81 voter's ballot under the provisions of this article shall
82 be prescribed by the secretary of state.

83 Absent voters' ballots challenged by the clerk of the
84 circuit court under the provisions of this article shall
85 be transmitted by the clerk directly to the county court
86 sitting as a board of canvassers; and the absent voters'
87 ballots challenged by the election commissioners, poll
88 clerks and registered voters of the county under the
89 provisions of this article shall not be counted by the
90 election officials but shall be transmitted by them to the
91 county court sitting as a board of canvassers. Action
92 by the board of canvassers on such challenged absent

93 voters' ballots shall be governed by the provisions of
94 section forty-one, article one of this chapter.

§3-3-11. Preparation, number and handling of absent voters' ballots.

1 Absent voters' ballots shall be in all respects like other
2 ballots. Not less than forty-five days prior to the date on
3 which any primary, general or special election is to be
4 held, the clerks of the circuit courts of the several coun-
5 ties shall estimate and determine the number of absent
6 voters' ballots of all kinds which will be required in
7 their respective counties for any such election. The
8 ballots for the election of all officers, or the ratification,
9 acceptance or rejection of any measure, proposition or
10 other public question to be voted on by the voters, shall
11 be prepared and printed under the direction of the board
12 of ballot commissioners constituted as provided in article
13 one of this chapter. The several county boards of ballot
14 commissioners shall prepare and have printed, in such
15 number as they shall determine, such absent voters'
16 ballots as are to be printed under their directions as
17 hereinbefore provided, and such ballots shall be delivered
18 to the clerk of the circuit court of the county not less
19 than thirty days prior to the day of the election at
20 which they are to be used. Before any ballot is mailed
21 or delivered the clerk of the circuit court shall affix his
22 official seal and he and the other members of the board
23 of ballot commissioners shall place their signatures
24 near the lower left-hand corner on the back thereof. An
25 absent voter's ballot not containing such seal and sig-
26 natures shall be invalid and shall be subject to chal-
27 lenge by any election commissioner or poll clerk.

28 The clerk of the circuit court shall be primarily respon-
29 sible for the preparation, mailing, receiving, delivering
30 and otherwise handling of all absent voters' ballots.
31 He shall keep such record, as may be prescribed by the
32 secretary of state, of all ballots so delivered for the pur-
33 pose of absentee voting, as well as all ballots, if any,
34 marked before him, and shall deliver to the commissioner
35 of election to whom the ballots for the precinct are
36 delivered and at the time of the delivery of such ballots

37 a certificate stating the number of ballots delivered or
38 mailed to absent voters, and those marked before him,
39 if any, and the names of the voters to whom such ballots
40 have been delivered or mailed, or by whom they have
41 been marked, if marked before him.

**§3-3-12. Rules, regulations, orders, instructions, forms, lists
and records pertaining to absentee voting.**

1 The secretary of state shall make, amend and rescind
2 such rules, regulations, orders and instructions, and pre-
3 scribe such forms, lists and records, and consolidation
4 of such forms, lists and records as may be necessary to
5 carry out the policy of the Legislature as contained in
6 this article and as may be necessary to provide for an
7 effective, efficient and orderly administration of the ab-
8 sent voter law of this state.

9 It shall be the duty of all clerks of the circuit court,
10 other county officers, and all election commissioners and
11 poll clerks to abide by such rules, regulations, orders
12 and instructions and to use such forms, lists and records
13 which, without limiting the foregoing, may include or
14 relate to:

15 (a) The consolidation of the two application forms
16 provided for herein into one form;

17 (b) The size and form of Absent Voter's Ballot En-
18 velope Nos. 1 and 2, and carrier envelopes;

19 (c) The forms and information which shall be placed
20 on Absent Voter's Ballot Envelope No. 2;

21 (d) The forms and manner of making the challenges
22 to absent voters' ballots authorized by this article;

23 (e) The forms of, information to be contained in,
24 and consolidation of lists and records pertaining to ap-
25 plications for, and voting of, absent voters' ballots and
26 assistance to persons voting absentee voters' ballots;

27 (f) The supplying of application forms, envelopes,
28 challenge forms, lists, records, and other forms;

29 (g) The keeping and security of voted absentee voters'
30 ballots in the office of the clerk of the circuit court.

§3-3-13. Absentee voting in municipal elections.

1 The provisions of this article relating to absentee voting
2 shall apply to all municipal elections, except where
3 clearly not adaptable thereto, and the governing bodies
4 of the several municipalities of the state shall by ordi-
5 nance implement the provisions hereof so as to develop
6 and provide a complete and satisfactory absentee voting
7 system for municipal elections.

ARTICLE 4. VOTING MACHINES.**§3-4-20. Recording and disposition of absent voters' ballots.**

1 The recording and disposition of absent voters' ballots
2 delivered to polling places using voting machines shall
3 be governed by the provisions of article three of this
4 chapter.

CHAPTER 51

(House Bill No. 609—By Mr. Auvil)

[Passed February 12, 1970; in effect from passage. Approved by the Governor.]

AN ACT to amend article fourteen, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-nine, relating to authorizing county boards of education, the teachers retirement board, the West Virginia board of education, and the board of regents and their agencies to establish group tax sheltered annuity plans for the benefit of their employees pursuant to section 403(b) of the Internal Revenue Code of 1954.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 14. GROUP LIFE INSURANCE.**§33-14-29. Group annuity plans for employees of county boards of education, the teachers retirement board, the West Virginia board of education, the board of regents and their agencies.**

1 The provision in subdivisions (b), (c) and (d) of
2 section two of this article shall not apply to group
3 annuity contracts issued by insurance companies to
4 county boards of education, the teachers retirement
5 board, the West Virginia board of education, and the
6 board of regents and their agencies. The boards of edu-
7 cation, the teachers retirement board, the West Virginia
8 board of education, and the board of regents and their
9 agencies shall be the holders of the master policies
10 under which annuities are insured for the benefit of their
11 employees who elect to participate in a "tax sheltered
12 group annuity plan" established pursuant to section
13 403(b) of the Internal Revenue Code of 1954 and amend-
14 ments and successor provisions thereto: *Provided, how-*
15 *ever,* That no such plan shall be adopted unless the board
16 of education first secures the written approval of the
17 insurance commissioner: *Provided further,* That no group
18 annuity contract shall be awarded, approved or issued
19 by any county board of education without competitive
20 bid.

CHAPTER 52**(House Bill No. 579—By Mr. Seibert)**

[Passed February 11, 1970; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article twenty-six, providing for the creation of the West Virginia post-assessment insurance guaranty association; re-

quiring insurance companies to be members of such association as a condition precedent to transacting business in the state of West Virginia; and providing for payment of claims against insolvent insurance companies and the assessment of the cost thereof among insurers.

Be it enacted by the Legislature of West Virginia:

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

**ARTICLE 26. WEST VIRGINIA POST-ASSESSMENT INSURANCE
GUARANTY ASSOCIATION.**

- §33-26-1. Short title.
- §33-26-2. Purpose.
- §33-26-3. Scope.
- §33-26-4. Construction.
- §33-26-5. Definitions.
- §33-26-6. Creation of the association.
- §33-26-7. Board of directors.
- §33-26-8. Powers and duties of the association.
- §33-26-9. Plan of operation.
- §33-26-10. Duties and powers of the commissioner.
- §33-26-11. Effect of paid claims.
- §33-26-12. Nonduplication of recovery.
- §33-26-13. Prevention of insolvencies.
- §33-26-14. Examination of association; financial report.
- §33-26-15. Tax exemption.
- §33-26-16. Recognition of assessments in rates.
- §33-26-17. Immunity.
- §33-26-18. Stay of proceedings; reopening of default judgments.
- §33-26-19. Severability.

§33-26-1. Short title.

- 1 This article may be cited as the "West Virginia In-
- 2 surance Guaranty Association Act."

§33-26-2. Purpose.

- 1 The purpose of this article is to provide a mechanism
- 2 for the payment of covered claims under certain insur-
- 3 ance policies to avoid excessive delay in payment and
- 4 to avoid financial loss to claimants or policyholders be-

5 cause of the insolvency of an insurer, to assist in the
6 detection and prevention of insurer insolvencies, and to
7 provide an association to assess the cost of such protec-
8 tion among insurers.

§33-26-3. Scope.

1 This article shall apply to all kinds of direct insurance,
2 except life, title, surety, disability, credit, mortgage
3 guaranty, ocean marine, and workmen's compensation
4 insurance.

§33-26-4. Construction.

1 This article shall be liberally construed to effect the
2 purpose under section two of this article which shall
3 constitute an aid and guide to interpretation.

§33-26-5. Definitions.

1 As used in this article:

2 (1) "Account" means any one of the two accounts
3 created by section six of this article.

4 (2) "Association" means the West Virginia insurance
5 guaranty association created under section six of this
6 article.

7 (3) "Commissioner" means the insurance commis-
8 sioner of West Virginia.

9 (4) "Covered claim" means an unpaid claim, including
10 one for unearned premiums, which arises out of and is
11 within the coverage of an insurance policy to which
12 this article applies and which policy is in force at the
13 time of the occurrence giving rise to such unpaid claims
14 if (a) the insurer issuing the policy becomes an insolvent
15 insurer after the effective date of this article and (b)
16 the claimant or insured is a resident of this state at the
17 time of the insured occurrence, or the property from
18 which the claim arises is permanently located in this
19 state. "Covered claim" shall not include (i) any amount
20 in excess of the applicable limits of coverage provided
21 by an insurance policy to which this article applies; nor
22 (ii) any amount due any reinsurer, insurer, insurance
23 pool, or underwriting association, as subrogation recov-
24 eries or otherwise.

25 (5) "Insolvent insurer" means an insurer (a) autho-
26 rized to transact insurance in this state either at the time
27 the policy was issued or when the insured event occurred
28 and (b) determined to be insolvent by a court of com-
29 petent jurisdiction.

30 (6) "Member insurer" means any person who (a)
31 writes any kind of insurance to which this article
32 applies under section three of this article, including
33 the exchange of reciprocal or interinsurance contracts,
34 and (b) is licensed to transact insurance in this state.

35 (7) "Net direct written premiums" means direct
36 gross premiums written in this state on insurance policies
37 to which this article applies, less return premiums
38 thereon and dividends paid or credited to policyholders
39 on such direct business. "Net direct written premiums"
40 does not include premiums on contracts between insurers
41 or reinsurers.

42 (8) "Person" includes an individual, company, in-
43 surer, association, organization, society, reciprocal, part-
44 nership, syndicate, business trust, corporation, or any
45 other legal entity.

46 (9) "Receiver" means receiver, liquidator, rehabili-
47 tator, or conservator as the context may require.

§33-26-6. Creation of the association.

1 There is created a nonprofit unincorporated legal en-
2 tity to be known as the West Virginia insurance guaranty
3 association. All insurers defined as member insurers in
4 section five of this article shall be and remain members
5 of the association as a condition of their authority to
6 transact insurance in this state. The association shall
7 perform its functions under a plan of operation estab-
8 lished and approved under section nine of this article
9 and shall exercise its powers through a board of direc-
10 tors established under section seven of this article. For
11 purposes of administration and assessment, the associa-
12 tion shall establish and maintain two separate accounts:
13 (a) The automobile insurance account; and (b) the ac-
14 count for all other insurance to which this article ap-
15 plies.

§33-26-7. Board of directors.

- 1 (1) The board of directors of the association shall
2 consist of not less than five nor more than nine persons
3 serving terms as established in the plan of operation.
4 The members of the board shall be selected by member
5 insurers subject to the approval of the commissioner.
6 Vacancies on the board shall be filled for the remaining
7 period of the term in the same manner as initial appoint-
8 ments. If no members are selected within sixty days
9 after the effective date of this article, the commissioner
10 may appoint the initial members of the board of directors.
- 11 (2) In approving selections to the board, the commis-
12 sioner shall consider among other things whether all
13 member insurers are fairly represented.
- 14 (3) Members of the board may be reimbursed from
15 the assets of the association for expenses incurred by
16 them as members of the board of directors.

§33-26-8. Powers and duties of the association.

- 1 (1) The association shall:
 - 2 (a) Be obligated to the extent of the covered claims
3 existing prior to the determination of insolvency, and
4 for such claims arising within thirty days after the de-
5 termination of insolvency, but such obligation shall in-
6 clude only that amount of each covered claim which is
7 in excess of one hundred dollars and is less than three
8 hundred thousand dollars. In no event shall the associa-
9 tion be obligated to a policyholder or claimant in an
10 amount in excess of the obligations of the insolvent
11 insurer under the policy from which the claim arises.
 - 12 (b) Be deemed the insurer to the extent of its obliga-
13 tion on the covered claims and to such extent shall have
14 all rights, duties, defenses, and obligations of the in-
15 solvent insurer as if the insurer had not become insolvent.
 - 16 (c) Allocate claims paid and expenses incurred among
17 the two accounts separately, and assess member insurers
18 separately for each account amounts necessary to pay
19 the obligations of the association under subdivision (a)
20 of this subsection subsequent to an insolvency, the ex-
21 penses of handling covered claims subsequent to an in-

22 solvency, the cost of examinations under section thirteen
23 of this article, and other expenses authorized by this
24 article. The assessments of each member insurer shall
25 be in the proportion that the net direct written premiums
26 of the member insurer for the preceding calendar year on
27 the kinds of insurance in the account bears to the net
28 direct written premiums of all member insurers for the
29 preceding calendar year on the kinds of insurance in
30 the account. Each member insurer shall be notified of
31 the assessment not later than thirty days before it is due.
32 No member insurer may be assessed in any one year on
33 any account an amount greater than two percent of that
34 member insurer's net direct written premiums for the
35 preceding calendar year on the kinds of insurance in the
36 account. If the maximum assessment, together with the
37 other assets of the association in any account, does not
38 provide in any one year in any account an amount suffi-
39 cient to make all necessary payments from that account,
40 the funds available shall be prorated and the unpaid
41 portion shall be paid as soon thereafter as funds become
42 available. The association may exempt or defer, in whole
43 or in part, the assessment of any member insurer, if the
44 assessment would cause the member insurer's financial
45 statement to reflect the amounts of capital or surplus less
46 than the minimum amounts required for a certificate
47 of authority by any jurisdiction in which the member
48 insurer is authorized to transact insurance. Each member
49 insurer may set off against any assessment, authorized
50 payments made on covered claims and expenses incurred
51 in the payment of such claims by the member insurer if
52 they are chargeable to the account for which the assess-
53 ment is made.

54 (d) Investigate claims brought against the association
55 and adjust, compromise, settle, and pay covered claims
56 to the extent of the association's obligation and deny all
57 other claims and may review settlements, releases and
58 judgments to which the insolvent insurer or its insureds
59 were parties to determine the extent to which such settle-
60 ments, releases and judgments may be properly con-
61 tested.

62 (e) Notify such persons as the commissioner directs
63 under subsection (2), section ten of this article.

64 (f) Handle claims through its employees or through
65 one or more insurers or other persons designated as
66 servicing facilities. Designation of a servicing facility
67 is subject to the approval of the commissioner, but such
68 designation may be declined by a member insurer.

69 (g) Reimburse each servicing facility for obligations
70 of the association paid by the facility and for expenses
71 incurred by the facility while handling claims on behalf
72 of the association and shall pay the other expenses of
73 the association authorized by this article.

74 (2) The association may:

75 (a) Employ or retain such persons as are necessary to
76 handle claims and perform other duties of the association.

77 (b) Borrow funds necessary to effect the purposes of
78 this article in accord with the plan of operation.

79 (c) Sue or be sued.

80 (d) Negotiate and become a party to such contracts
81 as are necessary to carry out the purpose of this article.

82 (e) Perform such other acts as are necessary or proper
83 to effectuate the purpose of this article.

84 (f) Refund to the member insurers in proportion to
85 the contribution of each member insurer to an account
86 that amount by which the assets of the account exceed
87 the liabilities, if, at the end of any calendar year, the
88 board of directors finds that the assets of the association
89 in any account exceed the liabilities of that account as
90 estimated by the board of directors for the coming year.

§33-26-9. Plan of operation.

1 (1) The association shall:

2 (a) Submit to the commissioner a plan of operation
3 and any amendments thereto necessary or suitable to
4 assure the fair, reasonable, and equitable administration
5 of the association. The plan of operation and any amend-
6 ments thereto shall become effective upon approval in
7 writing by the commissioner.

8 (b) If the association fails to submit a suitable plan
9 of operation within ninety days following the effective
10 date of this article or if at any time thereafter the asso-
11 ciation fails to submit suitable amendments to the plan,
12 the commissioner shall, after notice and hearing, adopt
13 and promulgate such reasonable rules as are necessary
14 or advisable to effectuate the provisions of this article.
15 Such rules shall continue in force until modified by the
16 commissioner or superseded by a plan submitted by the
17 association and approved by the commissioner. All such
18 rules shall be promulgated in accordance with the pro-
19 visions of chapter twenty-nine-a of this code.

20 (2) All member insurers shall comply with the plan
21 of operation.

22 (3) The plan of operation shall:

23 (a) Establish the procedures whereby all the powers
24 and duties of the association under section eight of this
25 article will be performed.

26 (b) Establish procedures for handling assets of the
27 association.

28 (c) Establish the amount and method of reimbursing
29 members of the board of directors under section seven
30 of this article.

31 (d) Establish procedures by which claims may be
32 filed with the association and establish acceptable forms
33 of proof of covered claims. Notice of claims to the re-
34 ceiver of the insolvent insurer shall be deemed notice
35 to the association or its agent and a list of such claims
36 shall be periodically submitted to the association or sim-
37 ilar organization in another state by the receiver.

38 (e) Establish regular places and times for meetings
39 of the board of directors.

40 (f) Establish procedures for records to be kept of all
41 financial transactions of the association, its agents, and
42 the board of directors.

43 (g) Provide that any member insurer aggrieved by
44 a final action or decision of the association may appeal
45 to the commissioner within thirty days after the action
46 or decision.

47 (h) Establish the procedures whereby selections for
48 the board of directors will be submitted to the commis-
49 sioner.

50 (i) Contain additional provisions necessary or proper
51 for the execution of the powers and duties of the asso-
52 ciation.

53 (4) The plan of operation may provide that any or
54 all powers and duties of the association, except those
55 under subdivision (c), subsection (1), section eight, and
56 subdivision (b), subsection (2), section eight of this ar-
57 ticle are delegated to a corporation, association or other
58 organization which performs or will perform functions
59 similar to those of this association, or its equivalent, in
60 two or more states. Such a corporation, association or
61 organization shall be reimbursed as a servicing facility
62 would be reimbursed and shall be paid for its perfor-
63 mance of any other functions of the association. A dele-
64 gation under this subsection shall take effect only with
65 the approval of both the board of directors and the com-
66 missioner, and may be made only to a corporation, asso-
67 ciation, or organization which extends protection not
68 substantially less favorable and effective than that pro-
69 vided by this article.

§33-26-10. Duties and powers of the commissioner.

1 (1) The commissioner shall:

2 (a) Notify the association of the existence of an
3 insolvent insurer not later than three days after he
4 receives notice of the determination of the insolvency.

5 (b) Upon request of the board of directors, provide
6 the association a statement of the net direct written
7 premiums of each member insurer.

8 (2) The commissioner may:

9 (a) Require that the association notify the insureds
10 of the insolvent insurer and any other interested parties
11 of the determination of insolvency and of their rights
12 under this article. Such notification shall be by mail
13 at their last known address, where available, but if
14 sufficient information for notification by mail is not

15 available, notice by publication in a newspaper of general
16 circulation shall be sufficient.

17 (b) Suspend or revoke, after notice and hearing,
18 the certificate of authority to transact insurance in this
19 state of any member insurer which fails to pay an
20 assessment when due or fails to comply with the plan
21 of operation. As an alternative, the commissioner may
22 levy a fine on any member insurer which fails to pay an
23 assessment when due. Such fine shall not exceed five
24 percent of the unpaid assessment per month, except that
25 no fine shall be less than one hundred dollars per
26 month.

27 (c) Revoke the designation of any servicing facility
28 if he finds claims are being handled unsatisfactorily.

29 (3) Any final order of the commissioner under this
30 article shall be subject to judicial review as provided
31 by section fourteen, article two of this chapter.

§33-26-11. Effect of paid claims.

1 (1) Any person recovering under this article shall
2 be deemed to have assigned his rights under the policy
3 to the association to the extent of his recovery from the
4 association. Every insured or claimant seeking the pro-
5 tection of this article shall cooperate with the associa-
6 tion to the same extent as such person would have been
7 required to cooperate with the insolvent insurer. The
8 association shall have no cause of action against the
9 insured of the insolvent insurer for any sums it has
10 paid out except such causes of action as the insolvent
11 insurer would have had if such sums had been paid by
12 the insolvent insurer. In the case of an insolvent in-
13 surer operating on a plan whereby insurance policies
14 with assessment liability have been issued to insureds,
15 payments of claims by the association shall not operate
16 to reduce the liability of such insureds to the receiver
17 for unpaid assessments.

18 (2) The receiver of an insolvent insurer shall be
19 bound by settlements of covered claims by the associa-
20 tion or a similar organization in another state, subject
21 to the approval of the court having jurisdiction of the

22 receivership. The court having jurisdiction shall grant
23 such claims priority equal to that to which the claimant
24 would have been entitled, in the absence of this article,
25 against the assets of the insolvent insurer. The expenses
26 of the association or similar organization in handling
27 claims shall be accorded the same priority as the re-
28 ceiver's expenses.

29 (3) The association shall periodically file with the
30 receiver of the insolvent insurer statements of the cov-
31 ered claims paid by the association and estimates of
32 anticipated claims against the association which shall
33 preserve the rights of the association against the assets
34 of the insolvent insurer.

§33-26-12. Nonduplication of recovery.

1 (1) Any person having a claim against a solvent in-
2 surer under any provision in an insurance policy other
3 than a policy of an insolvent insurer, which is also a
4 covered claim, shall be required to exhaust first his right
5 under such solvent insurer's policy. Any amount pay-
6 able on a covered claim under this article shall be re-
7 duced by the amount of any recovery under such solvent
8 insurer's policy.

9 (2) Any person having a claim which may be recov-
10 ered under more than one insurance guaranty associa-
11 tion or its equivalent shall seek recovery first from the
12 association of the place of residence of the insured ex-
13 cept that if it is a first party claim for damage to prop-
14 erty with a permanent location, he shall seek recovery
15 first from the association of the location of the property.
16 Any recovery under this article shall be reduced by the
17 amount of the recovery from any other insurance guar-
18 anty association or its equivalent.

§33-26-13. Prevention of insolvencies.

1 To aid in the detection and prevention of insurer in-
2 solvencies:

3 (1) It shall be the duty of the board of directors,
4 upon majority vote, to notify the commissioner of any
5 information indicating that any member insurer may

6 be insolvent or in a financial condition hazardous to the
7 policyholders or the public.

8 (2) The board of directors may, upon majority vote,
9 request that the commissioner order an examination of
10 any member insurer which the board in good faith
11 believes may be in a financial condition hazardous to the
12 policyholders or the public. Within thirty days of the
13 receipt of such request, the commissioner shall begin
14 such examination. The examination may be conducted
15 as a national association of insurance commissioners'
16 examination or may be conducted by such persons as
17 the commissioner designates. The cost of such examina-
18 tion shall be paid by the association and the examination
19 report shall be treated as are other examination reports.
20 In no event shall such examination report be released
21 to the board of directors prior to its release to the public,
22 but this shall not preclude the commissioner from com-
23 plying with subdivision (3) of this section. The com-
24 missioner shall notify the board of directors when the
25 examination is completed. The request for an examina-
26 tion shall be kept on file by the commissioner but it
27 shall not be open to public inspection prior to the release
28 of the examination report to the public.

29 (3) It shall be the duty of the commissioner to report
30 to the board of directors when he has reasonable cause
31 to believe that any member insurer examined or being
32 examined at the request of the board of directors may
33 be insolvent or in a financial condition hazardous to the
34 policyholders or the public.

35 (4) The board of directors may, upon majority vote,
36 make reports and recommendations to the commissioner
37 upon any matter germane to the solvency, liquidation,
38 rehabilitation or conservation of any member insurer.
39 Such reports and recommendations shall not be con-
40 sidered public documents.

41 (5) The board of directors may, upon majority vote,
42 make recommendations to the commissioner for the de-
43 tection and prevention of insurer insolvencies.

44 (6) The board of directors shall, at the conclusion of
45 any insurer insolvency in which the association was

46 obligated to pay covered claims, prepare a report on the
47 history and causes of such insolvency, based on the in-
48 formation available to the association, and submit such
49 report to the commissioner.

§33-26-14. Examination of association; financial report.

1 The association shall be subject to examination and
2 regulation by the commissioner. The board of directors
3 shall submit, not later than March thirtieth of each year,
4 a financial report for the preceding calendar year, in a
5 form approved by the commissioner.

§33-26-15. Tax exemption.

1 The association shall be exempt from payment of all
2 fees and all taxes levied by this state or any of its sub-
3 divisions except taxes levied on real or personal prop-
4 erty.

§33-26-16. Recognition of assessments in rates.

1 The rates and premiums charged for insurance policies
2 to which this article applies shall include amounts suf-
3 ficient to recoup a sum equal to the amounts paid to the
4 association by the member insurer less any amounts re-
5 turned to the member insurer by the association and
6 such rates shall not be deemed excessive because they
7 contain an amount reasonably calculated to recoup
8 assessments paid by the member insurer.

§33-26-17. Immunity.

1 There shall be no liability on the part of and no cause
2 of action of any nature shall arise against any member
3 insurer, the association or its agents or employees, the
4 board of directors, or the commissioner or his repre-
5 sentatives for any action taken by them in the exercise
6 and performance of their powers and duties under this
7 article.

§33-26-18. Stay of proceedings; reopening of default judgments.

1 All proceedings in which the insolvent insurer is a
2 party or obligated to defend a party in any court in this
3 state shall be stayed for sixty days from the date the

4 insolvency is determined to permit proper defense by
5 the association of all pending causes of action. As to any
6 covered claims arising from a judgment under any order,
7 decision, verdict or finding based on the default of the
8 insolvent insurer or its wrongful failure to defend an
9 insured, the association either on its own behalf or on
10 behalf of such insured may apply to have such judgment,
11 order, decision, verdict or finding set aside by the same
12 court or administrator that made such judgment, order,
13 decision, verdict or finding and shall be permitted to de-
14 fend against such claim on the merits.

§33-26-19. Severability.

1 In the event any part or provision of this article be
2 held to be unconstitutional by any court of competent
3 jurisdiction, such holding and decision of the court shall
4 not affect the validity and constitutionality of the
5 remaining parts and provisions of this article.

CHAPTER 53

(House Bill No. 535—By Mr. Savilla and Mr. Seibert)

[Passed February 5, 1970; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section nine, article six, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the investments of the state board of investments.

Be it enacted by the Legislature of West Virginia:

That section nine, 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.

§12-6-9. Investments for periods in excess of one year.

1 Notwithstanding the restrictions which may otherwise
2 be provided by law as to the securities in which funds may

3 be invested, funds made available for investment for
4 periods in excess of one year may be invested by the
5 board, without the approval of any other state agency
6 or official other than as required in section six of this
7 article, in the following classes of securities, and not
8 otherwise:

9 (a) Securities of the United States or agency thereof,
10 or those guaranteed by, or for which the credit of the
11 United States or agency thereof is pledged for the pay-
12 ment of the principal and interest thereof.

13 (b) Direct general obligation securities of this state,
14 or any other state or territory of the United States, or
15 the District of Columbia, unconditionally guaranteed as
16 to the principal and interest by such other state or terri-
17 tory of the United States, or the District of Columbia:
18 *Provided*, That (1) such other state, territory, or the
19 District of Columbia has the power to levy taxes for
20 the payment of the principal and interest of such securi-
21 ties, and (2) at the time of investment such other state,
22 territory, or the District of Columbia is not in default
23 in the payment of any part of the principal or interest
24 owing by it upon any part of its funded indebtedness.

25 (c) Securities issued by a federal land bank, or by
26 a federal intermediate credit bank, under the act of Con-
27 gress of July seventeen, one thousand nine hundred
28 sixteen, known as the "Federal Farm Loan Act," as
29 amended or supplemented from time to time, or by the
30 Federal Home Loan Bank System, Federal National Mort-
31 gage Association, or banks for cooperatives.

32 (d) Securities issued, assumed or unconditionally
33 guaranteed by the International Bank for Reconstruc-
34 tion and Development, or Tennessee Valley Authority.

35 (e) Any fixed interest bond, note or debenture of any
36 corporation organized and operating within the United
37 States: *Provided*, That such corporation shall have a
38 minimum net worth of fifteen million dollars and its
39 securities or its parent corporation's securities are listed
40 on one or more of the national stock exchanges: *Pro-*
41 *vided, however*, That (1) such corporation has earned
42 a profit in eight of the preceding ten fiscal years as re-

43 flected in its statements, and (2) such corporation has not
44 defaulted in the payment of principal or interest on any
45 of its outstanding funded indebtedness during its pre-
46 ceding ten fiscal years, and (3) the bonds, notes or
47 debentures of such corporation to be purchased are rated
48 "AA" or the equivalent thereof or better than "AA" or
49 the equivalent thereof by at least two or more nationally
50 recognized rating services, such as Standard and Poor's,
51 Dun & Bradstreet, or Moody's.

52 (f) Any security that is secured by a first lien deed
53 of trust or mortgage on real property situate within this
54 state, and that is either (1) insured by the Federal Hous-
55 ing Administration pursuant to provisions of the National
56 Housing Act, as amended or supplemented from time
57 to time, or (2) guaranteed by the veterans administration
58 pursuant to provisions of Title 38, United States Code, re-
59 lating to veterans benefits, as amended or supplemented
60 from time to time: *Provided*, That the board shall not
61 purchase any such security from anyone other than a
62 Federal Housing Administration approved mortgagee. To
63 facilitate and encourage the offering of such securities
64 to the board for its investment therein, the board shall
65 have the power and authority to make to any federal
66 housing administration approved mortgagee, at any time,
67 an advance written commitment and obligation, binding
68 upon the board and its funds, for the future purchase
69 of such securities in such amount or amounts, at such
70 price or prices, and at such future time or times as the
71 board may in its discretion deem to be for the best in-
72 terests of the fund, and all purchases of such securities
73 shall be made pursuant to such a commitment and obliga-
74 tion: *Provided, however*, That the board shall make no
75 commitment and obligation to purchase any such securi-
76 ties except in specified amounts of two hundred fifty
77 thousand dollars or more as the aggregate of the unpaid
78 principal balances owing on such securities at the time
79 of purchase thereof. No such commitment and obliga-
80 tion shall be valid or binding for more than eighteen
81 months after the date thereof. To facilitate preservation
82 of the value of such securities and of the real property
83 securing the same, the board shall have the further power

84 and authority to make with any federal housing adminis-
85 tration approved mortgagee from whom such a security is
86 purchased a contract under which the mortgagee shall be
87 authorized, empowered and obligated to service a loan
88 represented by the security, and to pay such mortgagee
89 for its services a monthly fee not in excess of the rate
90 of one twelfth of one half of one per centum per annum
91 of the unpaid principal balance of the loan represented
92 by the security.

CHAPTER 54

(House Bill No. 517—By Mr. Seibert and Mrs. Withrow)

[Passed February 12, 1970; in effect July 1, 1970. Approved by the Governor.]

AN ACT to amend and reenact section one, article nine, chapter twenty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to licensing of facilities by mental health.

Be it enacted by the Legislature of West Virginia:

That section one, article nine, 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 9. LICENSING OF HOSPITALS.

§27-9-1. License from director of mental health; regulations.

1 No hospital, center or institution, or part thereof, to
2 provide inpatient, outpatient or other service designed
3 to contribute to the care and treatment of the mentally ill
4 or mentally retarded, or prevention of such disorders,
5 shall be established, maintained or operated by any political subdivision or by any person, persons, association
6 or corporation unless a license therefor shall be first
7 obtained from the director of mental health. The application for such license shall be accompanied by a plan
8 of the premises to be occupied, and such other data and
9 facts that the director may require. He may make such

12 terms and regulations in regard to the conduct of such
13 hospital, center or institution, or part thereof, as he may
14 think proper and necessary. He, or any person autho-
15 rized by him, shall have authority to investigate and in-
16 spect such hospital, center or institution, or part thereof;
17 and the director of mental health may revoke the license
18 of any such hospital, center or institution, or part thereof,
19 for good cause after reasonable notice to the superinten-
20 dent or other person in charge thereof.

CHAPTER 55

(Senate Bill No. 202—By Mr. Jackson, Mr. President,
and Mr. Holliday)

[Passed February 12, 1970; in effect ninety days from passage. Approved by the
Governor.]

AN ACT to amend chapter twenty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article fifteen, relating to the entry of the state of West Virginia into an interstate compact on the mentally disordered offender.

Be it enacted by the Legislature of West Virginia:

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

**ARTICLE 15. INTERSTATE COMPACT ON THE MENTALLY DIS-
ORDERED OFFENDER.**

§27-15-1. Enactment of compact.

§27-15-2. Who may enter into contracts under compact.

§27-15-3. Effective date.

§27-15-1. Enactment of compact.

1 The interstate compact on the mentally disordered
2 offender, hereinafter called "the compact," is hereby
3 ratified, enacted into law and entered into with all juris-

4 ditions legally joining therein, in the form substantially
5 as follows:

INTERSTATE COMPACT ON THE MENTALLY
DISORDERED OFFENDER

Article I. Purpose and policy.

1 (a) The party states, desiring by common action to
2 improve their programs for the care and treatment of
3 mentally disordered offenders, declare that it is the policy
4 of each of the party states to:

5 (1) Strengthen their own programs and laws for the
6 care and treatment of the mentally disordered offender.

7 (2) Encourage and provide for such care and treat-
8 ment in the most appropriate locations, giving due
9 recognition to the need to achieve adequacy of diagnosis,
10 care, treatment, aftercare and auxiliary services and
11 facilities and, to every extent practicable, to do so in
12 geographic locations convenient for providing a thera-
13 peutic environment.

14 (3) Authorize cooperation among the party states in
15 providing services and facilities, when it is found that
16 cooperative programs can be more effective and efficient
17 than programs separately pursued.

18 (4) Place each mentally disordered offender in a legal
19 status which will facilitate his care, treatment and
20 rehabilitation.

21 (5) Authorize research and training of personnel on
22 a cooperative basis, in order to improve the quality or
23 quantity of personnel available for the proper staffing
24 of programs, services and facilities for mentally disordered
25 offenders.

26 (6) Care for and treat mentally disordered offenders
27 under conditions which will improve the public safety.

28 (b) Within the policies set forth in this article, it is
29 the purpose of this compact to:

30 (1) Authorize negotiation, entry into, and operations
31 under contractual arrangements among any two or more
32 of the party states for the establishment and maintenance
33 of cooperative programs in any one or more of the fields

34 for which specific provision is made in the several articles
35 of this compact.

36 (2) Set the limits within which such contracts may
37 operate, so as to assure protection of the civil rights of
38 mentally disordered offenders and protection of the rights
39 and obligations of the public and of the party states.

40 (3) Facilitate the proper disposition of criminal charges
41 pending against mentally disordered offenders, so that
42 programs for their care, treatment and rehabilitation may
43 be carried on efficiently.

Article II. Definitions.

1 As used in this compact:

2 (a) "Mentally disordered offender" means a person
3 who has been determined, by adjudication or other
4 method legally sufficient for the purpose in the party
5 state where the determination is made, to be mentally
6 ill and:

7 (1) Is under sentence for the commission of crime; or

8 (2) Who is confined or committed on account of the
9 commission of an offense for which, in the absence of
10 mental illness, said person would be subject to incar-
11 ceration in a penal or correctional facility.

12 (b) "Patient" means a mentally disordered offender
13 who is cared for, treated, or transferred pursuant to this
14 compact.

15 (c) "Sending state" means a state party to this compact
16 in which the mentally disordered offender was convicted;
17 or the state in which he would be subject to trial on or
18 conviction of an offense, except for his mental condition;
19 or, within the meaning of Article V of this compact, the
20 state whose authorities have filed a petition in connection
21 with an untried indictment, information or complaint.

22 (d) "Receiving state" means a state party to this com-
23 pact to which a mentally disordered offender is sent for
24 care, aftercare, treatment or rehabilitation, or within the
25 meaning of Article V of this compact, the state in which
26 a petition in connection with an untried indictment, in-
27 formation or complaint has been filed.

Article III. Contracts.

1 (a) Each party state may make one or more contracts
2 with any one or more of the other party states for the care
3 and treatment of mentally disordered offenders on behalf
4 of a sending state in facilities situated in receiving states,
5 or for the participation of such mentally disordered of-
6 fenders in programs of aftercare on conditional release
7 administered by the receiving state. Any such contract
8 shall provide for:

9 (1) Its duration.

10 (2) Payments to be made to the receiving state by the
11 sending state for patient care, treatment and extraordin-
12 ary services, if any.

13 (3) Determination of responsibility for ordering or per-
14 mitting the furnishing of extraordinary services, if any.

15 (4) Participation in compensated activities, if any,
16 available to patients; the disposition or crediting of any
17 payment received by patients on account thereof; and the
18 crediting of proceeds from or disposal of any products
19 resulting therefrom.

20 (5) Delivery and retaking of mentally disordered of-
21 fenders.

22 (6) Such other matters as may be necessary and ap-
23 propriate to fix the obligations, responsibilities and rights
24 of the sending and receiving states.

25 (b) Prior to the construction or completion of construc-
26 tion of any facility for mentally disordered offenders or
27 addition to such facility by a party state, any other party
28 state or states may contract therewith for the enlarge-
29 ment of the planned capacity of the facility or addition
30 thereto, or for the inclusion therein of particular equip-
31 ment or structures, and for the reservation of a specific
32 per centum of the capacity of the facility to be kept avail-
33 able for use by patients of the sending state or states so
34 contracting. Any sending state so contracting may, to the
35 extent that moneys are legally available therefor, pay to
36 the receiving state, a reasonable sum as consideration for
37 such enlargement of capacity, or provision of equipment
38 or structures, and reservation of capacity. Such payment

39 may be in a lump sum or in installments as provided in
40 the contract.

41 (c) A party state may contract with any one or more
42 other party states for the training of professional or other
43 personnel whose services, by reason of such training,
44 would become available for or be improved in respect of
45 ability to participate in the care and treatment of men-
46 tally disordered offenders. Such contracts may provide
47 for such training to take place at any facility being oper-
48 ated or to be operated for the care and treatment of
49 mentally disordered offenders; at any institution or facil-
50 ity having resources suitable for the offering of such
51 training; or may provide for the separate establishment
52 of training facilities: *Provided*, That no such separate es-
53 tablishment shall be undertaken, unless it is determined
54 that an appropriate existing facility or institution cannot
55 be found at which to conduct the contemplated program.
56 Any contract entered into pursuant to this paragraph shall
57 provide for:

58 (1) The administration, financing and precise nature of
59 the program.

60 (2) The status and employment or other rights of the
61 trainees.

62 (3) All other necessary matters.

63 (d) No contract entered into pursuant to this compact
64 shall be inconsistent with any provision thereof.

Article IV. Procedures and rights.

1 (a) Whenever the duly constituted judicial or ad-
2 ministrative authorities in a state party to this compact,
3 and which has entered into a contract pursuant to Ar-
4 ticle III, shall decide that custody, care and treatment
5 in, or transfer of a patient to, a facility within the ter-
6 ritory of another party state, or conditional release for
7 aftercare in another party state is necessary in order
8 to provide adequate care and treatment or is desirable in
9 order to provide an appropriate program of therapy or
10 other treatment, or is desirable for clinical reasons, said
11 officials may direct that the custody, care and treatment
12 be within a facility or in a program of aftercare within
13 the territory of said other party state, the receiving state

14 to act in that regard solely as agent for the sending
15 state.

16 (b) The appropriate officials of any state party to
17 this compact shall have access, at all reasonable times,
18 to any facility in which it has a contractual right to
19 secure care or treatment of patients for the purpose
20 of inspection and visiting such of its patients as may
21 be in the facility or served by it.

22 (c) Except as otherwise provided in Article VI, pa-
23 tients in a facility pursuant to the terms of this compact
24 shall at all times be subject to the jurisdiction of the
25 sending state and may at any time be removed for trans-
26 fer to a facility within the sending state, for transfer
27 to another facility in which the sending state may have
28 a contractual or other right to secure care and treat-
29 ment of patients, for release on aftercare or other con-
30 ditional status, for discharge, or for any other purpose
31 permitted by the laws of the sending state: *Provided*,
32 That the sending state shall continue to be obligated to
33 such payments as may be required pursuant to the terms
34 of any contract entered into under the terms of Ar-
35 ticle III.

36 (d) Each receiving state shall provide regular re-
37 ports to each sending state on the patients of that send-
38 ing state in facilities pursuant to this compact including
39 a psychiatric and behavioral record of each patient and
40 certify said record to the official designated by the
41 sending state, in order that each patient may have the
42 benefit of his or her record in determining and altering
43 the disposition of said patient in accordance with the
44 law which may obtain in the sending state and in order
45 that the same may be a source of information for the
46 sending state.

47 (e) All patients who may be in a facility or receiv-
48 ing aftercare from a facility pursuant to the provisions
49 of this compact shall be treated in a reasonable and
50 humane manner and shall be cared for, treated and
51 supervised in accordance with the standards pertaining
52 to the program administered at the facility. The fact
53 of presence in a receiving state shall not deprive any

54 patient of any legal rights which said patient would
55 have had if in custody or receiving care, treatment or
56 supervision as appropriate in the sending state.

57 (f) Any hearing or hearings to which a patient
58 present in a receiving state pursuant to this compact
59 may be entitled by the laws of the sending state shall
60 be had before the appropriate authorities of the sending
61 state, or of the receiving state if authorized by the
62 sending state. The receiving state shall provide adequate
63 facilities for such hearings as may be conducted by the ap-
64 propriate officials of a sending state. In the event such
65 hearing or hearings are had before officials of the re-
66 ceiving state, the governing law shall be that of the
67 sending state and a record of the hearing or hearings
68 as prescribed by the sending state shall be made. Said
69 record together with any recommendations of the hear-
70 ing officials shall be transmitted forthwith to the offi-
71 cial or officials before whom the hearing would have
72 been had if it had taken place in the sending state.
73 In any and all proceedings had pursuant to the pro-
74 visions of this paragraph, the officials of the receiving
75 state shall act solely as agents of the sending state and
76 no final determination shall be made in any matter
77 except by the appropriate officials of the sending state.
78 Costs of records made pursuant to this paragraph shall
79 be borne by the sending state.

80 (g) Any patient confined pursuant to this compact
81 shall be released within the territory of the sending
82 state unless the patient, and the sending and receiving
83 states, shall agree upon release in some other place.
84 The sending state shall bear the cost of such return to
85 its territory.

86 (h) Any patient pursuant to the terms of this com-
87 pact shall be subject to civil process and shall have any
88 and all rights to sue, be sued and participate in and
89 derive any benefits or incur or be relieved of any obli-
90 gations or have such obligations modified or his status
91 changed on account of any action or proceeding in which
92 he could have participated if in any appropriate facility
93 of the sending state or being supervised therefrom, as
94 the case may be, located within such state.

95 (i) The parent, guardian, trustee, or other person or
96 persons entitled under the laws of the sending state to
97 act for, advise, or otherwise function with respect to
98 any patient shall not be deprived of or restricted in his
99 exercise of any power in respect of any patient pur-
100 suant to the terms of this compact.

Article V. Disposition of charges.

1 (a) Whenever the authorities responsible for the care
2 and treatment of a mentally disordered offender, whether
3 convicted or adjudicated in the state or subject to care,
4 aftercare, treatment or rehabilitation pursuant to a con-
5 tract, are of the opinion that charges based on untried
6 indictments, informations or complaints in another party
7 state present obstacles to the proper care and treatment of
8 a mentally disordered offender or to the planning or
9 execution of a suitable program for him, such authorities
10 may petition the appropriate court in the state where the
11 untried indictment, information or complaint is pending
12 for prompt disposition thereof. If the mentally disordered
13 offender is a patient in a receiving state, the appropriate
14 authorities of the sending state, upon recommendation of
15 the appropriate authorities in the receiving state, shall,
16 if they concur in the recommendation, file the petition
17 contemplated by this paragraph.

18 (b) The court shall hold a hearing on the petition with-
19 in thirty days of the filing thereof. Such hearing shall
20 be only to determine whether the proper safeguarding and
21 advancement of the public interest; the condition of the
22 mentally disordered offender; and the prospects for more
23 satisfactory care, treatment and rehabilitation of him war-
24 rant disposition of the untried indictment, information or
25 complaint prior to termination of the defendant's status
26 as a mentally disordered offender in the sending state. The
27 prosecuting officer of the jurisdiction from which the un-
28 tried indictment, information or complaint is pending, the
29 petitioning authorities, and such other persons as the
30 court may determine shall be entitled to be heard.

31 (c) Upon any hearing pursuant to this article, the court
32 may order such adjournments or continuances as may be
33 necessary for the examination or observation of the men-

34 tally disordered offender or for the securing of necessary
35 evidence. In granting or denying any such adjournment
36 or continuance, the court shall give primary consideration
37 to the purposes of this compact, and more particularly to
38 the need for expeditious determination of the legal and
39 mental status of a mentally disordered offender so that his
40 care, treatment and discharge to the community only
41 under conditions which will be consonant with the public
42 safety may be implemented.

43 (d) The presence of a mentally disordered offender
44 within a state wherein a petition is pending or being heard
45 pursuant to this article, or his presence within any other
46 state through which he is being transported in connection
47 with such petition or hearing, shall be only for the pur-
48 poses of this compact, and no court, agency or person shall
49 have or obtain jurisdiction over such mentally disordered
50 offender for any other purpose by reason of his presence
51 pursuant to this article. The mentally disordered offender
52 shall, at all times, remain in the custody of the sending
53 state. Any acts of officers, employees, or agencies of the
54 receiving state in providing or facilitating detention,
55 housing or transportation for the mentally disordered
56 offender shall be only as agents for the sending state.

57 (e) Promptly upon conclusion of the hearing the court
58 shall dismiss the untried indictment, information or com-
59 plaint, if it finds that the purposes enumerated in para-
60 graph (b) of this article would be served thereby. Other-
61 wise, the court shall make such order with respect to the
62 petition and the untried indictment, information or com-
63 plaint as may be appropriate in the circumstances and
64 consistent with the status of the defendant as a mentally
65 disordered offender in the custody of and subject to the
66 jurisdiction of the sending state.

67 (f) No fact or other matter established or adjudicated
68 at any hearing pursuant to this article, or in connection
69 therewith, shall be deemed established or adjudicated,
70 nor shall the same be admissible in evidence, in any sub-
71 sequent prosecution of the untried indictment, informa-
72 tion or complaint concerned in a petition filed pursuant
73 to this article unless:

•

74 (1) The defendant or his duly empowered legal repre-
75 sentative requested or expressly acquiesced in the making
76 of the petition, and was afforded an opportunity to partic-
77 ipate in person in the hearing; or

78 (2) The defendant himself offers or consents to the
79 introduction of the determination or adjudication at such
80 subsequent proceedings.

**Article VI. Acts not reviewable in receiving
state; return.**

1 (a) Any decision of the sending state in respect of
2 any matter over which it retains jurisdiction pursuant
3 to this compact shall be conclusive upon and not review-
4 able within the receiving state, but if at the time the
5 sending state seeks to remove a patient from the receiving
6 state there is pending against the patient within such
7 state any criminal charge or if the patient is suspected
8 of having committed within such state a criminal offense,
9 the patient shall not be returned without the consent of the
10 receiving state until discharged from prosecution or other
11 form of proceeding, imprisonment or detention for such
12 offense. The duly accredited officers of the sending state
13 shall be permitted to transport patients pursuant to this
14 compact through any and all states party to this compact
15 without interference.

16 (b) A patient who escapes while receiving care and
17 treatment or who violates provisions of aftercare by
18 leaving the jurisdiction, or while being detained or trans-
19 ported pursuant to this compact shall be deemed an
20 escapee from the sending state and from the state in
21 which the facility is situated or the aftercare was being
22 provided. In the case of an escape to a jurisdiction other
23 than the sending or receiving state, the responsibility for
24 return shall be that of the sending state, but nothing con-
25 tained herein shall be construed to prevent or affect the
26 activities of officers and agencies of any jurisdiction
27 directed toward the apprehension and return of an
28 escapee.

Article VII. Federal aid.

1 Any state party to this compact may accept federal
2 aid for use in connection with any facility or program,
3 the use of which is or may be affected by this compact
4 or any contract pursuant thereto and any patient in a
5 receiving state pursuant to this compact may participate
6 in any such federally aided program or activity for which
7 the sending and receiving states have made contractual
8 provision: *Provided*, That if such program or activity is
9 not part of the customary regimen of the facility or pro-
10 gram the express consent of the appropriate official of
11 the sending state shall be required therefor.

Article VIII. Entry into force.

1 This compact shall enter into force and become effective
2 and binding upon the states so acting when it has been
3 enacted into law by any two states from among the states
4 of Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota,
5 Missouri, Nebraska, North Dakota, Ohio, South Dakota
6 and Wisconsin. Thereafter, this compact shall enter into
7 force and become effective and binding as to any other
8 of said states, or any other state upon similar action by
9 such state.

Article IX. Withdrawal and termination.

1 This compact shall continue in force and remain bind-
2 ing upon a party state until it shall have enacted a statute
3 repealing the same and providing for the sending of
4 formal written notice of withdrawal from the compact to
5 the appropriate officials of all other party states. An actual
6 withdrawal shall not take effect until two years after
7 the notices provided in said statute have been sent. Such
8 withdrawal shall not relieve the withdrawing state from
9 its obligations assumed hereunder prior to the effective
10 date of withdrawal. Before the effective date of with-
11 drawal, a withdrawing state shall remove to its territory,
12 at its own expense, such patients as it may have in other
13 party states pursuant to the provisions of this compact.

Article X. Other arrangements unaffected.

1 Nothing contained in this compact shall be construed
2 to abrogate or impair any agreement or other arrange-
3 ment which a party state may have with a nonparty
4 state for the custody, care, treatment, rehabilitation or
5 aftercare of patients nor to repeal any other laws of
6 a party state authorizing the making of cooperative
7 arrangements.

Article XI. Construction and severability.

1 The provisions of this compact shall be liberally con-
2 strued and shall be severable. If any phrase, clause, sen-
3 tence or provision of this compact is declared to be
4 contrary to the constitution of any participating state
5 or of the United States or the applicability thereof to
6 any government, agency, person or circumstance is held
7 invalid, the validity of the remainder of this compact
8 and the applicability thereof to any government, agency,
9 person or circumstance shall not be affected thereby.
10 If this compact shall be held contrary to the constitu-
11 tion of any state participating therein, the compact shall
12 remain in full force and effect as to the remaining states
13 and in full force and effect as to the state affected as to
14 all severable matters.

§27-15-2. Who may enter into contracts under compact.

1 The governor, the state commissioner of public in-
2 stitutions, the department of mental health, the state
3 board of education, the state board of vocational edu-
4 cation, the division of vocational rehabilitation, the state
5 commission on higher education, the West Virginia board
6 of regents, the state department of welfare, the depart-
7 ment of public safety, the state department of health
8 and the West Virginia board of probation and parole may
9 negotiate and enter into contracts on behalf of this state
10 pursuant to Article III of the compact and may perform
11 such contracts: *Provided*, That no funds, personnel, fa-
12 cilities, equipment, supplies, or materials shall be pledged
13 for, committed or used on account of any such contract,
14 unless legally available therefor.

§27-15-3. Effective date.

- 1 The effective date of this article shall be July one, one
- 2 thousand nine hundred seventy.

CHAPTER 56

(Senate Bill No. 70—By Mr. Gainer and Mr. Floyd)

[Passed February 11, 1970; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal sections eleven and twelve, article four, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend chapter seventeen of said code by adding thereto a new article, designated article twenty-four, relating to disposal of junk and abandoned vehicles, providing for public notice to determine vehicle owners and lienholders, providing for sale at auction by law-enforcement agencies of vehicles unclaimed and for simplified methods to transfer junk and abandoned vehicles to demolishers for demolition, wrecking, and dismantling junk and abandoned vehicles.

Be it enacted by the Legislature of West Virginia:

That sections eleven and twelve, article four, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that chapter seventeen of said code be amended by adding thereto a new article, designated article twenty-four, to read as follows:

ARTICLE 24. DISPOSAL OF JUNK AND ABANDONED VEHICLES.

- §17-24-1. Definitions.
- §17-24-2. Legislative declaration; purpose of article.
- §17-24-3. Abandonment of vehicle prohibited.
- §17-24-4. Penalty for abandonment of vehicle.
- §17-24-5. Authority to take possession of abandoned vehicles.
- §17-24-6. Notification of vehicle owner and lienholders.
- §17-24-7. Auction of abandoned vehicles.
- §17-24-8. Proceeds from sale of abandoned vehicle.
- §17-24-9. Garage keepers and abandoned vehicles.
- §17-24-10. Disposal of abandoned vehicle directly to demolisher.

§17-24-11. Duties of demolisher.

§17-24-12. General repealer.

§17-24-13. Severability.

§17-24-1. Definitions.

1 As used in this article, unless the context clearly re-
2 quires a different meaning:

3 "Vehicle" means any device in, upon, or by which per-
4 sons or property may be transported or drawn that is
5 operated customarily in contact with or immediately ad-
6 jacent to the surface of the earth and which device is self
7 propelled or propelled by an energy providing force ex-
8 cept those devices propelled or drawn by human energy
9 or used exclusively upon stationary rails or tracks.

10 "Junk vehicle" means any vehicle that is not lawfully
11 and validly registered and remains inoperative or in-
12 capable of being driven for a period of ten days after the
13 day the vehicle becomes inoperative or incapable of being
14 driven and which vehicle the owner, bailee or finder,
15 whichever is applicable, within the ten-day period, fails to
16 have made operative or capable of being driven or fails to
17 make arrangements to have the vehicle made operative or
18 capable of being driven.

19 "Abandon" or "abandoned" means to permit or allow
20 any vehicle to become an abandoned vehicle.

21 "Abandoned vehicle" means any vehicle or major part
22 thereof that is inoperative and is left unattended on public
23 property for any period of time over ten days, or any
24 vehicle or major part thereof that has remained illegally
25 on public property for any period of time over ten days,
26 or any vehicle or major part thereof that has remained
27 on private property without consent of the owner or per-
28 son in control of the property for any period of time over
29 ten days or any vehicle or major part thereof that is un-
30 attended, discarded, deserted and unlicensed or is inopera-
31 tive for any period of time over one hundred eighty days.

32 "Law-enforcement agency" means any public law-en-
33 forcement agency of the state, counties, and municipalities
34 within the state of West Virginia.

35 "Demolisher" means any licensed person (other than his
36 agents or employees, if any, while acting within the scope

37 of their authority or employment) whose business, to any
38 extent or degree, is to convert a vehicle into processed
39 scrap or scrap metal, or into saleable parts, or otherwise
40 to wreck or dismantle vehicles.

§17-24-2. Legislative declaration; purpose of article.

1 The Legislature recognizes and declares that junk
2 and abandoned vehicles are nuisances to both adults
3 and children and therefore are dangerous and consti-
4 tute a present danger; that junk and abandoned vehicles
5 serve as harborage and breeding places for flies, mosqui-
6 toes, fleas, ticks, mice, rats and other insects, pests and
7 rodents injurious to the public health, safety and gen-
8 eral welfare; that junk and abandoned vehicles serve
9 frequently as temporary or permanent places of human
10 residence unconducive to public health, safety and wel-
11 fare; therefore the Legislature declares it to be the public
12 policy of the state of West Virginia, in order to eliminate
13 the present danger resulting from junk and abandoned
14 vehicles, and in order to provide for the public health,
15 safety and welfare, to enact legislation to that end by
16 providing expeditious means and methods for the disposal
17 of junk and abandoned vehicles.

§17-24-3. Abandonment of vehicle prohibited.

1 No person shall abandon a vehicle upon public property
2 or upon property which he does not own, lease, rent or
3 otherwise control within the state of West Virginia.

§17-24-4. Penalty for abandonment of vehicle.

1 Any person who abandons a vehicle shall be guilty of a
2 misdemeanor, and, upon conviction thereof, shall be fined
3 not less than one hundred dollars nor more than one
4 thousand dollars, or imprisoned in the county jail not
5 less than three nor more than six months.

§17-24-5. Authority to take possession of abandoned vehicles.

1 Any law-enforcement agency that has knowledge of,
2 or discovers or finds any vehicle abandoned on private or
3 public property shall take into custody that vehicle. For
4 that purpose, the law-enforcement agency may employ
5 its own personnel, equipment and facilities or hire per-

6 sons, equipment and facilities for the purpose of remov-
7 ing, preserving and storing abandoned vehicles.

§17-24-6. Notification of vehicle owner and lienholders.

1 (a) A law-enforcement agency which takes into cus-
2 tody an abandoned vehicle shall notify within fourteen
3 days after taking custody, by registered or certified mail,
4 return receipt requested, the last known registered owner
5 of the vehicle and all lienholders of record that the
6 vehicle has been taken into custody. The notice shall
7 contain a full description of the vehicle including the year,
8 make, model, manufacturer's serial or identification num-
9 ber or any other number that may have been assigned to
10 the vehicle by the commissioner of motor vehicles and
11 any distinguishing marks; set forth the location of the
12 facility where the vehicle is being held; inform the owner
13 and any lienholders of record of their right to reclaim
14 the vehicle within ten days after the date notice was re-
15 ceived by the owner or lienholders, upon payment of all
16 towing, preservation and storage charges resulting from
17 taking and placing the vehicle in custody; and state that
18 the failure of the owner or lienholders of record to exer-
19 cise their right to reclaim the vehicle within the ten-day
20 period shall be deemed a waiver by the owner and all
21 lienholders of record of all right, title and interest in the
22 vehicle and of their consent to the sale of the abandoned
23 vehicle at a public auction.

24 (b) If the identity of the last registered owner of the
25 abandoned vehicle cannot be determined; or if the cer-
26 tificate of registration or certificate of title contains no
27 address for the owner; or if it is impossible to determine
28 with reasonable certainty the identity and addresses of
29 all lienholders, notice shall be published as a Class II legal
30 advertisement in compliance with the provisions of article
31 three, chapter fifty-nine of this code, and the notice shall
32 be published in a newspaper of general circulation in the
33 county wherein the vehicle was abandoned, and the
34 notice shall be sufficient to meet all requirements of notice
35 pursuant to this article. Any notice by publication can
36 contain multiple listings of abandoned vehicles. The
37 notice shall be published within fourteen days after the

38 vehicle is taken into custody and shall have the same con-
39 tents required for notice in subsection (a) of this section.

40 (c) The consequences and effect of failure to reclaim
41 an abandoned vehicle within the ten-day period after
42 notice is received by registered or certified mail or within
43 ten days after the final notice is published in a newspaper
44 shall be set forth in the notice.

§17-24-7. Auction of abandoned vehicles.

1 If an abandoned vehicle is not reclaimed as provided
2 for in section six of this article, the law-enforcement
3 agency in possession of the abandoned vehicle shall sell
4 it at a public auction. The purchaser of the vehicle shall
5 take title to the vehicle free and clear of all liens
6 and claims of ownership, shall receive a sales receipt
7 from the law-enforcement agency that auctioned the
8 vehicle and shall be entitled to register the purchased
9 vehicle and receive a certificate of title on presentation
10 of the sales receipt to the department of motor vehicles
11 and upon compliance with the provisions of article three,
12 chapter seventeen-a of this code. The sales receipt at such
13 sale shall be sufficient title only for purposes of trans-
14 ferring the vehicle to a demolisher for demolition, wreck-
15 ing or dismantling, and no further titling of the vehicle
16 shall be necessary by either the purchaser at auction or
17 by the demolisher, both of whom shall be exempt from
18 the payment of any fees and taxes required under article
19 three, chapter seventeen-a of this code: *Provided*, That
20 the purchaser at auction must place the vehicle in the
21 possession of a demolisher within thirty days from the
22 date he purchased the vehicle and the demolisher must
23 demolish, wreck or dismantle the vehicle within six
24 months after taking possession of the vehicle and if they
25 do not they shall be required to pay any fees and taxes re-
26 quired under article three, chapter seventeen-a of this
27 code.

§17-24-8. Proceeds from sale of abandoned vehicle.

1 From the proceeds of the sale, the law-enforcement
2 agency which sold the abandoned vehicle shall reimburse
3 itself for any expenses it may have incurred in conduct-

4 ing the auction, any costs of towing, preserving and stor-
5 ing the vehicle which resulted from placing the aban-
6 doned vehicle in custody, and all notice and publication
7 costs incurred pursuant to section six of this article.

8 Any remainder from the proceeds of sale after payment
9 of these costs shall be held for the last registered owner
10 of the vehicle or entitled lienholder for ninety days, after
11 which time, if no owner or lienholder claims the remain-
12 der, it shall be deposited in the state treasury to be kept
13 and maintained as a special revolving account designated
14 as the "abandoned vehicle disposal account" and any
15 moneys so collected and deposited shall be used solely
16 by law-enforcement agencies for the payment of auction,
17 towing, preserving, storage and all notice and publica-
18 tion costs which result from placing other abandoned
19 vehicles in custody, whenever the proceeds from a sale
20 of those abandoned vehicles are insufficient to meet these
21 expenses and costs.

22 The "abandoned vehicle disposal account" shall be
23 under the direction and control of the commissioner of
24 motor vehicles. He shall assure that moneys are properly
25 deposited in the account by any law-enforcement agency
26 that sells any abandoned vehicles at auction and that any
27 moneys necessary to pay costs and expenses of those sales,
28 as specified in the preceding paragraph are disbursed in
29 accordance with state accounting procedures to law-en-
30 forcement agencies selling an abandoned vehicle.

31 The "abandoned vehicle disposal account" shall never
32 be maintained in excess of the amount necessary to
33 efficiently and properly carry out the intentions of this
34 article and in no event shall the "abandoned vehicle dis-
35 posal account" be maintained in excess of the sum of
36 five thousand dollars; whenever the "abandoned vehicle
37 disposal account" exceeds that amount, the commissioner
38 of motor vehicles shall transfer the excess to the state
39 general revenue fund.

§17-24-9. Garage keepers and abandoned vehicles.

1 Any vehicle left for more than ten days in a garage
2 operated for commercial purposes, after notice by the

3 garage keeper by registered or certified mail, return re-
4 ceipt requested, to the owner to pick up the vehicle, shall
5 be deemed and considered an abandoned vehicle and shall
6 be reported by the garage keeper to the appropriate law-
7 enforcement agency.

8 All abandoned vehicles left in garages shall be taken
9 into custody by the law-enforcement agency to which
10 they are reported and sold in accordance with the pro-
11 cedure set forth in this article unless prior to sale the
12 vehicle is properly reclaimed and the garage keeper paid
13 any costs he may have incurred regarding the vehicle.
14 If the vehicle is sold the proceeds of the sale shall first
15 be applied to the garage keeper's charges for servicing,
16 storage or repair of the vehicle, and any surplus after
17 such payment shall be distributed in accordance with
18 section eight of this article.

19 Nothing in this section shall be construed to impair any
20 lien of a garage keeper under the laws of this state or the
21 right of a lienholder to foreclose.

22 For purposes of this section "garage keeper" means any
23 operator of a parking place, lot or establishment, vehicle
24 storage facility or establishment for the servicing, repair
25 or maintenance of vehicles.

**§17-24-10. Disposal of abandoned vehicle directly to de-
molisher.**

1 (a) Any person, firm, corporation, or the state, or any
2 county or municipality within the state of West Virginia,
3 upon whose property or in whose possession is found any
4 abandoned vehicle, or any person being the owner of a
5 vehicle whose certificate of title is faulty, lost or de-
6 stroyed, may apply to the law-enforcement agency of the
7 jurisdiction in which the vehicle is situated for authority
8 to sell, give away or dispose of the vehicle to a demolisher.

9 (b) The application shall set out the name and address
10 of the applicant, the year, make, model, manufacturer's
11 serial or identification number or any other number that
12 may have been assigned to the vehicle by the commis-
13 sioner of motor vehicles, if ascertainable, and any dis-

14 tinguishing marks and shall contain a concise statement
15 of the facts surrounding the abandonment, or that the
16 title of the vehicle is lost or destroyed, or the reasons for
17 the defect of title in the owner. The applicant shall
18 execute an affidavit stating that the facts alleged in the
19 application are true and that no material fact has been
20 withheld.

21 (c) If the law-enforcement agency finds that the ap-
22 plication is executed in proper form and shows that the
23 vehicle has been abandoned upon the property of the
24 applicant or if it shows that the applicant appears to be
25 the rightful owner, the law-enforcement agency shall
26 follow the notification procedures set forth in section six
27 of this article.

28 (d) If the abandoned vehicle is not reclaimed in ac-
29 cordance with section six of this article, the law-enforce-
30 ment agency shall give the applicant a certificate of au-
31 thority to sell the vehicle, which certificate shall be
32 sufficient title only for purposes of transferring the vehicle
33 to a demolisher for demolition, wrecking or dismantling,
34 and no further titling of the vehicle shall be necessary
35 by either the applicant or the demolisher both of whom
36 shall be exempt from the payment of any fees and taxes
37 required under article three, chapter seventeen-a of this
38 code: *Provided*, That the demolisher must demolish,
39 wreck or dismantle the vehicle within six months after
40 taking possession of the vehicle and if he does not he shall
41 be required to pay any fees and taxes required under
42 article three, chapter seventeen-a of this code.

43 (e) Notwithstanding any other provisions of this arti-
44 cle, any person, firm, corporation, or the state, or any
45 county or municipality within the state of West Virginia,
46 upon whose property or in whose possession is found an
47 abandoned vehicle, or any person being the owner of a
48 vehicle whose certificate of title is faulty, lost or destroyed,
49 may dispose of the vehicle to a demolisher without title
50 and without complying with the notification procedures
51 set forth in section six of this article if the vehicle is nine
52 years old or older and has no engine or is totally in-
53 operative.

§17-24-11. Duties of demolisher.

1 Notwithstanding any provisions contained in chapter
2 seventeen-a to the contrary, any demolisher who pur-
3 chases or otherwise acquires a vehicle for purposes of
4 wrecking, dismantling or demolition shall be exempt from
5 the payment of any fees and taxes required under chapter
6 seventeen-a of this code: *Provided*, That the demolisher
7 must demolish, wreck or dismantle the vehicle within
8 six months after taking possession of the vehicle and if he
9 does not he shall be required to obtain a certificate of title
10 in his name and pay the fees and taxes required under
11 article three, chapter seventeen-a of this code. Immediately
12 after the vehicle has been demolished, wrecked, disman-
13 tled or changed so that it physically is no longer a vehicle,
14 the demolisher shall surrender to the department of motor
15 vehicles for cancellation the certificate of title or auction
16 sales receipt for the vehicle with the word "scrapped" or
17 word or words of similar meaning written across the face
18 thereof. If the demolisher does not have a certificate of
19 title or auction sales receipt for the vehicle, he shall give
20 notice to the department of motor vehicles on the form
21 the department shall prescribe.

22 The department of motor vehicles shall issue forms, rules
23 and regulations governing the surrender of auction sales
24 receipts, certificates of title and notification to the depart-
25 ment that a vehicle has been demolished, wrecked, dis-
26 mantled or changed so that it physically is no longer a
27 vehicle, as are appropriate; but no action of the depart-
28 ment shall change the purpose or intent of this article or
29 slow down or impair the mechanisms and methods for dis-
30 posing of abandoned and junk vehicles provided for
31 herein.

32 A demolisher shall keep an accurate and complete
33 record of all vehicles purchased or otherwise acquired by
34 him in the course of his business. These records shall con-
35 tain the name and address of the person from whom each
36 vehicle was purchased or otherwise acquired and the date
37 of purchase or the date otherwise acquired. The records
38 shall be open for inspection by any law-enforcement
39 agency at any time during normal business hours. Any

40 record required under this section shall be kept by the
41 demolisher for a period of at least two years.

§17-24-12. General repealer.

1 All other laws or parts of laws inconsistent with this
2 article are hereby repealed to the extent of such
3 inconsistency.

§17-24-13. Severability.

1 If any provision of this article or the application thereof
2 in any case or situation is held invalid, that invalidity
3 shall not affect other provisions or applications of this
4 article, and to this end the provisions of this article are
5 declared severable.

CHAPTER 57

(Com. Sub. for House Bill No. 523—Originating in the House
Committee on Agriculture and Natural Resources)

[Passed February 12, 1970; in effect January 1, 1971. Approved by the Governor.]

AN ACT to amend and reenact sections thirty-four, forty-three and forty-five, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to hunting and fishing license fees for nonresidents.

Be it enacted by the Legislature of West Virginia:

That sections thirty-four, forty-three and forty-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. WILDLIFE RESOURCES.

§20-2-34. Disposition of license fees; reports of agents; special funds and uses.

§20-2-43. Class E, Class F and Class G licenses for nonresidents.

§20-2-45. Class K nonresident six-day, statewide, fishing license.

§20-2-34. Disposition of license fees; reports of agents; special funds and uses.

1 All persons in this state who receive money for licenses
2 and permits required by this chapter shall, on the first
3 day of each month, pay over to the director all moneys
4 so collected by them during the preceding month. Such
5 payment shall be accompanied by a report showing, in
6 the case of license money, the name of the county, the
7 class of license sold, the names and addresses of the per-
8 sons paying the same, the date of the receipt thereof,
9 the signature of the person receiving and remitting such
10 funds, and such other information as the director may
11 deem necessary.

12 Except where other provisions of this chapter specifi-
13 cally require and direct payment of any such moneys
14 into designated funds for specific uses and purposes, all
15 moneys so received by the director hereunder shall be
16 by him promptly paid into the state treasury and shall
17 be credited to the department of natural resources and
18 shall be further credited to and kept in a separate
19 fund designated "license fund—wildlife resources" which
20 shall be used and paid out, upon order of the director
21 solely for law enforcement and for purposes directly
22 relating to the conservation, protection, propagation and
23 distribution of wildlife in this state pursuant to the pro-
24 visions of this chapter.

25 No funds from the "license fund—wildlife resources"
26 shall be expended for recreational facilities or activities
27 that are used by or for the benefit of the general public,
28 rather than purchasers of hunting and fishing licenses.

§20-2-43. Class E, Class F and Class G licenses for nonresidents.

1 A Class E license shall be a nonresident hunting license
2 and shall entitle the licensee to hunt all game in all
3 counties of the state. It shall be issued only to citizens
4 of the United States who are not residents of this state.
5 The fee therefor shall be thirty dollars.

6 A Class F license shall be a nonresident fishing license
7 and shall entitle the licensee to fish for all fish in all

8 counties of the state. It shall be issued only to citizens
9 of the United States, and to unnaturalized persons pos-
10 sessing the permit required by section twenty-nine of
11 this article, who are not residents of this state. The fee
12 therefor shall be twenty dollars.

13 A Class G license shall be a nonresident family fishing
14 license and shall entitle the licensee and members of his
15 family to fish within the territorial limits of state parks
16 and state forests and in the waters of streams bounding
17 same, for a distance of not to exceed one hundred yards
18 from the exterior boundary of any state park or state
19 forest, for a period not to exceed one week. It may be
20 issued to any adult nonresident who is temporarily re-
21 siding in any state park or forest as tenant or lessee
22 of the state. The fee therefor shall be three dollars for
23 the head of the family, plus fifty cents additional for each
24 member of his family to whom the privileges of such
25 license are extended. Class G licenses may be issued in
26 such manner and under such regulations as the director
27 may see fit to prescribe.

**§20-2-45. Class K nonresident six-day, statewide, fishing
license.**

1 A Class K license shall be a nonresident fishing license
2 and shall entitle the licensee to fish for all fish in all
3 counties of the state for a period not to exceed six days.
4 It shall be issued only to citizens of the United States, and
5 to unnaturalized persons possessing the permit required
6 by section twenty-nine of this article, who are not resi-
7 dents of this state. The fee therefor shall be ten dollars.

CHAPTER 58

(House Bill No. 539—By Mr. Speaker, Mr. Boiarsky,
and Mr. Ours)

[Passed February 11, 1970; in effect July 1, 1970. Approved by the Governor.]

AN ACT to amend and reenact section one, article four, chap-
ter twenty of the code of West Virginia, one thousand

nine hundred thirty-one, as amended, relating to transfer of the control, management and supervision of Berkeley Springs sanitarium from the commissioner of public institutions to the director of the department of natural resources.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. PARKS AND RECREATION.

§20-4-1. Duties and functions of division of parks and recreation.

1 The division of parks and recreation herein created
2 and established shall have within its jurisdiction and
3 supervision:

4 (a) All state parks and state recreation areas, in-
5 cluding all lodges, cabins, swimming pools, motorboating
6 and all other recreational facilities therein and thereat;

7 (b) Administration of all laws and regulations re-
8 lating to beautification of state highways and other pub-
9 lic areas;

10 (c) The functions and services of the following com-
11 missions which are hereby made activities of the depart-
12 ment of natural resources:

13 (1) Point Pleasant battle monument commission,
14 created by Joint Resolution No. 24 adopted by
15 the Legislature of West Virginia on the sixth day
16 of December, one thousand eight hundred seventy-
17 five;

18 (2) The Prickett's Fort state park commission, cre-
19 ated by chapter forty-eight, acts of the Legislature of
20 West Virginia, regular session, one thousand nine hun-
21 dred twenty-seven;

22 (3) Droop Mountain battlefield commission, created
23 by House Joint Resolution No. 8 adopted by the
24 Legislature of West Virginia on the twenty-fifth
25 day of January, one thousand nine hundred twenty-
26 seven;

27 (4) Philippi battlefield commission, created by House
28 Joint Resolution No. 15 adopted by the Legis-
29 lature of West Virginia on the thirtieth day of March,
30 one thousand nine hundred twenty-seven; and

31 (5) Carnifex Ferry battleground park commission,
32 created by chapter nine, acts of the Legislature of West
33 Virginia, regular session, one thousand nine hundred
34 thirty-one; and

35 (d) Administration of all laws and regulations re-
36 lating to the establishment, development, protection, use
37 and enjoyment of all state parks and state recre-
38 ational facilities consistent with the provisions of
39 this chapter.

40 Berkeley Springs sanitarium heretofore established
41 and located on the state property located at Bath Square,
42 or Berkeley Springs property, in Morgan county, shall
43 be continued as a state recreational facility under the
44 jurisdiction and supervision of the division of parks
45 and recreation and shall be managed, directed and con-
46 trolled as prescribed in articles one and four, chapter
47 twenty of the code.

48 The director shall have and is hereby granted all of
49 the powers and authority and shall perform all of the
50 functions and duties with regard to Berkeley Springs
51 sanitarium that were previously vested in and performed
52 by the state commissioner of public institutions, who
53 shall no longer have such power and authority and
54 whose power and authority with regard to Berkeley
55 Springs sanitarium is hereby abolished. The title to all
56 property consisting of or belonging to Berkeley Springs
57 sanitarium is hereby transferred to and shall be vested
58 in the director who shall be the custodian of all deeds
59 and other muniments of title to all of that property and
60 shall cause those deeds and muniments susceptible of
61 recordation to be recorded in the proper office.

62 The chief of the division shall be primarily respon-
63 sible for the execution and administration of the pro-
64 visions of this article as an integral part of the natural
65 resources program of the state and shall organize and

66 staff his division for the orderly, efficient and economical
67 accomplishment of these ends.

CHAPTER 59

(Senate Bill No. 20—By Mr. Carrigan)

[Passed February 9, 1970; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article eight, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the West Virginia board of optometry.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 8. OPTOMETRISTS.

§30-8-3. Board of optometry; duties; disposition of moneys collected; compensation and expenses.

1 There shall be a state board of examiners in optometry,
2 known as the "West Virginia board of optometry", which
3 shall consist of five optometrists, who shall be appointed
4 by the governor, by and with the advice and consent of
5 the Senate. Each member of the board, at the time of his
6 appointment, shall have been a resident and a registered
7 practicing optometrist of this state for a period of three
8 years or more immediately preceding his appointment.
9 The members of the board in office on July one, one
10 thousand nine hundred sixty-seven, shall, unless sooner
11 removed, continue to serve until their successors have
12 been appointed and have qualified. On or before the first
13 day of July, one thousand nine hundred sixty-seven, and
14 annually thereafter, as their respective terms expire, the
15 governor shall appoint their successors so that one year
16 he shall appoint one member and in each of the two suc-
17 ceeding years he shall appoint two members, each for a

18 term of three years commencing on the first day of July.
19 Any member shall be eligible for reappointment.

20 All fees and other moneys collected by the board pur-
21 suant to the provisions of this article shall be kept in a
22 separate fund and expended solely for the purpose of
23 this article. No part of this special fund shall revert to
24 the general funds of this state. The compensation for
25 the members of the board and all expenses incurred under
26 this article shall be paid from this special fund. No com-
27 pensation or expense incurred under this article shall be
28 a charge against the general funds of this state.

29 The board shall make necessary rules and regulations,
30 subject to the provisions of chapter twenty-nine-a of this
31 code, which are not inconsistent with any other provision
32 or section of this article.

33 (a) For the proper performance of its duties;

34 (b) To govern the ethical practice of optometry for
35 the safety, protection and welfare of the public; and

36 (c) To govern the time, place and manner of conduct-
37 ing examinations in optometry, and the manner and form
38 in which applicants for such examination shall be filed.

CHAPTER 60

(Com. Sub. for House Bill No. 583—Originating in the House
Committee on the Judiciary)

[Passed February 12, 1970; in effect from passage. Approved by the Governor.]

AN ACT to amend article thirteen-a, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section five-a, relating to the certification of underground surveyors and additional requirements therefor.

Be it enacted by the Legislature of West Virginia:

That article thirteen-a, chapter thirty 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 13A. LAND SURVEYORS.

§30-13A-5a. Underground surveying; additional requirements.

1 After the first day of July one thousand nine hundred
2 seventy, no person required to be licensed under the pro-
3 visions of this article shall engage in underground sur-
4 veying until he shall have first obtained a license under
5 the provisions of this article and in addition shall have
6 received from the board, after application therefor, a cer-
7 tificate to engage in underground surveying, which cer-
8 tificate shall remain valid so long and only so long as the
9 license issued to such person under the provisions of this
10 article remains unexpired, unsuspended and unrevoked.
11 In order to be eligible for such certificate such person
12 shall, in addition to the requirements for a license, have
13 three years or more experience in the practice of under-
14 ground surveying. In the event an application for any
15 such certificate is denied, all of the provisions of sections
16 nine and ten of this article shall be as fully applicable
17 as if the application denied were an application for a
18 license under the provisions of this article.

CHAPTER 61

(House Bill No. 758—By Mr. Kopp)

[Passed February 12, 1970; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections four, seven and eight, article twenty, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to raising the application and renewal fees for licenses for physical therapists.

Be it enacted by the Legislature of West Virginia:

That sections four, seven and eight, article twenty, 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 20. PHYSICAL THERAPISTS.

§30-20-4. Qualifications of applicants for license; applications; fee.

§30-20-7. Registration without examination; reciprocity; fees.

§30-20-8. Renewal of registration; fee; inactive list.

§30-20-4. Qualifications of applicants for license; applications; fee.

1 To be eligible for license by the board as a physical
2 therapist, each applicant must:

3 a. Be at least twenty-one years old.

4 b. Be of good moral character.

5 c. Not be addicted to the intemperate use of alcohol
6 or narcotic drugs.

7 d. Be a citizen of the United States or have obtained
8 a declaration of intention of becoming a citizen.

9 e. Present evidence that he is a graduate of a school
10 of physical therapy approved by the American physical
11 therapy association and the board: *Provided*, That any
12 person who received his education in physical therapy
13 outside of the United States may qualify for a license
14 by fulfilling those requirements of the American physical
15 therapy association and the medical board, including
16 successful completion of a period of supervised clinical
17 experience and a written examination provided by the
18 board: *Provided, however*, That on or before the thirtieth
19 day of June, one thousand nine hundred sixty-six, any
20 person who has practiced physical therapy in this state
21 for five continuous years prior to the effective date of
22 this article (July 1, 1963) under the prescription and
23 direction of a licensed physician or surgeon may qualify
24 for a license by successful completion of a written
25 examination provided by the board.

26 f. Either (1) pass to the satisfaction of the board an
27 examination conducted by it to determine his fitness for
28 practice as a physical therapist; or (2) be entitled to be
29 licensed without examination as provided in section seven
30 of this article.

31 Unless entitled to be licensed under section seven of
32 this article, a person who desires to be licensed as a
33 physical therapist shall apply to the board, in writing,
34 on a blank furnished by the board. He shall embody in
35 that application evidence under oath, satisfactory to the
36 board, of his possessing the qualifications preliminary
37 to examination required by this section. He shall pay
38 to the board a fee of fifty dollars at the time of filing his
39 application, no part of which shall be refunded.

§30-20-7. Registration without examination; reciprocity; fees.

1 The board shall register as a physical therapist any
2 person who (1) applies for such registration after the
3 effective date of this article [July 1, 1963], and (2) at the
4 time of the effective date of this article is a member of or
5 is eligible for membership in the American physical
6 therapy association or the American registry of physical
7 therapists; and (3) is residing in the state at the time of
8 the effective date of this article. At the time of making
9 such application, such applicant shall pay the board a fee
10 of fifty dollars.

11 The board shall license as a physical therapist, without
12 examination, on the payment of a fee of fifty dollars,
13 any applicant for registration who is a physical therapist
14 registered or licensed under the laws of another state,
15 territory, or the District of Columbia, if the requirements
16 for registration or license of physical therapists in the
17 state, territory, or the District of Columbia, in which
18 the applicant was registered or licensed, were at the date
19 of his registration substantially equal to the requirements
20 in this article and if he meets all existing rules and regu-
21 lations set by the board.

§30-20-8. Renewal of registration; fee; inactive list.

1 Every physical therapist shall renew his license on or
2 before January one of each year by payment of a fee of
3 ten dollars. Any license that is not so renewed shall
4 automatically lapse. The board may in its discretion
5 renew a lapsed license on the payment of all unpaid fees.
6 A person licensed under the provisions of this article,
7 desiring to retire from practice temporarily, shall send

8 a written notice to the board. Upon receipt of such
9 notice, the board shall place the name of such person
10 upon the inactive list. While remaining on this list the
11 person shall not be subject to the payment of any fee
12 and shall not practice physical therapy in the state. When
13 such person desires to resume practice, application for
14 renewal of license and payment of renewal fee for the
15 current year shall be made to the board.

CHAPTER 62

(House Bill No. 524—By Mr. Daugherty and Mr. Nelson,
of Cabell)

[Passed February 11, 1970; 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 twenty-one, relating to the practice of psychology; providing for the licensing of persons engaging in the practice of psychology; providing a legislative finding, a declaration of public policy and definitions; relating to the circumstances under which a firm, association or corporation may engage in the practice of psychology; providing certain duties of licensees; providing for construction of article; creating the board of examiners of psychologists; relating to the qualifications, terms, oath and compensation of members of said board; providing for meetings of said board; specifying the powers and duties of said board; relating to the receipt and disbursement of funds by said board; establishing qualifications for the issuance of a license or temporary permit to engage in the practice of psychology; providing exceptions; providing for applications for and the issuance of licenses and temporary permits, renewals thereof and fees therefor; authorizing the board to suspend or revoke a license or temporary permit and establishing the grounds therefor; authorizing said board

to hold hearings; providing a time and place for such 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 stay or 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 appeals to the supreme court of appeals; providing for legal counsel for the board; 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 twenty-one, to read as follows:

ARTICLE 21. PSYCHOLOGISTS.

- §30-21-1. Legislative findings and declaration of public policy.
- §30-21-2. Definitions.
- §30-21-3. License required; firms, associations and corporations engaging in the practice of psychology.
- §30-21-4. Duties of licensee; construction of article.
- §30-21-5. Creation of board of examiners of psychologists; members, terms, meetings, officers, oath and compensation; general provisions.
- §30-21-6. Powers and duties of board; funds of board.
- §30-21-7. Qualifications of applicants; exceptions; applications; fee.
- §30-21-8. Issuance of license; renewal of license; renewal fee; display of license.
- §30-21-9. Temporary permits.
- §30-21-10. Suspension or revocation of license or temporary permit.
- §30-21-11. Procedures for hearing.
- §30-21-12. Judicial review; appeal to supreme court of appeals; legal representation for board.
- §30-21-13. Penalties.
- §30-21-14. Actions to enjoin violations.
- §30-21-15. Severability.

§30-21-1. Legislative findings and declaration of public policy.

- 1 The Legislature of the state of West Virginia hereby
- 2 determines and finds that in the public interest persons
- 3 should not engage in the practice of psychology in this

4 state without the requisite experience and training and
5 without adequate regulation and control; and that there
6 is presently no adequate means to protect the interests
7 of the citizens of this state from the unauthorized, un-
8 qualified and unregulated practice of psychology. It is
9 therefore declared to be the public policy of this state
10 that the practice of psychology affects the general
11 welfare and public interest of the state and its citizens;
12 that persons without the necessary qualifications, train-
13 ing and education, and persons not of good character
14 should not engage in the practice of psychology; and
15 that the evils of such unauthorized and unqualified prac-
16 tice may be best prevented and the interest of the public
17 best served by regulating and controlling such practice
18 as provided in this article.

§30-21-2. Definitions.

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

3 (a) "Applicant" means any person making applica-
4 tion for an original or renewal license or a temporary
5 permit under the provisions of this article.

6 (b) "Licensee" means any person holding a license
7 or a temporary permit issued under the provisions of
8 this article.

9 (c) "Board" means the board of examiners of psy-
10 chologists created by this article.

11 (d) "Psychology" means the science involving the
12 principles, methods and procedures of understanding,
13 predicting and influencing behavior; the principles per-
14 taining to learning, perception, motivation, thinking,
15 emotions and interpersonal relationships; the methods
16 and procedures of interviewing and counseling; the
17 methods and procedures of psychotherapy, meaning the
18 use of learning, conditioning methods and emotional
19 reactions, in a professional relationship, to assist a person
20 or persons to modify feelings, attitudes and behavior,
21 which are intellectually, socially or emotionally mal-
22 adjustive or ineffectual; the constructing, administering
23 and interpreting of tests of intelligence, special abilities,
24 aptitudes, interests, attitudes, personality characteristics,

25 emotions and motivation; the psychological evaluation,
26 prevention and improvements of adjustment problems
27 of individuals and groups; and the resolution of inter-
28 personal and social conflicts.

29 (e) "Practice of psychology" means the rendering or
30 offering to render for a fee, salary or other compensation,
31 monetary or otherwise, any psychological service in-
32 volving: (i) The application of the principles, methods
33 and procedures of understanding, predicting and influ-
34 encing behavior; (ii) the application of the principles
35 pertaining to learning, perception, motivation, thinking,
36 emotions and interpersonal relationships; (iii) the ap-
37 plication of the methods and procedures of interviewing
38 and counseling; (iv) the application of the methods and
39 procedures of psychotherapy, meaning the use of learn-
40 ing, conditioning methods and emotional reactions, in
41 a professional relationship, to assist a person or persons
42 to modify feelings, attitudes and behavior, which are
43 intellectually, socially or emotionally maladjustive or
44 ineffectual; (v) the constructing, administering and in-
45 terpreting of tests of intelligence, special abilities, apti-
46 tudes, interests, attitudes, personality characteristics,
47 emotions and motivation; (vi) the psychological evalu-
48 ation, prevention and improvement of adjustment prob-
49 lems of individuals and groups; and (vii) the resolution
50 of interpersonal and social conflicts.

51 However, for the purpose of this article, the term
52 "practice of psychology" shall not include:

53 (1) Teaching, lecturing or engaging in research in
54 psychology as part of salaried employment at an insti-
55 tution of higher learning;

56 (2) The official duties of a person employed as a
57 psychologist by the state of West Virginia or any of its
58 departments, agencies, divisions or bureaus or by county
59 boards of education or local governments, which duties
60 are performed under the direct and regular supervision
61 of a licensee;

62 (3) The official duties of a person employed as a
63 psychologist by any department, agency, division or
64 bureau of the United States of America;

65 (4) The official duties of a person working under
66 the direct and regular supervision of a licensee for the
67 purpose of gaining the experience required for a license
68 hereunder by the provisions of subdivision (4), sub-
69 section (a), section seven of this article, which experi-
70 ence is of a type approved by the board;

71 (5) The use, in good faith, of certain psychological
72 techniques, procedures, methods and principles as an
73 incident to engaging in a recognized occupation or pro-
74 fession, other than the practice of psychology, including,
75 but not limited to, the occupation or profession of a
76 physician, lawyer, dentist, social worker, sociologist,
77 political scientist, economist, probation or parole officer,
78 rehabilitation or marriage counselor, clergyman, audi-
79 ologist, speech pathologist, teacher, educational or
80 guidance counselor and a placement or personnel direc-
81 tor;

82 (6) The activities of a student of psychology, psy-
83 chological intern or psychological resident, which activi-
84 ties are a part of and are engaged in pursuant to a course
85 of study at an institution of higher learning; or

86 (7) The activities of an assistant or technician which
87 are performed under the direct and regular supervision
88 of a licensee.

89 (f) "Examination" means the examination in psy-
90 chology required by subdivision (5), subsection (a),
91 section seven of this article.

**§30-21-3. License required; firms, associations and corporations
engaging in the practice of psychology.**

1 (a) No person shall engage in, offer to engage in,
2 or hold himself out to the public as being engaged in,
3 the practice of psychology in this state, nor shall any
4 person use in connection with any trade, business, pro-
5 fession or occupation, except in those instances specifi-
6 cally excluded from the definition of the practice of
7 psychology by subparagraphs (1), (2), (3), (4) and
8 (6), subdivision (e), section two of this article, the
9 word "psychologist," "psychology," "psychological" or
10 any other title, word or abbreviation which induces or

11 tends to induce the belief that such person is qualified
12 to engage or is engaged in the practice of psychology,
13 unless and until he shall first obtain a license or tempo-
14 rary permit to engage in the practice of psychology in
15 accordance with the provisions of this article, which
16 license or temporary permit remains unexpired, un-
17 suspended and unrevoked: *Provided*, That no such license
18 or temporary permit shall be required for a psycholo-
19 gist who is not a resident of this state, who is the
20 holder of a license or certificate to engage in the prac-
21 tice of psychology issued by a state with licensing or
22 certification requirements determined by the board to
23 be at least as great as those provided in this article, who
24 has no regular place of practice in this state and who
25 engages in the practice of psychology in this state for
26 a period of not more than ten days in any calendar
27 year.

28 (b) No firm, association or corporation shall, except
29 through a licensee or licensees, render any service or
30 engage in any activity which if rendered or engaged in
31 by any individual would constitute the practice of psy-
32 chology.

§30-21-4. Duties of licensee; construction of article.

1 (a) It shall be the duty of a licensee when entering
2 into any psychologist-client relationship to assist his
3 client in obtaining professional help for all aspects of
4 his problem which fall outside the boundaries of the
5 licensee's competence. It shall also be the duty of a
6 licensee to encourage his client to make provision for
7 the medical diagnosis and treatment of relevant medical
8 problems and, whenever indicated, to make referral to
9 or seek consultation with medical specialists.

10 (b) Nothing in this article shall be construed as per-
11 mitting the administering or prescribing of drugs or as
12 infringing upon the practice of medicine and surgery.

**§30-21-5. Creation of board of examiners of psychologists;
members, terms, meetings, officers, oath and com-
pensation; general provisions.**

1 (a) There is hereby created the state board of ex-
2 aminers of psychologists which shall be composed of

3 five members appointed by the governor by and with
4 the advice and consent of the Senate. Each member
5 shall have been actively engaged in the practice of psy-
6 chology or in the teaching of psychology in the state
7 of West Virginia for at least two years immediately pre-
8 ceding his appointment and shall be the holder of a
9 license under the provisions of this article, or, in the
10 case of the members first appointed, shall be eligible
11 for such a license.

12 (b) The members of the board shall be appointed
13 for overlapping terms of three years each and until their
14 respective successors have been appointed and have quali-
15 fied, except for the original appointments. For the purpose
16 of original appointments, two members shall be appointed
17 for a term of three years and until their successors have
18 been appointed and have qualified, two members shall be
19 appointed for a term of two years and until their succes-
20 sors have been appointed and have qualified and one mem-
21 ber shall be appointed for a term of one year and until
22 his successor has been appointed and has qualified. Mem-
23 bers may be reappointed for any number of terms. Before
24 entering upon the performance of his duties, each mem-
25 ber shall take and subscribe to the oath required by sec-
26 tion five, article four of the constitution of this state.
27 Vacancies shall be filled by appointment by the governor
28 for the unexpired term of the member whose office shall
29 be vacant and such appointment shall be made within
30 sixty days of the occurrence of such vacancy. Any member
31 may be removed by the governor in case of incompetency,
32 neglect of duty, gross immorality or malfeasance in office.

33 (c) The board shall elect from its membership a
34 chairman and secretary who shall serve at the will and
35 pleasure of the board. A majority of the members of
36 the board shall constitute a quorum and meetings shall
37 be held at the call of the chairman or upon the written
38 request of three members at such time and place as
39 designated in such call or request, and, in any event,
40 the board shall meet at least once annually to conduct
41 the examination hereinafter provided for and to trans-
42 act such other business as may come before it. Mem-

43 bers may be paid such reasonable compensation as the
44 board may from time to time determine, and in addi-
45 tion may be reimbursed for all reasonable and neces-
46 sary expenses actually incurred in the performance of
47 their duties, which compensation and expenses shall be
48 paid in accordance with the provisions of subsection (b),
49 section six of this article.

§30-21-6. Powers and duties of board; funds of board.

1 (a) The board shall:

2 (1) Examine applicants and determine their eligi-
3 bility for a license or temporary permit to engage in
4 the practice of psychology;

5 (2) Prepare, conduct and grade an apt and proper
6 written, oral or written and oral examination of appli-
7 cants for a license and determine the satisfactory passing
8 score thereon;

9 (3) Promulgate reasonable rules and regulations
10 implementing the provisions of this article and the pow-
11 ers and duties conferred upon the board hereby,
12 including, but not limited to, reasonable rules and reg-
13 ulations establishing standards to insure the proper
14 supervision of all persons working under the direct and
15 regular supervision of a licensee under the provisions
16 of this article, all of which reasonable rules and regula-
17 tions shall be promulgated in accordance with the
18 provisions of article three, chapter twenty-nine-a of this
19 code;

20 (4) Issue, renew, deny, suspend or revoke licenses
21 and temporary permits to engage in the practice of psy-
22 chology in accordance with the provisions of this article
23 and, in accordance with the administrative procedures
24 hereinafter provided, may review, affirm, reverse, vacate
25 or modify its order with respect to any such denial,
26 suspension or revocation;

27 (5) Investigate alleged violations of the provisions of
28 this article, reasonable rules and regulations promulgated
29 hereunder and orders and final decisions of the board
30 and take appropriate disciplinary action against any
31 licensee for the violation thereof or institute appropriate

32 legal action for the enforcement of the provisions of
33 this article, reasonable rules and regulations promulgated
34 hereunder and orders and final decisions of the board
35 or take such disciplinary action and institute such legal
36 action;

37 (6) Employ, direct, discharge and define the duties
38 of full or part-time professional, clerical or other per-
39 sonnel necessary to effectuate the provisions of this
40 article;

41 (7) Keep accurate and complete records of its pro-
42 ceedings, certify the same as may be appropriate, and
43 prepare, from time to time, a list showing the names
44 and addresses of all licensees;

45 (8) Whenever it deems it appropriate, confer with
46 the attorney general or his assistants in connection with
47 all legal matters and questions; and

48 (9) Take such other action as may be reasonably
49 necessary or appropriate to effectuate the provisions of
50 this article.

51 (b) All moneys paid to the board shall be accepted
52 by a person designated by the board and deposited by
53 him with the treasurer of the state and credited to an
54 account to be known as the "board of examiners of psy-
55 chologists fund." All of the reasonable compensation of
56 the members of the board, the reimbursement of all
57 reasonable and necessary expenses actually incurred by
58 such members and all other costs and expenses incurred
59 by the board in the administration of this article shall
60 be paid from such fund, and no part of the state's general
61 revenue fund shall be expended for this purpose.

**§30-21-7. Qualifications of applicants; exceptions; applications;
fee.**

1 (a) To be eligible for a license to engage in the prac-
2 tice of psychology, the applicant must:

3 (1) Be at least twenty-one years of age;

4 (2) Be of good moral character;

5 (3) Be a holder of a doctor of philosophy degree or
6 its equivalent or a master's degree in psychology from an
7 accredited institution of higher learning, with adequate

8 course study at such institution in psychology, the ade-
9 quacy of any such course study to be determined by the
10 board;

11 (4) When the degree held is a doctor of philosophy
12 degree or its equivalent, have at least two-years' experi-
13 ence subsequent to receiving said degree in the perform-
14 ance of any of the psychological services described in
15 subdivision (e), section two of this article, including those
16 activities excluded from the definition of the term "prac-
17 tice of psychology" in said subdivision (e), and, when
18 the degree held is a master's degree, have at least eight
19 years' experience subsequent to receiving said degree in
20 the performance of any of the psychological services de-
21 scribed in said subdivision (e), including those activities
22 excluded from the definition of the term "practice of
23 psychology" in said subdivision (e);

24 (5) Have passed the examination prescribed by the
25 board, which examination shall cover the basic subject
26 matter of psychology and psychological skills and tech-
27 niques;

28 (6) Not have been convicted of a felony or crime
29 involving moral turpitude; and

30 (7) Not, within the next preceding six months, have
31 taken and failed to pass the examination required by
32 subdivision (5), subsection (a) of this section.

33 (b) The following persons shall be eligible for a
34 license to engage in the practice of psychology without
35 examination:

36 (1) Any applicant who holds a doctor of philosophy
37 degree or its equivalent from an institution of higher
38 learning, with adequate course study at such institution
39 in psychology and who is a diplomate of the "American
40 Board of Examiners in Professional Psychology"; and

41 (2) Any person who holds a license or certificate to
42 engage in the practice of psychology issued by any other
43 state, the requirements for which license or certificate
44 are found by the board to be at least as great as those
45 provided in this article.

46 (c) Any person who is engaged in the practice of
47 psychology in this state, or is engaged in any of the
48 activities described in subparagraphs (1), (2), or (3),
49 subdivision (e), section two of this article, in this state,
50 on the effective date of this article and has been so
51 engaged for a period of two consecutive years immedi-
52 ately prior thereto shall be eligible for a license to
53 engage in the practice of psychology without exami-
54 nation and without meeting the requirements of sub-
55 division (4), subsection (a) of this section, if applica-
56 tion for such license is made within six months after
57 the effective date of this article and if such person meets
58 the requirements of subdivisions (1), (2), (3) and (6),
59 subsection (a) of this section.

60 (d) Any applicant for any such license shall submit
61 an application therefor at such time (subject to the
62 time limitation set forth in subsection (c) of this sec-
63 tion), in such manner, on such forms and containing
64 such information as the board may from time to time
65 by reasonable rule and regulation prescribe, and pay to
66 the board a license fee of fifteen dollars, which fee shall
67 be returned to the applicant if he is denied a license.

**§30-21-8. 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 to engage
3 in the practice of psychology, it shall forthwith issue
4 to him such license; and otherwise the board shall deny
5 the same. The license shall be valid for a period of two
6 years from the date issued and may be renewed for a
7 period of two years without examination upon applica-
8 tion for renewal on a form prescribed by the board and
9 payment to the board of a renewal fee of ten dollars:
10 *Provided*, That the board may deny an application for
11 renewal for any reason which would justify the denial
12 of an original application for a license. The board shall
13 prescribe the form of licenses and each license shall be
14 conspicuously displayed by the licensee at his principal
15 place of practice.

§30-21-9. Temporary permits.

1 (a) Upon proper application the board may issue,
2 without examination, a temporary permit to engage in
3 the practice of psychology in this state:

4 (1) Pending examination, to an applicant who meets
5 the qualifications of subdivisions (1), (2), (3), (4), (6)
6 and (7), subsection (a), section seven of this article,
7 which temporary permit shall expire thirty days after
8 the board gives written notice of the results of the
9 examination held next following the issuance of such
10 temporary permit, and such permit may not be renewed
11 nor another thereof issued to the same person; and

12 (2) To a psychologist who is not a resident of this
13 state and who meets the requirements of subdivisions
14 (1), (2), (3), (4), (6) and (7), subsection (a), section
15 seven of this article, which temporary permit shall be
16 valid only for a period of ninety days in the calendar
17 year in which issued, and such permit may not be re-
18 newed nor another thereof issued to the same person
19 in the same calendar year.

20 (b) The fee for any temporary permit shall be
21 fifteen dollars.

§30-21-10. Suspension or revocation of license or temporary 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 temporary permit issued under the pro-
6 visions of this article.

7 (b) The board shall suspend or revoke any license
8 or temporary permit when it finds the holder thereof
9 has:

10 (1) Been convicted of a felony or other crime in-
11 volving moral turpitude;

12 (2) Obtained a license or temporary permit by means
13 of fraud or deceit;

14 (3) Been incompetent, grossly negligent, or guilty
15 of other malpractice as defined by the board by reason-
16 able rules and regulations; or

17 (4) Failed or refused to comply with the provisions
18 of this article or any reasonable rule and regulation
19 promulgated by the board hereunder or any order or
20 final decision of the board.

21 (c) The board shall also suspend or revoke any
22 license or temporary permit if it finds the existence of
23 any grounds which would justify the denial of an appli-
24 cation for such license or temporary permit if application
25 were then being made for it.

§30-21-11. Procedures for hearing.

1 (a) Whenever the board shall deny an application
2 for any original or renewal license or deny an appli-
3 cation for a temporary permit or shall suspend or revoke
4 any license or temporary permit, it shall make and
5 enter an order to that effect and serve a copy thereof
6 on the applicant or licensee, as the case may be, by
7 certified mail, return receipt requested. Such order shall
8 state the grounds for the action taken and shall require
9 that any license or temporary permit suspended or
10 revoked thereby shall be returned to the board by the
11 holder within twenty days after receipt of said copy of
12 said order.

13 (b) Any person adversely affected by any such order
14 shall be entitled to a hearing thereon (as to all issues
15 not excluded from the definition of a "contested case"
16 as set forth in article one, chapter twenty-nine-a of this
17 code) if, within twenty days after receipt of a copy
18 thereof, he files with the board a written demand for
19 such hearing. A demand for hearing shall operate auto-
20 matically to stay or suspend the execution of any order
21 suspending or revoking a license or temporary permit
22 or denying an application for a renewal license. The
23 board may require the person demanding such hearing
24 to give reasonable security for the costs thereof and if
25 such person does not substantially prevail at such
26 hearing such costs shall be assessed against him

27 and may be collected by an action at law or other proper
28 remedy.

29 (c) Upon receipt of a written demand for such hear-
30 ing, the board shall set a time and place therefor not
31 less than ten and not more than thirty days thereafter.
32 Any scheduled hearing may be continued by the board
33 upon its own motion or for good cause shown by the
34 person demanding the hearing.

35 (d) All of the pertinent provisions of article five,
36 chapter twenty-nine-a of this code shall apply to and
37 govern the hearing and the administrative procedures
38 in connection with and following such hearing, with
39 like effect as if the provisions of said article five were
40 set forth in this subsection.

41 (e) Any such hearing shall be conducted by a quorum
42 of the board. For the purpose of conducting any such
43 hearing any member of the board shall have the power
44 and authority to issue subpoenas and subpoenas duces
45 tecum which shall be issued and served within the time,
46 for the fees and shall be enforced, as specified in section
47 one, article five of said chapter twenty-nine-a, and all
48 of the said section one provisions dealing with subpoenas
49 and subpoenas duces tecum shall apply to subpoenas
50 and subpoenas duces tecum issued for the purpose of a
51 hearing hereunder.

52 (f) At any such hearing the person who demanded
53 the same may represent himself or be represented by
54 an attorney at law admitted to practice before any
55 circuit court of this state. Upon request by the board,
56 it shall be represented at any such hearing by the at-
57 torney general or his assistants without additional com-
58 pensation.

59 (g) After any such hearing and consideration of all
60 of the testimony, evidence and record in the case, the
61 board shall render its decision in writing. The written
62 decision of the board shall be accompanied by findings
63 of fact and conclusions of law as specified in section
64 three, article five, chapter twenty-nine-a of this code,
65 and a copy of such decision and accompanying findings
66 and conclusions shall be served by certified mail, return

67 receipt requested, upon the person demanding such hear-
68 ing, and his attorney of record, if any.

69 (h) The decision of the board shall be final unless
70 reversed, vacated or modified upon judicial review
71 thereof in accordance with the provisions of section
72 twelve of this article.

**§30-21-12. 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 eleven 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 judi-
7 cial review with like effect as if the provisions of said
8 section 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 of
16 appeals shall be provided by the attorney general or
17 his assistants and in any circuit court by the prosecuting
18 attorney of the county as well, all without additional
19 compensation.

§30-21-13. Penalties.

1 Any person who violates any of the provisions of this
2 article, any of the reasonable rules and regulations
3 promulgated 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 fined not more than five hun-
6 dred dollars, or imprisoned in the county jail not more
7 than six months, or both fined and imprisoned.

§30-21-14. Actions to enjoin violations.

1 Whenever it appears to the board that any person has
2 been or is violating or is about to violate any provision

3 of this article, any reasonable rule and regulation promul-
4 gated hereunder or any order or final decision of the board,
5 the board may apply in the name of the state to the circuit
6 court of the county in which the violation or violations
7 or any part thereof has occurred, is occurring or is about
8 to occur, or the judge thereof in vacation, for an injunc-
9 tion against such person and any other persons who have
10 been, are or are about to be, involved in any practices,
11 acts or omissions, so in violation, enjoining such person
12 or persons from any such violation or violations. Such
13 application may be made and prosecuted to conclusion
14 whether or not any such violation or violations have re-
15 sulted or shall result in prosecution or conviction under
16 the provisions of section thirteen of this article.

17 Upon application by the board, the circuit courts of
18 this state may by mandatory or prohibitory injunction
19 compel compliance with the provisions of this article,
20 the reasonable rules and regulations promulgated here-
21 under and all orders and final decisions of the board.
22 The court may issue a temporary injunction in any case
23 pending a decision on the merits of any application
24 filed.

25 The judgment of the circuit court upon any applica-
26 tion permitted by the provisions of this section shall
27 be final unless reversed, vacated or modified on appeal
28 to the supreme court of appeals. Any such appeal shall
29 be sought in the manner and within the time provided
30 by law for appeals from circuit courts in other civil
31 actions.

32 The board shall be represented in all such proceedings
33 by the attorney general or his assistants and in such pro-
34 ceedings in the circuit court by the prosecuting attorneys
35 of the several counties as well, all without additional
36 compensation.

§30-21-15. Severability.

1 If any provision of this article or the application thereof
2 to any person or circumstance is held unconstitutional or
3 invalid, such unconstitutionality or invalidity shall not
4 affect other provisions or applications of the article, and

5 to this end the provisions of this article are declared to
6 be severable.

CHAPTER 63

(Com. Sub. for Senate Bill No. 111—Originating in the Senate
Committee on Finance)

[Passed February 6, 1970; In effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two, fourteen, twenty-two, twenty-five and thirty-one, article ten, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to definitions of words used in the West Virginia public employees retirement act; service credit; retirement annuity; disability retirement; and employers' contributions.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.

§5-10-2. Definitions.

§5-10-14. Service credit.

§5-10-22. Retirement annuity.

§5-10-25. Disability retirement.

§5-10-31. Employers accumulation fund; employers contributions.

§5-10-2. Definitions.

1 The following words and phrases as used in this article,
2 unless a different meaning is clearly indicated by the con-
3 text, shall have the following meanings:

4 (1) "State" means the state of West Virginia;

5 (2) "Retirement system" or "system" means the West
6 Virginia public employees retirement system created and
7 established by this article;

8 (3) "Board of trustees" or "board" means the board of
9 trustees of the West Virginia public employees retirement
10 system;

11 (4) "Political subdivision" means the state of West Vir-
12 ginia, a county, city or town in the state; a school corpora-
13 tion or corporate unit; any separate corporation or instru-
14 mentality established by one or more counties, cities or
15 towns, as permitted by law; any corporation or instru-
16 mentality supported in most part by counties, cities or
17 towns; any public corporation charged by law with the
18 performance of a governmental function and whose juris-
19 diction is coextensive with one or more counties, cities or
20 towns, any agency or organization established by, or ap-
21 proved by the department of mental health for the provi-
22 sion of community health or mental retardation services,
23 and which is supported in part by state, county or municipi-
24 pal funds;

25 (5) "Participating public employer" means the state of
26 West Virginia, any board, commission, department, insti-
27 tution or spending unit, and shall include any agency
28 created by rule of the supreme court of appeals having
29 full-time employees, which for the purposes of this article
30 shall be deemed a department of state government; and
31 any political subdivision in the state which has elected to
32 cover its employees, as defined in this article, under the
33 West Virginia public employees retirement system;

34 (6) "Employee" means any person who serves regularly
35 as an officer or employee, full time, on a salary basis,
36 whose tenure is not restricted as to temporary or provi-
37 sional appointment, in the service of, and whose compen-
38 sation is payable in whole or in part by any political sub-
39 division, or an officer or employee whose compensation is
40 calculated on a daily basis and paid monthly or on comple-
41 tion of assignment, including technicians and other per-
42 sonnel employed by the West Virginia national guard
43 whose compensation in whole or in part is paid by the
44 federal government: *Provided*, That members of the state
45 Legislature, the clerk of the House of Delegates, the clerk
46 of the state Senate, members of the legislative body of any
47 political subdivision and judges of the state court of claims
48 shall be considered to be employees, anything contained
49 herein to the contrary notwithstanding. In any case of
50 doubt as to who is an employee within the meaning of this
51 article the board of trustees shall decide the question;

52 (7) "Member" means any person who is included in the
53 membership of the retirement system;

54 (8) "Retirant" means any member who retires with an
55 annuity payable by the retirement system;

56 (9) "Beneficiary" means any person, except a retirant,
57 who is entitled to, or will be entitled to, an annuity or
58 other benefit payable by the retirement system;

59 (10) "Service" means personal service rendered to a
60 participating public employer by an employee, as defined
61 in this article, of a participating public employer;

62 (11) "Prior service" means service rendered prior to
63 July one, one thousand nine hundred sixty-one, to the
64 extent credited a member as provided in this article;

65 (12) "Contributing service" means service rendered by
66 a member from and after the date of his entrance in the
67 retirement system, to the extent credited him as provided
68 in this article;

69 (13) "Credited service" means the sum of a member's
70 prior service credit and contributing service credit stand-
71 ing to his credit as provided in this article;

72 (14) "Compensation" means the remuneration paid a
73 member by a participating public employer for personal
74 services rendered by him to the participating public em-
75 ployer. In the event a member's remuneration is not all
76 paid in money, his participating public employer shall fix
77 the value of the portion of his remuneration which is not
78 paid in money;

79 (15) "Final average salary" means the average of the
80 highest annual compensation received by a member dur-
81 ing any period of three consecutive years of his credited
82 service contained within his ten years of credited service
83 immediately preceding the date his employment with a
84 participating public employer last terminated. If he has
85 less than five years of credited service, his final average
86 salary shall be the average of the annual rate of compen-
87 sation received by him during his total years of credited
88 service. Final average salary for members of the Legisla-
89 ture means their actual compensation serving as a mem-
90 ber of the Legislature multiplied by eight; plus any other
91 compensation they receive from any other participating
92 public employer including the state of West Virginia;

93 (16) "Accumulated contributions" means the sum of all
94 amounts deducted from the compensations of a member
95 and credited to his individual account in the members'
96 deposit fund, together with regular interest thereon;

97 (17) "Regular interest" means such rate or rates of
98 interest per annum, compounded annually, as the board of
99 trustees shall from time to time adopt;

100 (18) "Annuity" means an annual amount payable by
101 the retirement system throughout the life of a person. All
102 annuities shall be paid in equal monthly installments,
103 using the upper cent for any fraction of a cent;

104 (19) "Annuity reserve" means the present value of all
105 payments to be made to a retirant or beneficiary of a re-
106 tirant on account of any annuity, computed upon the basis
107 of such mortality and other tables of experience, and
108 regular interest, as the board of trustees shall from time
109 to time adopt;

110 (20) "Retirement" means a member's withdrawal from
111 the employ of a participating public employer with an an-
112 nuity payable by the retirement system;

113 (21) "Actuarial equivalent" means a benefit of equal
114 value computed upon the basis of such mortality table and
115 regular interest as the board of trustees shall from time
116 to time adopt;

117 (22) The masculine gender shall include the feminine
118 gender, and words of the singular number with respect to
119 persons shall include the plural number, and vice versa.

§5-10-14. Service credit.

1 (a) The board of trustees shall credit each mem-
2 ber with the prior service and contributing service to
3 which he is entitled based upon such rules and regu-
4 lations as the board of trustees shall from time to time
5 adopt: *Provided*, That in no case shall less than ten
6 days of service rendered by a member in any calendar
7 month be credited as a month of service; nor shall less
8 than ten months of service rendered in any calendar
9 year be credited as a year of service; nor shall more
10 than one year of service be credited any member for
11 all service rendered by him in any calendar year; nor

12 shall any member who was not in the employ of a
13 political subdivision within a period of twenty-five years
14 immediately preceding the date the political subdivision
15 became a participating public employer be credited with
16 prior service.

17 (b) The board of trustees shall grant service credit
18 to employees of boards of health, the clerk of the House
19 of Delegates and the clerk of the state Senate, or to
20 any former and present member of the state teachers
21 retirement system who have been contributing members
22 for more than three years, for service previously credited
23 by the state teachers retirement system, and shall re-
24 quire the transfer of the member's contributions to the
25 retirement system, and shall also require a deposit, with
26 interest, of any withdrawals of contributions any time
27 prior to said member's retirement. Repayment of with-
28 drawals shall be as directed by the board of trustees.

29 (c) Court reporters who are acting in an official ca-
30 pacity, although paid by funds other than the county
31 court or state auditor, may receive prior service credit
32 for such time as served in such capacity.

§5-10-22. Retirement annuity.

1 Upon a member's retirement, as provided in this
2 article, he shall receive a straight life annuity equal to one
3 and five-tenths percent of his final average salary mul-
4 tiplied by the number of years, and fraction of a year,
5 of his credited service in force at the time of his re-
6 tirement: *Provided*, That after March one, one thou-
7 sand nine hundred seventy, all members retired and
8 all members retiring shall receive a straight life an-
9 nuity equal to two percent of his final average sal-
10 ary multiplied by the number of years, and frac-
11 tion of a year, of his credited service in force at the
12 time of his retirement. In either event, upon his re-
13 tirement he shall have the right to elect an option pro-
14 vided for in section twenty-four hereof. All annuity
15 payments shall commence effective the first of the
16 month following the month in which a member retires
17 or a member dies leaving a beneficiary entitled to benefits
18 and shall continue to the end of the month in which

19 said retirant or beneficiary dies, and said annuity pay-
20 ments shall not be prorated for any portion of a month
21 in which a member retires or retirant or beneficiary
22 dies.

23 Any member of the Legislature who retires, or former
24 member who has been retired under this article, shall
25 receive an annuity as provided herein based upon the
26 salary at the time of his retirement, which annuity
27 shall be changed from time to time during the period
28 of his retirement and shall be changed proportionately
29 when and if the compensation of members of the Leg-
30 islature is changed: *Provided further*, That all former
31 members of the Legislature, now retired, shall, effective
32 March one, one thousand nine hundred seventy, have
33 their annuity readjusted in accordance with subdivision
34 (15), section two, of this article, as amended.

§5-10-25. Disability retirement.

1 (a) Upon the application of a member or former
2 member of the retirement system, or his present or
3 past employing authority, any member or former mem-
4 ber who (1) is or was in the employ of a participating
5 public employer, (2) has ten or more years of credited
6 service, and (3) becomes totally and permanently in-
7 capacitated for employment, by reason of a personal
8 injury or disease, may be retired by the board of trus-
9 tees if after a medical examination of the said member
10 or former member, made by or under the direction of
11 a medical committee consisting of two physicians, one
12 of whom shall be named by the board, and one by the
13 said member or former member, the said medical com-
14 mittee reports, in writing, to the board that (1) the
15 said member or former member is physically or mentally
16 totally incapacitated for employment, (2) that such in-
17 capacity will probably be permanent, and (3) that the
18 said member or former member should be retired. In
19 the event the two above-mentioned physicians do not
20 agree in their findings, then the board of trustees may,
21 at its discretion, appoint a third physician to examine
22 said member or former member and, based upon the
23 third physician's report in writing, the board may retire
24 said member or former member.

25 (b) A member with less than ten years of credited
26 service shall have the service requirement provided for
27 in subsection (a) above waived in the event (1) the
28 board of trustees finds his total and permanent disability
29 to be the natural and proximate result of a personal
30 injury or disease arising out of and in the course of his
31 actual performance of duty in the employ of a partici-
32 pating public employer, and (2) he is in receipt of work-
33 men's compensation on account of such physical or
34 mental disability.

35 (c) For those members or former members retiring and
36 those members retired, as of March one, one thousand nine
37 hundred seventy, he shall receive a straight life annuity
38 computed according to section twenty-two hereof and
39 he shall have the right to elect an option provided for
40 in section twenty-four hereof: *Provided, however, That*
41 his straight life annuity payable to his attainment of
42 age sixty-five years shall not be less than fifty percent
43 of his final average salary; and his said straight life
44 annuity payable from and after his attainment of age
45 sixty-five years shall not be less than twenty percent
46 of his final average salary: *Provided further, That* his
47 said annuity shall be subject to section twenty-six hereof.

**§5-10-31. Employers accumulation fund; employers contri-
butions.**

1 (a) The employers accumulation fund is hereby cre-
2 ated. It shall be the fund in which shall be accumulated
3 the contributions made by the participating public em-
4 ployers to the retirement system, and from which trans-
5 fers shall be made as provided in this section.

6 (b) Based upon the provisions of section thirteen of
7 this article, the participating public employers contribu-
8 tions to the retirement system shall be determined, ac-
9 cording to subdivisions one, two, three and four below,
10 for the state as the state division, and for the other par-
11 ticipating public employers as the public employer divi-
12 sion.

13 (1) The participating public employers contributions
14 for members' current service shall be a percent of the
15 members' annual compensation which will equal an

16 amount which if paid annually by the participating public
17 employers during the members' future service will be
18 sufficient to provide, at the time annuities will become
19 payable on their account, the difference between the an-
20 nuity reserves for the future service portions of the an-
21 nuities to be paid and the present value of the members'
22 future net contributions.

23 (2) The participating public employers contributions
24 for members' accrued service shall be a percent of the
25 members' annual compensation which will equal an
26 amount which if paid annually by the participating public
27 employers over a period of years, to be determined by
28 the board of trustees, will amortize, at regular interest,
29 the unfunded annuity reserves for the accrued portions
30 of the annuities to be paid on account of members.

31 (3) The participating public employers contributions
32 for annuities being paid retirants and beneficiaries shall
33 be a percent of the members' annual compensations which
34 will equal an amount which if paid annually by the par-
35 ticipating public employers over a period of years, to be
36 determined by the board of trustees, will amortize, at
37 regular interest, the unfunded annuity reserves for an-
38 nuities being paid retirants and beneficiaries.

39 (4) In no year shall the total of the contributions, pro-
40 vided for in subdivisions one, two and three above, to
41 be paid by any participating public employer exceed ten
42 and five-tenths percent of the total payroll for the mem-
43 bers in the employ of such participating public employer
44 for the preceding fiscal year.

—o—

CHAPTER 64

(House Bill No. 721—By Mr. Seibert)

[Passed February 12, 1970; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section sixteen, article one, chapter twenty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the transfer of inmates of state institutions.

Be it enacted by the Legislature of West Virginia:

That section sixteen, article one, 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 1. SUPERVISION AND CONTROL OF STATE INSTITUTIONS.

§25-1-16. Transfer of inmates of state institutions.

1 The state commissioner of public institutions shall
2 have authority to cause the transfer of any patient or
3 inmate from any state institution to any other state or
4 federal institution which is better fitted for the care or
5 treatment of such patient or inmate, or for other good
6 cause or reason.

7 Whenever a convict in a state prison becomes mentally
8 ill, the warden shall proceed in accordance with section
9 thirty-one, article five, chapter twenty-eight of the code
10 of West Virginia, one thousand nine hundred thirty-one, as
11 amended.

12 Whenever a convict in a state prison needs medical
13 attention, other than mental care, not available at said
14 prison, the warden or superintendent of said prison shall
15 immediately notify the commissioner of public institu-
16 tions, who, after proper investigation, shall cause the
17 transfer of said convict to a hospital within the state
18 of West Virginia properly equipped to render the med-
19 ical attention necessary. Such a convict, while receiv-
20 ing treatment in said hospital, shall be under guard at
21 all times and shall forthwith be returned to prison upon
22 his recovery.

CHAPTER 65

(House Bill No. 516—By Mrs. Withrow and Mr. Seibert)

[Passed February 5, 1970; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article five, chapter twenty-six of the code of West Virginia, one thousand nine

hundred thirty-one, as amended, relating to state benevolent institutions; continuation; management; superintendent; and renaming of Pinecrest sanitarium.

Be it enacted by the Legislature of West Virginia:

That section one, article five, 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 5. PINECREST HOSPITAL.

§26-5-1. Continuation; management; superintendent.

1 The tuberculosis sanitarium heretofore established at
2 Beckley, for the care and treatment of persons afflicted
3 with tuberculosis, shall be continued and shall be known
4 as Pinecrest hospital, and shall be managed, directed and
5 controlled as prescribed in article one, chapter twenty-
6 five, and in section eight, article one, chapter sixteen of
7 the code. The chief executive officer of such hospital
8 shall be the superintendent, who shall be a legally quali-
9 fied physician of at least six years' experience in the
10 practice of his profession and who shall be a person of
11 good executive ability.

CHAPTER 66

(Senate Bill No. 161—By Mr. Carrigan and Mr. Holliday)

[Passed February 11, 1970; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, two, three, four and five, article five-a, chapter twenty-eight 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 six and seven, all relating to the establishment and continuance; management and control; appointment of warden; bond; duties; residence; laws governing penitentiary applicable; exceptions; transfer of prisoners; sentencing of

prisoners; and the renaming of the "West Virginia medium security prison."

Be it enacted by the Legislature of West Virginia:

That sections one, two, three, four and five, article five-a, chapter twenty-eight 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 six and seven, all to read as follows:

ARTICLE 5A. HUTTONSVILLE CORRECTIONAL CENTER.

§28-5A-1. Establishment and continuance.

§28-5A-2. Management and control.

§28-5A-3. Appointment of warden; bond; duties; residence.

§28-5A-4. Laws governing penitentiary applicable; exception.

§28-5A-5. Transfer of prisoners.

§28-5A-6. Diagnostic and classification division established.

§28-5A-7. Diagnosis and classification of prisoners sentenced to penitentiary.

§28-5A-1. Establishment and continuance.

1 The prison farm near Huttonsville in the county of
2 Randolph, undertaken pursuant to chapter eighty-six,
3 acts of the Legislature of West Virginia, one thousand
4 nine hundred thirty-seven, is hereby established, and
5 shall be continued as the "Huttonsville Correctional
6 Center."

§28-5A-2. Management and control.

1 Huttonsville correctional center, a medium security
2 state prison, shall be managed, directed, and controlled
3 as provided in chapter twenty-five of this code.

§28-5A-3. Appointment of warden; bond; duties; residence.

1 The warden shall be the chief executive officer of
2 Huttonsville correctional center. He shall be appointed
3 by the governor, by and with the advice and consent
4 of the Senate, and shall give bond in such sum as the
5 commissioner of public institutions may require. His
6 duties shall be fixed by the commissioner of public in-
7 stitutions, and shall conform to, as nearly as possible,
8 the duties heretofore assigned to the warden of the West
9 Virginia penitentiary at Moundsville. The warden shall
10 reside in or near the prison.

§28-5A-4. Laws governing penitentiary applicable; exception.

1 The laws governing the West Virginia penitentiary
2 at Moundsville shall, as nearly as may be, apply to
3 Huttonsville correctional center except that criminal
4 proceedings against inmates in said prison shall be in
5 the circuit court of the county of Randolph.

§28-5A-5. Transfer of prisoners.

1 Upon the request of the warden of the West Vir-
2 ginia penitentiary or the warden of Huttonsville cor-
3 rectional center, the commissioner of public institutions
4 may, in his discretion, order the transfer of prisoners
5 from one institution to the other.

§28-5A-6. Diagnostic and classification division established.

1 The commissioner of public institutions shall establish
2 a diagnostic and classification division within the Hut-
3 tonsville correctional center. This division shall be a
4 maximum security facility.

§28-5A-7. Diagnosis and classification of prisoners sentenced to penitentiary.

1 Notwithstanding any provision of the code to the con-
2 trary, all prisoners sentenced to the West Virginia peni-
3 tentiary at Moundsville after October one, one thousand
4 nine hundred seventy, shall, upon imposition of such
5 sentence, first undergo diagnosis and classification at the
6 Huttonsville correctional center.

CHAPTER 67

(Senate Bill No. 19—By Mr. Carrigan)

[Passed February 3, 1970; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article three, chapter twenty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the public service commission fund.

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
3 those now required by law. The amount of such fees shall
4 be fixed by the auditor and levied by him upon each of
5 such public utilities according to the value of its property
6 as ascertained by the last assessment, and shall be ap-
7 portioned among such public utilities upon the basis of
8 such valuation, so as to produce a revenue of three
9 hundred twenty thousand dollars per annum, which fees
10 shall be paid on or before the twentieth day of January
11 in each 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
14 a special fund, designated "public service commission
15 fund," to be appropriated as provided by law for the pur-
16 pose of paying the salaries of the commission, as fixed by
17 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 in
39 said fund and may be appropriated and used as provided
40 in subsection (a) hereof.

41 (d) With respect to the fiscal year which began on July
42 one, one thousand nine hundred sixty-nine, it is hereby
43 declared to be the intent of the Legislature that the provi-
44 sions of subsection (b) hereof shall be applicable to said
45 fiscal year which began on July one, one thousand nine
46 hundred sixty-nine, and the auditor shall fix such fees as
47 provided for in said subsection at an amount so as to
48 produce during said fiscal year a revenue of six hundred
49 forty thousand dollars. Any additional amount levied upon
50 public utilities as a result of said subsection (b) for said
51 fiscal year which began on July one, one thousand nine
52 hundred sixty-nine, shall be paid not later than April one,
53 one thousand nine hundred seventy, and all such fees for
54 each and every fiscal year thereafter shall be paid as speci-
55 fied in said subsection (b).

CHAPTER 68

(Senate Bill No. 24—By Mr. Carrigan)

[Passed February 7, 1970; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article one, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section one, article two-a of said chapter, all relating to the creation of the West Virginia department of highways and the office of West Virginia commissioner of highways, and to transfer the duties of the state road commissioner to the West Virginia commissioner of highways.

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Be it enacted by the Legislature of West Virginia:

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

Article

1. Definitions.

2A. West Virginia Commissioner of Highways.

ARTICLE 1. DEFINITIONS.

§17-1-2. "Commission"; "road commission"; "state road commission."

1 The words and terms "commission," "road commission"
2 or "state road commission," when used in this chapter,
3 except in article two thereof and in references to the
4 commission established by said article, shall refer to and
5 mean the West Virginia commissioner of highways,
6 created by section one, article two-a of this chapter.
7 Whenever reference is made to the "commission," "road
8 commission" or "state road commission," the power or
9 duty prescribed shall apply to the West Virginia com-
10 missioner of highways, unless the context clearly re-
11 quires a different meaning.

ARTICLE 2A. WEST VIRGINIA COMMISSIONER OF HIGHWAYS.

§17-2A-1. Duties of state road commissioner transferred to department of highways; department to act through commissioner of highways; office of commissioner of highways created; appointment, etc.

1 The office of state road commissioner heretofore exist-
2 ing is hereby continued in all respects as heretofore con-
3 stituted, but is hereby designated as the West Virginia
4 department of highways. All duties and responsibilities
5 heretofore imposed upon the state road commissioner and
6 the powers exercised by him are hereby transferred to the
7 West Virginia department of highways and such duties
8 and responsibilities shall be performed by the said de-
9 partment and the powers may be exercised thereby
10 through the West Virginia commissioner of highways,
11 who shall be the chief executive officer of the department.

12 There is hereby created the office of West Virginia com-
13 missioner of highways, who shall be appointed by the
14 governor, by and with the advice and consent of the Sen-
15 ate, subject to the provisions of section two-a, article
16 seven, chapter six of this code. Also subject to the pro-
17 visions of section two-a, article seven, chapter six of
18 this code, the state road commissioner in office when
19 this section takes effect, shall, unless sooner removed, con-
20 tinue in the office of West Virginia commissioner of
21 highways until a successor is appointed pursuant to the
22 terms of this article.

CHAPTER 69

(Senate Bill No. 18—By Mr. Carrigan)

[Passed February 10, 1970; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seventeen-b, article four, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the relocation of public utility facilities to accommodate federal aid highway projects.

Be it enacted by the Legislature of West Virginia:

That section seventeen-b, article four, 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 4. STATE ROAD SYSTEM.

§17-4-17b. Relocation of public utility lines to accommodate federal-aid highway projects.

1 Whenever the state road commissioner shall determine
2 that any public utility line or facility located upon, across
3 or under any portion of a state highway shall be relocated
4 in order to accommodate a federal-aid interstate or Ap-
5 palachian highway project, and upon such determination
6 and due notice thereof, the public utility owning or operat-
7 ing such facility shall relocate the same in accordance with
8 the order of the commissioner; then the cost of such re-
9 location shall be paid out of the state road fund in all cases

10 involving the interstate or the Appalachian system where
11 proportionate reimbursement of such cost shall be ob-
12 tained by the state road commissioner from the United
13 States pursuant to the "Federal Aid Highway Act of 1956"
14 or the "Appalachian Regional Development Act of 1965",
15 as amended, and all acts amendatory or supplementary
16 thereto: *Provided*, That the cost of any relocation of mu-
17 nicipally owned utility facilities and water or sanitary dis-
18 tricts or authorities shall be paid out of state road funds
19 in any case involving any federal-aid system where pro-
20 portionate reimbursement of such cost shall be obtained
21 by the state road commissioner from the United States.

22 For the purposes of this section, the term, "cost of re-
23 location", shall include the entire amount paid by such
24 utility, exclusive of any right-of-way costs incurred by
25 such utility, properly attributable to such relocation after
26 deducting therefrom any increase in the value of the new
27 facility and salvage value derived from the old facility.

28 The cost of relocating utility facilities, as defined herein,
29 in connection with any federal-aid interstate or Appa-
30 lachian highway project is hereby declared to be a cost
31 of highway construction.

CHAPTER 70

(Senate Bill No. 138—By Mr. Carrigan and Mr. Crawford)

[Passed February 12, 1970; 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, under authority of the Better Roads Amendment of 1964, in an amount not exceeding twenty million dollars during the fiscal year ending June thirtieth, one thousand nine hundred seventy-one, 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 redemption; 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; redemption; 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; redemption; when may issue.

- 1 Bonds of the state of West Virginia, under authority
- 2 of the Better Roads Amendment of 1964, of the par

3 value not to exceed twenty million dollars during the
4 fiscal year ending June thirty, one thousand nine hun-
5 dred seventy-one, are hereby authorized to be issued and
6 sold for the sole purpose of raising funds for the build-
7 ing and construction of free state roads and highways as
8 provided for by the constitution and the laws enacted
9 thereunder. Such bonds may be issued by the governor
10 in such amounts, in coupons or registered form, in such
11 denominations, at such time, bearing such date or dates
12 and redemption provisions, if any, as the governor may
13 determine, based upon an examination of the state road
14 commission's yearly program which justifies the issuance
15 by the governor of said bonds, and shall become due and
16 payable serially, annually or semiannually, in such
17 amounts and mature in such years as the governor may
18 determine: *Provided, however,* That such bonds shall
19 mature within and not exceeding twenty-five years from
20 their date. The governor may retain such fiscal, financial
21 and other professional services as he may deem necessary
22 and desirable for the issuance and sale of said bonds.

§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" bonds,
9 and for each bond registered a fee of fifty cents shall
10 likewise be charged by and paid to the state of West
11 Virginia, to the credit of the state road sinking fund.
12 All such bonds shall be payable at the office of the
13 treasurer of the state of West Virginia, or, at the option
14 of the holder, at a bank in the city of New York to be
15 designated by the governor, or, at the option of the
16 holder at such other bank or banks, within or without
17 the state, as may be designated or approved by the
18 governor. The bonds shall bear interest, payable semi-
19 annually, to bearer, at the office of the treasurer of the

20 state of West Virginia, at the capitol of the state, or at
21 the banks designated and approved by the governor,
22 upon presentation and surrender of interest coupons,
23 then due, in the case of coupon bonds. For the payment
24 of interest on registered bonds, the treasurer of the state
25 of West Virginia shall requisition a warrant from the
26 auditor of the state to be drawn on the state treasurer,
27 and shall mail such warrant to the registered owner at
28 the address as shown by the record of registration. Both
29 the principal and interest of the bonds shall be payable
30 in lawful money of the United States of America and
31 the bonds shall be exempt from taxation by the state of
32 West Virginia, or by any county, district, or municipality
33 thereof, which facts shall appear on the face of the bonds
34 as part of the contract with the holder thereof.

§3. Form of bond.

1 The bonds shall be executed on behalf of the state of
2 West Virginia, by the manual or facsimile signature of the
3 treasurer thereof, under the great seal of the state or a
4 facsimile thereof, and countersigned by the manual or
5 facsimile signature of the auditor of the state: *Provided,*
6 *however,* That one of said signatures on said bonds shall be
7 a manual signature and said bonds shall be in the follow-
8 ing form or to the following effect, as nearly as may be,
9 namely:

10 COUPON ROAD BOND
11 (Or registered road bond, as the case may be)
12 OF THE
13 STATE OF WEST VIRGINIA

14 \$ No.

15 The state of West Virginia, under and by virtue of
16 authority of an amendment to the constitution, which
17 was proposed by House Joint Resolution No. 10, adopted
18 the seventh day of March, one thousand nine hundred
19 sixty-three, and was ratified by a vote of the people at
20 the general election on the third day of November, one
21 thousand nine hundred sixty-four, which is hereby made
22 a part hereof as fully as if set forth at length herein, ac-
23 knowledges itself to be indebted to and hereby promises
24 to pay to the bearer hereof (in case of a coupon bond) or

25 to _____ or assigns (the owner
26 of record, in case of registered bonds) on the _____ day of
27 _____, 19____, in lawful money of the United States of
28 America at the office of the treasurer of the state of West
29 Virginia at the capitol of said state, or, at _____
30 _____ bank in the city of New York, or, at _____
31 _____ bank, at the option of the holder, the sum of
32 _____ dollars, with interest thereon at _____ per
33 centum per annum from the date, payable semiannually
34 in like lawful money of the United States of America at
35 the treasurer's office or banks aforesaid, on the first day of
36 _____ and the first day of _____ of each year (and
37 in the case of coupon bonds) according to the tenor of the
38 annexed coupons bearing the facsimile signature of the
39 treasurer of the state of West Virginia, upon surrender of
40 such coupons. This bond (in case of a coupon bond) may
41 be exchanged for a registered bond of like tenor upon
42 application to the treasurer of the state of West Virginia.
(Redemption provisions, if any, to be inserted here)

43 To secure the payment of the principal and interest of
44 this bond, the state of West Virginia covenants and
45 agrees with the holder as follows: (1) That this bond
46 shall constitute a direct and general obligation of the state
47 of West Virginia; (2) that the full faith and credit of the
48 state is pledged to secure the payment of the principal and
49 interest of this bond; (3) that an annual state tax shall be
50 collected in an amount sufficient to pay as it may accrue
51 the interest on this bond and the principal thereof; and
52 (4) that such tax shall be levied in any year only to the
53 extent that the moneys in the state road fund irrevoca-
54 bly set aside and appropriated for and applied to the pay-
55 ment of the interest on and principal of this bond becoming
56 due and payable in such year are insufficient therefor.

57 This bond is hereby made exempt from any taxation
58 by the state of West Virginia, or by any county, district,
59 or municipal corporation thereof.

60 In testimony whereof, witness the manual or facsimile
61 signature of the treasurer of the state of West Virginia,
62 and the manual or facsimile countersignature of the audi-
63 tor of the state, hereto affixed according to law, dated the
64 _____ day of _____, one thousand nine hundred _____,

65 and the seal of the state of West Virginia or a facsimile
66 thereof.

67

68 _____
Treasurer of the State of West Virginia

69 (SEAL)

70 Countersigned:

71 _____

72 Auditor of the State of West Virginia

§4. Form of coupon.

1 The form of coupon shall be substantially as follows,
2 to wit:

3 STATE OF WEST VIRGINIA

4 Bond No. _____ Coupon No. _____

5 On the first day of _____, 19____, the state
6 of West Virginia will pay to the bearer, in lawful money
7 of the United States of America, at the office of the
8 treasurer of the state, or, at _____
9 bank in the city of New York, or, at _____,
10 at the option of the holder, the sum of _____
11 dollars, the same being semiannual interest on Road
12 Bond No. _____.

13

14 _____
Treasurer of the State of West Virginia

15 The signature of the treasurer to such coupon shall be
16 by his facsimile signature and the coupons shall be
17 numbered in the order of their maturity, from number
18 one consecutively. The bonds and coupons may be signed,
19 as provided in this act, by the present treasurer and
20 auditor, or by any of their respective successors in office,
21 and the bonds signed by the persons now in the office may
22 be sold by the governor or his successor in office without
23 being signed by the successor in office of the present
24 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 all
2 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. The
16 remainder of the fund shall be turned over by the state
17 treasurer to the state sinking fund commission, whose
18 duty it shall be to invest the same in obligations of the
19 government of the United States, bonds of the state of
20 West Virginia, or any political subdivision thereof: *Pro-*
21 *vided*, That bonds or other obligations so purchased by
22 the 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 so
25 paid into the state road sinking fund under the provisions
26 of this act shall be expended for the purpose of paying
27 the interest and principal of the bonds hereby provided
28 for as they severally become due and payable and for no
29 other purpose except that the fund may be invested
30 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 a 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 to
6 secure the payment of the principal and interest of such
7 bonds; (3) that an annual state tax shall be collected in
8 an amount sufficient to pay as it may accrue the interest
9 on such bonds and the principal thereof; and (4) that
10 such tax shall be levied in any year only to the extent
11 that the moneys in the state road fund irrevocably set
12 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
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 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 solely
4 for the building and construction of free state roads and
5 highways provided for by the state constitution and the
6 laws enacted thereunder. Except for such sums necessary
7 for current operating balances, such account shall be
8 invested and reinvested in short-term obligations of the
9 United States treasury: *Provided*, That no such invest-
10 ment or reinvestment shall adversely affect the current
11 operating balances of such account.

§10. Plates, etc., property of state.

1 The plates, casts, dies or other forms from which the
2 bonds authorized by this act are produced or made shall
3 be the property of the state of West Virginia.

§11. Auditor to be custodian of unsold bonds.

- 1 The state auditor shall be the custodian of all unsold
- 2 bonds issued pursuant to the provisions of this act.

§12. Interim certificates.

- 1 The governor may authorize the issuance of interim
- 2 certificates to be issued to the purchasers of such bonds
- 3 to be held by them in lieu of permanent bonds. When
- 4 interim certificates are so issued, they shall become full
- 5 and legal obligations of the state of West Virginia under
- 6 all of the provisions of this act just as fully and com-
- 7 pletely as the permanent bonds.

§13. Payment of expenses.

- 1 All expenses incurred in the execution of this act,
- 2 shall be paid out of the state road fund on warrants of
- 3 the auditor of the state drawn on the state treasurer.

CHAPTER 71

(Senate Bill No. 139—By Mr. Carrigan and Mr. Crawford)

[Passed February 12, 1970; in effect July 1, 1970. Approved by the Governor.]

AN ACT authorizing the issuance and sale by the governor of bonds of the state of West Virginia, under authority of the Roads Development Amendment of 1968, in an amount not exceeding seventy million dollars during the fiscal year ending June thirtieth, one thousand nine hundred seventy-one, 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 redemption; 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; redemption; 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; redemption; when may issue.

- 1 Bonds of the state of West Virginia, under authority of
- 2 the Roads Development Amendment of 1968, of the par
- 3 value not to exceed seventy million dollars during
- 4 the fiscal year ending June thirty, one thousand nine
- 5 hundred seventy-one, are hereby authorized to be issued
- 6 and sold for the sole purpose of raising funds for the

7 building and construction of free state roads and high-
8 ways as provided for by the constitution and the laws
9 enacted thereunder. Such bonds may be issued by the
10 governor in such amounts, in coupons or registered form,
11 in such denominations, at such time, bearing such date
12 or dates and redemption provisions, if any, as the gov-
13 ernor may determine, based upon an examination of the
14 state road commission's yearly program which justifies
15 the issuance by the governor of said bonds, and shall
16 become due and payable serially, annually or semi-
17 annually, in such amounts and mature in such years as the
18 governor may determine: *Provided, however,* That such
19 bonds shall mature within and not exceeding twenty-five
20 years from their date. The governor may retain such
21 fiscal, financial and other professional services as he may
22 deem necessary and desirable for the issuance and sale of
23 said bonds.

**§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" bonds
9 and for each bond registered a fee of fifty cents shall like-
10 wise be charged by and paid to the state of West Vir-
11 ginia, to the credit of the state road sinking fund. All
12 such bonds shall be payable at the office of the treasurer
13 of the state of West Virginia, or, at the option of the
14 holder, at a bank in the city of New York to be desig-
15 nated by the governor, or, at the option of the holder
16 at such other bank or banks, within or without the state,
17 as may be designated or approved by the governor. The
18 bonds shall bear interest, payable semiannually, to bearer,
19 at the office of the treasurer of the state of West Vir-
20 ginia, at the capitol of the state, or at the banks desig-
21 nated and approved by the governor, upon presentation

22 and surrender of interest coupons, then due, in the case
23 of coupon bonds. For the payment of interest on regis-
24 tered bonds, the treasurer of the state of West Virginia
25 shall requisition a warrant from the auditor of the
26 state to be drawn on the state treasurer, and shall mail
27 such warrant to the registered owner at the address as
28 shown by the record of registration. Both the principal
29 and interest of the bonds shall be payable in lawful
30 money of the United States of America and the bonds
31 shall be exempt from taxation by the state of West Vir-
32 ginia, or by any county, district, or municipality thereof,
33 which facts shall appear on the face of the bonds as part
34 of the contract with the holder thereof.

§3. Form of bond.

1 The bonds shall be executed on behalf of the state of
2 West Virginia, by the manual or facsimile signature of
3 the treasurer thereof, under the great seal of the state
4 or a facsimile thereof, and countersigned by the manual
5 or facsimile signature of the auditor of the state: *Pro-*
6 *vided, however,* That one of said signatures on said bonds
7 shall be a manual signature and said bonds shall be
8 in the following form or to the following effect, as nearly
9 as may be, namely:

10 COUPON ROAD BOND
11 (Or registered road bond, as the case may be)
12 OF THE
13 STATE OF WEST VIRGINIA
14 \$..... No.

15 The state of West Virginia, under and by virtue of
16 authority of an amendment to the constitution, which
17 was proposed by Senate Joint Resolution No. 2, adopted
18 the eighth day of February, one thousand nine hundred
19 sixty-eight, and was ratified by a vote of the people at
20 the general election on the fifth day of November, one
21 thousand nine hundred sixty-eight, which is hereby made
22 a part hereof as fully as if set forth at length herein,
23 acknowledges itself to be indebted to and hereby prom-
24 ises to pay to the bearer hereof (in case of a coupon
25 bond) or to..... or assigns (the owner
26 of record, in case of registered bonds) on the.....

27 day of _____, 19____, in lawful money of the
28 United States of America at the office of the treasurer
29 of the state of West Virginia at the capitol of said state,
30 or, at _____ bank in the city of New York, or,
31 at _____ bank, at the option of the holder,
32 the sum of _____ dollars, with interest thereon at
33 _____ per centum per annum from the date, payable
34 semiannually in like lawful money of the United States
35 of America at the treasurer's office or banks aforesaid,
36 on the first day of _____ and the first day of _____
37 of each year (and in the case of coupon bonds) ac-
38 cording to the tenor of the annexed coupons bearing the
39 facsimile signature of the treasurer of the state of West
40 Virginia, upon surrender of such coupons. This bond
41 (in case of a coupon bond) may be exchanged for a
42 registered bond of like tenor upon application to the
43 treasurer of the state of West Virginia.

44 (Redemption provisions, if any, to be inserted here)

45 To secure the payment of the principal and interest
46 of this bond, the state of West Virginia covenants and
47 agrees with the holder as follows: (1) That this bond
48 shall constitute a direct and general obligation of the
49 state of West Virginia; (2) that the full faith and credit
50 of the state is pledged to secure the payment of the
51 principal and interest of this bond; (3) that an annual
52 state tax shall be collected in an amount sufficient to
53 pay as it may accrue the interest on this bond and the
54 principal thereof; and (4) that such tax shall be levied
55 in any year only to the extent that the moneys in the
56 state road fund irrevocably set aside and appropriated
57 for and applied to the payment of the interest on and
58 principal of this bond becoming due and payable in such
59 year are insufficient therefor.

60 This bond is hereby made exempt from any taxation
61 by the state of West Virginia, or by any county, district,
62 or municipal corporation thereof.

63 In testimony whereof, witness the manual or facsimile
64 signature of the treasurer of the state of West Virginia,
65 and the manual or facsimile countersignature of the
66 auditor of the state, hereto affixed according to law,
67 dated the _____ day of _____, one thousand

68 nine hundred _____, and the seal of the state
69 of West Virginia or a facsimile thereof.

70

71 _____
Treasurer of the State of West Virginia

72 (SEAL)

73 Countersigned:

74 _____

75 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
6 West Virginia will pay to the bearer, in lawful money of
7 the United States of America, at the office of the treasurer
8 of the state, or, at _____ bank
9 in the city of New York, or, at _____,
10 at the option of the holder, the sum of _____
11 dollars, the same being semiannual interest on Road
12 Bond No. _____.

13

14 _____
Treasurer of the State of West Virginia

15 The signature of the treasurer to such coupon shall be
16 by his facsimile signature and the coupons shall be
17 numbered in the order of their maturity, from number
18 one consecutively. The bonds and coupons may be signed,
19 as provided in this act, by the present treasurer and
20 auditor, or by any of their respective successors in office,
21 and the bonds signed by the persons now in the office
22 may be sold by the governor or his successor in office
23 without being signed by the successor in office of the
24 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 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
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 state
14 first to the payment of the semiannual interest on such
15 bonds as it shall become due as herein provided. The
16 remainder of the fund shall be turned over by the state
17 treasurer to the state sinking fund commission, whose
18 duty it shall be to invest the same in obligations of the
19 government of the United States, bonds of the state of
20 West Virginia, or any political subdivision thereof: *Pro-*
21 *vided*, That bonds or other obligations so purchased by
22 the 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 so
25 paid into the state road sinking fund under the provisions
26 of this act shall be expended for the purpose of paying
27 the interest and principal of the bonds hereby provided
28 for as they severally become due and payable and for no
29 other purpose except that the fund may be invested until
30 needed, as herein provided.

§7. Covenants of state.

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 a 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 to
6 secure the payment of the principal and interest of such
7 bonds; (3) that an annual state tax shall be collected in
8 an amount sufficient to pay as it may accrue the interest
9 on such bonds and the principal thereof; and (4) that
10 such tax shall be levied in any year only to the extent that
11 the moneys in the state road fund irrevocably set aside
12 and appropriated for and applied to the payment of the
13 interest on and principal of said bonds becoming due and
14 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 commissioner, and after
6 reviewing the program of the state road commission and
7 subject to the limitations contained in section one hereof.
8 All sales shall be at not less than par and accrued interest.
9 All interest coupons becoming payable prior to the sale
10 date shall be cancelled by the treasurer and rendered
11 ineffective, before the delivery of the bonds so sold.

• §9. Proceeds paid into separate account in state road fund; expenditures.

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 solely
4 for the building and construction of free state roads and
5 highways provided for by the state constitution and the
6 laws enacted thereunder. Except for such sums necessary
7 for current operating balances, such account shall be
8 invested and reinvested in short-term obligations of the
9 United States treasury: *Provided*, That no such invest-
10 ment or reinvestment shall adversely affect the current
11 operating balances of such account.

§10. Plates, etc., property of state.

1 The plates, casts, dies or other forms from which the
2 bonds authorized by this act are produced or made shall
3 be the property of the state of West Virginia.

§11. Auditor to be custodian of unsold bonds.

- 1 The state auditor shall be the custodian of all unsold
- 2 bonds issued pursuant to the provisions of this act.

§12. Interim certificates.

- 1 The governor may authorize the issuance of interim
- 2 certificates to be issued to the purchasers of such bonds
- 3 to be held by them in lieu of permanent bonds. When
- 4 interim certificates are so issued, they shall become full
- 5 and legal obligations of the state of West Virginia under
- 6 all of the provisions of this act just as fully and completely
- 7 as the permanent bonds.

§13. Payment of expenses.

- 1 All expenses incurred in the execution of this act, shall
- 2 be paid out of the state road fund on warrants of the
- 3 auditor of the state drawn on the state treasurer.

CHAPTER 72

(House Bill No. 757—By Mr. Watson and Mr. Seibert)

[Passed February 12, 1970; in effect from passage. Approved by the Governor.]

AN ACT to repeal sections forty-four and forty-five, article three, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend said chapter by adding thereto a new article, designated article eight, relating to the creation of a new division within the department of finance and administration which division shall be known as the state agency for surplus property, providing for the regulation and control of the acquisition of surplus property acquired from the federal government and for its distribution to donable state agencies and institutions.

Be it enacted by the Legislature of West Virginia:

That sections forty-four and forty-five, article three, chapter five-a of the code of West Virginia, one thousand nine hundred

thirty-one, as amended, be repealed; and that said chapter be amended by adding thereto a new article, designated article eight, to read as follows:

ARTICLE 8. STATE AGENCY FOR SURPLUS PROPERTY.

§5A-8-1. State agency for surplus property created as division.

§5A-8-2. Commissioner of finance and administration director; duties.

§5A-8-3. Authority and duties of the state agency for surplus property.

§5A-8-4. Power of director to delegate authority; bonding employees.

§5A-8-5. Warehousing, transfer, etc., charges.

§5A-8-6. Department of agriculture and other agencies exempted from application of article.

§5A-8-7. Severability.

§5A-8-1. State agency for surplus property created as division.

- 1 There is hereby established within the department of
- 2 finance and administration a division to be known as the
- 3 state agency for surplus property.

§5A-8-2. Commissioner of finance and administration director; duties.

- 1 The commissioner of finance and administration is
- 2 hereby designated as the director of the state agency for
- 3 surplus property, and with respect to the acquisition of
- 4 federal surplus property, the agency shall be subject to
- 5 the supervision and direction of the commissioner of
- 6 finance and administration. He, as director of the agency,
- 7 shall prescribe the duties which shall be assigned to the
- 8 personnel of the state agency for surplus property.

§5A-8-3. Authority and duties of the state agency for surplus property.

- 1 (a) The state agency for surplus property is hereby
- 2 authorized and empowered (1) to acquire from the United
- 3 States of America such property, including equipment,
- 4 materials, books or other supplies under the control of
- 5 any department or agency of the United States of Amer-
- 6 ica as may be usable and necessary for educational pur-
- 7 poses or public health purposes, including research;
- 8 (2) to warehouse property acquired; and (3) to dis-
- 9 tribute the property to tax-supported medical institutions,
- 10 hospitals, clinics, health centers, school systems, schools,
- 11 colleges and universities within the state, and to other

12 nonprofit medical institutions, hospitals, clinics, health
13 centers, schools, colleges and universities within the
14 state which have been held exempt from taxation under
15 section 101 (6) of the United States Internal Revenue
16 Code.

17 (b) For the purpose of executing its authority under
18 this article, the state agency for surplus property is
19 authorized and empowered to adopt, amend or rescind
20 rules and regulations as may be deemed necessary, and
21 take other action necessary and suitable in the admin-
22 istration of this article, including the enactment and
23 promulgation of rules and regulations necessary to bring
24 this article and its administration into conformity with
25 any federal statutes or rules and regulations promul-
26 gated under federal statutes for the acquisition and dis-
27 position of surplus property.

28 (c) The state agency for surplus property is autho-
29 rized and empowered to appoint advisory boards or com-
30 mittees necessary to the end that this article and the
31 rules and regulations promulgated hereunder conform
32 with federal statutes and rules and regulations pro-
33 mulgated under federal statutes for the acquisition and
34 disposition of surplus property.

35 (d) The state agency for surplus property is au-
36 thorized and empowered to take action, make expendi-
37 tures and enter into contracts, agreements and under-
38 takings for and in the name of the state, require reports,
39 and make investigations as may be required by law or
40 regulation of the United States of America in connec-
41 tion with the receipt, warehousing and distribution of
42 property received by the state agency for surplus prop-
43 erty from the United States of America.

44 (e) The state agency for surplus property is au-
45 thorized and empowered to act as a clearinghouse of
46 information for the public and private nonprofit insti-
47 tutions and agencies referred to in subsection (a) of this
48 section, to locate property available for acquisition from
49 the United States of America, to ascertain the terms
50 and conditions under which the property may be ob-
51 tained, to receive requests from the above-mentioned

52 institutions and agencies and to transmit to them all
53 available information in reference to the property, and
54 to aid and assist the institutions and agencies in every
55 way possible in the consummation or acquisition of trans-
56 actions hereunder.

57 (f) The state agency for surplus property, in the ad-
58 ministration of this article, shall cooperate to the fullest
59 extent consistent with the provisions of this article, with
60 the departments or agencies of the United States of
61 America and shall make reports in the form and con-
62 taining the information the United States of America or
63 any of its departments or agencies may from time to time
64 require, and it shall comply with the laws of the United
65 States of America and the rules and regulations of any
66 of the departments or agencies of the United States of
67 America governing the allocation, transfer, use or ac-
68 counting for property donable or donated to the state.

§5A-8-4. Power of director to delegate authority; bonding employees.

1 The commissioner of finance and administration, as
2 director of the state agency for surplus property, may
3 delegate to any employee of the agency such power and
4 authority as he deems reasonable and proper for the
5 effective administration of this article. The director of
6 the agency may, in his discretion, bond any person in
7 the employ of the state agency for surplus property,
8 handling moneys, signing checks or receiving or distrib-
9 uting property from the United States of America under
10 authority of this article.

§5A-8-5. Warehousing, transfer, etc., charges.

1 Any charges made or fees assessed by the state agency
2 for surplus property for the acquisition, warehousing,
3 distribution or transfer of any property acquired by
4 donation from the United States of America for edu-
5 cational purposes or public health purposes, including
6 research, shall be limited to those reasonably related
7 to the costs of care and handling in respect to its acquisi-
8 tion, receipts, warehousing, distribution or transfer by
9 the state agency for surplus property. All charges desig-

10 nated herein shall be used by the state agency for surplus
11 property to defray the general operating expenses of such
12 state agency for surplus property.

§5A-8-6. Department of agriculture and other agencies exempted from application of article.

1 Notwithstanding any provisions or limitations of this
2 article, the state department of agriculture and any other
3 state departments or agencies hereafter so designated
4 are authorized and empowered to distribute food, food
5 stamps, surplus commodities and agricultural products
6 under contracts and agreements with the federal government or any of its departments or agencies, and the
7 state department of agriculture and any other state
8 departments or agencies hereafter so designated are
9 authorized and empowered to adopt rules and regulations
10 in order to conform with federal requirements and standards for such distribution and also for the proper distribution of such food, food stamps, commodities and
11 agricultural products. To the extent set forth above and
12 in this section, the provisions of this article shall not
13 apply to the state department of agriculture and any
14 other state departments or agencies hereafter so designated for the purposes set forth in this section.

§5A-8-7. Severability.

1 If any provision of this article is declared unconstitutional or invalid by a court of competent jurisdiction,
2 that decision shall not affect the validity of the remaining
3 provisions of this article or the article in its entirety,
4 and to that end the provisions of this article are severable.

CHAPTER 73

(House Bill No. 566—By Mr. Seibert)

[Passed February 12, 1970; in effect July 1, 1970. Approved by the Governor.]

AN ACT to repeal sections eighteen through thirty-one, inclusive, article twelve; and to repeal article thirteen-a,

all of chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections one through seventeen, inclusive, article twelve of said chapter eleven, all relating to license for operation of stores, license taxes, and business franchise registration certificate tax.

Be it enacted by the Legislature of West Virginia:

That sections eighteen through thirty-one, inclusive, article twelve, and article thirteen-a, all of chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that sections one through seventeen, inclusive, article twelve of said chapter eleven, be amended and reenacted, all to read as follows:

ARTICLE 12. BUSINESS FRANCHISE REGISTRATION CERTIFICATE TAX.

- §11-12-1. Short title.
- §11-12-2. Definitions.
- §11-12-3. Business franchise registration tax levied.
- §11-12-4. Application for business registration certificate; issuance of business certificate; effect of business registration certificate; municipal license taxes.
- §11-12-5. Time for which registration certificate granted; power of tax commissioner to cancel certificate.
- §11-12-6. Business certificate a personal privilege not assignable; change of name, location, ownership, etc.
- §11-12-7. Display of registration certificate; injunctions; public information.
- §11-12-8. Collection by distraint.
- §11-12-9. Penalties.
- §11-12-10. Collection of back taxes; notice of discontinuance of business.
- §11-12-11. Collection by civil action; venue.
- §11-12-12. Criminal liability for violation of article; jurisdiction.
- §11-12-13. Assessment; jeopardy assessment.
- §11-12-14. Hearing; appeal.
- §11-12-15. Forms and regulations; enforcement.
- §11-12-16. Disposition of money collected.
- §11-12-17. Severability of provisions.

§11-12-1. Short title.

- 1 This article shall be cited as the "Business Franchise
- 2 Registration Tax."

§11-12-2. Definitions.

- 1 For the purposes of this article:

2 (a) "Business" shall mean any business, whether a
3 person engaged expressly or impliedly holds himself out
4 as engaged in business or supplying his products or a
5 commodity or service to the public as a class or a limited
6 portion of the public or sells any goods, wares, merchan-
7 dise of any kind or provides a service of any kind: *Pro-*
8 *vided, however,* That "business" shall not include sales
9 of products of the farm, garden, or dairy by the pro-
10 ducer or grower thereof; occasional sales by societies
11 acting for charitable, religious or benevolent purposes;
12 judicial sales directed by law or court order; or any
13 business the gross income of which is less than one thou-
14 sand dollars per license year. "Gross income" shall mean
15 the gross receipts of the business received as compen-
16 sation for personal services and from trade, commerce,
17 or sales and the value accruing from the sale of tangible
18 property (real or personal), or service, or both, without
19 any deduction on account of the cost of property sold,
20 materials used, labor costs, taxes or any other expense
21 whatsoever.

22 (b) "Business franchise registration certificate" shall
23 mean a franchise or certificate authorizing a person to
24 conduct business within the state of West Virginia and
25 when referred to in this article as certificate or regis-
26 tration shall mean business franchise registration cer-
27 tificate.

28 (c) "Person" or "company" shall mean and include any
29 individual, firm, copartnership, joint venture, associa-
30 tion, corporation, trust and any other group or combi-
31 nation acting as a unit in the plural as well as the singu-
32 lar and when used in connection with the penalties
33 imposed by section nine of this article, shall mean and
34 include the officers, directors, trustees, or members of
35 any firm, copartnership, joint venture, association, cor-
36 poration, trust or any other groups acting as a unit.

37 (d) "Tax commissioner" shall mean the tax commis-
38 sioner or his agent.

§11-12-3. Business franchise registration tax levied.

1 No person shall, without a business franchise registra-
2 tion certificate, engage in or prosecute, in the state of

3 West Virginia, any business activity without first obtain-
4 ing a business certificate from the state of West Vir-
5 ginia.

6 The business franchise registration tax levied shall
7 be fifteen dollars for each location a person holds
8 himself out to engage in or transact business therefrom.

**§11-12-4. Application for business registration certificate;
issuance of business certificate; effect of business
registration certificate; municipal license taxes.**

1 Any person making and filing the proper application
2 for a business registration certificate on forms to be
3 prescribed and furnished by the tax commissioner on
4 tendering the business registration certificate tax for each
5 business certificate requested shall be provided a cer-
6 tificate if the tax commissioner determines to his satis-
7 faction that all of the conditions precedent to the grant-
8 ing of such certificate have been fulfilled by the applicant
9 before issuing the certificate of registration.

10 Nothing in this article, in any payment or issuance
11 of any certificate under the provisions hereof, shall be
12 deemed to legalize any act which otherwise may be in
13 violation of law, or to exempt any person from any pen-
14 alty prescribed from such violation.

15 When any municipality is authorized by its charter
16 or by any law of this state to impose a license tax or
17 related penalty for engaging in or prosecuting any busi-
18 ness, activity, trade or employment within the limits
19 of said municipality, pursuant to the ordinances of such
20 municipality, no state business registration certificate
21 issued under this article shall exonerate the registrant
22 from any such municipal license tax or penalty, unless
23 otherwise expressly provided. Notwithstanding the provi-
24 sions of this article, any municipality may impose a license
25 tax or penalty pursuant to the provisions of section four,
26 article thirteen, chapter eight of this code up to but not
27 in excess of the amount of the state license tax in effect
28 on such business, activity, trade or employment on Jan-
29 uary one, one thousand nine hundred seventy, with like
30 effect as if this article had not been enacted.

§11-12-5. Time for which registration certificate granted; power of tax commissioner to cancel certificate.

1 All annual certificates issued under the provisions of
2 section four of this article shall be for a period of one
3 year beginning the first day of July and ending the thir-
4 tieth day of the following June.

5 If a registrant shall at any time knowingly or wil-
6 fully file false data or information required by section
7 four of this article, or shall wilfully refuse or neglect
8 to file any tax report or to pay the tax or penalty, or
9 any part thereof, required by chapter eleven of the code
10 of West Virginia, one thousand nine hundred thirty-one,
11 as amended, the tax commissioner may cancel his cer-
12 tificate. Before canceling any such certificate, the tax
13 commissioner shall set a hearing as prescribed in this
14 article, and notify the person by certified mail not less
15 than twenty days prior to the hearing date to appear and
16 show cause why such registration certificate should not
17 be canceled.

**§11-12-6. Business certificate a personal privilege not assign-
able; change of name, location, ownership, etc.**

1 Every business certificate issued under the provisions
2 of section four of this article shall confer a personal
3 privilege only to transact the business, activity or trade,
4 which may be the subject of the business certificate and
5 shall not be exercised except by the persons holding the
6 same and shall not be assignable to any other person.

7 Changes in the name of the person or change of loca-
8 tion, or address, or changes in ownership of the business
9 or changes in real parties of interest shall be considered
10 a cessation of the business and a new certificate shall be
11 required. Changes of partners or members of firms or
12 officers of a corporation shall not require a new certifi-
13 cate to be issued.

**§11-12-7. Display of registration certificate; injunctions; public
information.**

1 Any person to whom a certificate of registration shall
2 be issued under the provisions of section four of this

3 article, shall keep such certificate posted in a conspicuous
4 position in the place where the privilege of such business
5 is exercised. Such certificate of registration shall be
6 produced for inspection whenever required by the tax
7 commissioner or by any law-enforcement officers of this
8 state, county or municipality wherein the privileges to
9 conduct business is exercised.

10 No injunction shall issue from any court in the state
11 enjoining the collection of any business registration cer-
12 tificate tax required herein; and any person claiming
13 that any business certificate is not due, for any reason,
14 shall pay the same under protest and petition the tax
15 commissioner for a refund in accordance with the pro-
16 visions of section two-a of article one of this chapter.

17 If any person engaging in or prosecuting any business,
18 or trade, contrary to any other provisions of this article,
19 whether without obtaining a business certificate therefor
20 before commencing the same, or by continuing the same
21 after the termination of the effective period of any such
22 business certificate, the circuit court or the judge thereof in
23 vacation, of the county in which such violation occurred,
24 shall, upon proper application in the name of the state,
25 and after ten days' written notice thereof to such person,
26 grant an injunction prohibiting such person from con-
27 tinuing such business, activity or trade until he has
28 fully complied with the provisions of this article. The
29 remedy provided in this section shall be in addition to
30 all other penalties and remedies provided by law.

31 The tax commissioner shall make available, when re-
32 quested, information as to whether a person is registered
33 to do business in the state of West Virginia.

§11-12-8. Collection by distraint.

1 The tax commissioner, or his agent, may distraint upon
2 any personal or real property, including intangibles, of
3 any person delinquent in the payment of taxes and
4 penalties accrued and unpaid under the provisions of
5 section three of this article, and may require the assist-
6 ance of the sheriff of any county in levying such distress
7 in the county in which such sheriff is an officer. The
8 sheriff so collecting taxes due hereunder shall be en-

9 titled to compensation in the amount of all penalties
10 collected over and above the principal amount of tax
11 due but in no case shall such compensation exceed twenty-
12 five dollars. All taxes and penalties so collected, less the
13 compensation above, shall be remitted within ten days
14 after the collection to the tax commissioner. The tax
15 commissioner shall prescribe by general regulation the
16 manner of remittance of such funds and of allowing the
17 collecting officer the compensation due him under this
18 section. The sheriff shall be authorized to distrain im-
19 mediately upon request, as aforesaid, for the amount
20 which any person may have been assessed under the
21 provisions of this article, and to sell upon ten days notice
22 so much of said person's property, subject to such distress,
23 as may be necessary to pay the tax so assessed, including
24 penalties.

§11-12-9. Penalties.

1 Any person engaging in or prosecuting any business
2 contrary to the provisions of this article, whether with-
3 out obtaining a business registration certificate therefor
4 before commencing the same, or by continuing the same
5 after the termination of the effective period of any such
6 certificate may, in addition to paying the business regis-
7 tration tax, be liable for a penalty of fifty dollars for
8 each month or fraction thereof during which he has been
9 in default of the business registration tax. It shall be the
10 duty of the tax commissioner to collect the full amount
11 of the business registration tax and penalty imposed.

**§11-12-10. Collection of back taxes; notice of discontinuance
of business.**

1 Any person engaging in or prosecuting any business
2 contrary to provisions of this article, whether without
3 obtaining a certificate therefor before commencing the
4 same, or by continuing the same after the termination
5 of the effective period of such certificate, shall, in addition
6 to all other penalties provided in this article, be liable
7 for the payment of all back taxes and penalties for a
8 period not exceeding five years.

9 Whenever any person ceases to engage in business
10 within this state by reason of the discontinuance, sale or

11 transfer or by any other means of disposition of the busi-
12 ness, it shall be his duty to notify the tax commissioner
13 in writing of the discontinuance, sale or transfer or other
14 disposition of the business, the date thereof and the name
15 and address of the seller or transferor and purchaser or
16 transferee thereof.

17 Unless the notice shall have been given to the tax com-
18 missioner as above provided, such seller or transferor
19 and purchaser or transferee shall be jointly liable to the
20 state of West Virginia for the amount of all taxes and
21 penalties under the provisions of sections three and nine
22 of this article.

§11-12-11. Collection by civil action; venue.

1 The tax commissioner may collect any business regis-
2 tration certificate tax and penalties unpaid under the
3 provisions of sections three and nine of this article by
4 civil action or other appropriate legal or equitable proce-
5 dure; venue shall be in any court of limited or general
6 jurisdiction in the county in which the person engaging
7 in business resides or any county in which the business
8 subject to this article was doing business.

**§11-12-12. Criminal liability for violation of article; juris-
diction.**

1 Except as may herein be expressly provided, any person
2 violating any provisions under this article shall be guilty
3 of a misdemeanor, and, upon conviction thereof, shall be
4 fined not less than fifty dollars nor more than two hun-
5 dred dollars, or imprisoned in the county jail not more
6 than three months, or both fined and imprisoned and
7 each day or part thereof that any violation shall con-
8 tinue shall be deemed to constitute a distinct and separate
9 offense and be punishable accordingly. Justices of the
10 peace shall have concurrent jurisdiction with any other
11 court having jurisdiction for the trial of all misde-
12 meanors arising under this section.

§11-12-13. Assessment; jeopardy assessment.

1 Whenever the tax commissioner shall determine that
2 any tax due under section three of this article has not

3 been paid in full, the tax commissioner shall make an
4 assessment, from any available information, against the
5 taxpayer of such deficiency in tax, addition to tax, in-
6 terest or penalties as he may find to be due, and shall
7 serve the taxpayer with written notice of such assessment,
8 either in person or by certified mail. For purposes of
9 this article such written notice is termed as "notice of
10 assessment".

11 If the tax commissioner believes that the assessment
12 or collection of a deficiency, or the collection of any tax
13 due under section three of this article, will be jeopard-
14 ized by delay, he shall immediately make an assess-
15 ment of such deficiency for such tax due (together with
16 all additional amounts, interest or penalties provided for
17 by section nine of this article), noting that fact upon
18 the assessment. The amount so assessed shall be im-
19 mediately due and payable, and a notice of assessment
20 and demand for the payment thereof shall be served
21 upon the taxpayer. If the taxpayer against whom a
22 jeopardy assessment is made desires to immediately make
23 a petition for reassessment his petition shall be accom-
24 panied by such security as the tax commissioner may
25 deem necessary to insure compliance with this article.
26 If such petition for reassessment is filed, accompanied
27 by the necessary security, the provisions for hearing,
28 determination and appeal set forth in this article shall
29 then be applicable.

30 The tax commissioner may abate in whole or in part
31 any assessment which he shall determine to be erroneous.

§11-12-14. Hearing; appeal.

1 Any person against whom an order or decision of
2 the tax commissioner, or his representative, has been ad-
3 versely affected relating to the granting or the canceling
4 of the certificate, or any other matter wherein the find-
5 ings are in the discretion of the tax commissioner, may
6 appeal from such determination by requesting a hearing
7 before the tax commissioner, or his examiner, if such
8 request is made within thirty days from receipt of such
9 order or decision.

10 The tax commissioner shall issue a ruling within a
11 reasonable time from date of the hearing.

12 An appeal may be taken by the taxpayer to the circuit
13 court of the county of his residence, or in the circuit
14 court of Kanawha county, within thirty days after he
15 shall have received notice from the tax commissioner of
16 his determination as provided hereinbefore, in this sec-
17 tion.

§11-12-15. Forms and regulations; enforcement.

1 The tax commissioner is hereby invested with full
2 power and authority and it is hereby made his duty to
3 prescribe forms for applications, for business registration
4 certificates, and certificates and assessments and to make,
5 issue and put in force all necessary and needful rules and
6 regulations for ascertaining, assessing and collecting the
7 taxes imposed by section three of this article and the
8 enforcement under the provisions thereof.

9 Any employee of the state tax department so desig-
10 nated by the tax commissioner, shall have all the lawful
11 powers delegated to members of the department of public
12 safety to enforce the provisions of this article in any
13 county or city of this state, and such employee shall,
14 before entering upon the discharge of his duties, execute
15 a bond with security in the sum of thirty-five hundred
16 dollars, payable to the state of West Virginia, conditioned
17 for the faithful performance of his duties as such, and
18 such bond shall be approved as to form by the attorney
19 general, and as to sufficiency by the board of public
20 works, and the same shall be filed with the secretary
21 of state and preserved in his office.

§11-12-16. Disposition of money collected.

1 All money collected under the provisions of sections
2 three and nine of this article shall be paid into the state
3 treasury, monthly, by the state tax commissioner, and
4 shall be added to and shall constitute a part of the general
5 fund for the elementary schools.

§11-12-17. Severability of provisions.

1 The provisions of this article are severable and if any
2 shall be held unconstitutional, the decision of the court

- 3 shall not affect or impair any of the remaining provisions
4 thereof. It is hereby declared as legislative intent that
5 this article would have been adopted if such unconstitu-
6 tional provision had not been included therein.

CHAPTER 74

(Com. Sub. for House Bill No. 676—Originating in the House
Committee on Finance)

[Passed February 12, 1970; in effect July 1, 1970. Approved by the Governor.]

AN ACT to amend and reenact sections three and twenty-a, article fourteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the gasoline excise tax, the amount thereof, the measure of lien for such tax, notice of discontinuance of business, and partial refund of such taxes when used by certain bus lines.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 14. GASOLINE TAX.

§11-14-3. Amount, measure and lien of tax; notice of discontinuance of business.

§11-14-20a. Partial refund of tax on gasoline used by buses.

§11-14-3. Amount, measure and lien of tax; notice of discontinuance of business.

- 1 There is hereby imposed upon every person who is
2 a distributor, retail dealer or importer under the terms
3 of this article, an excise tax based on the quantities of
4 all gasoline produced, purchased, sold or used in this
5 state, which tax shall be equivalent to eight and one-half
6 cents per gallon on all gasoline. The tax shall be paid
7 as hereinafter provided.

8 A distributor shall use as the measure of the tax the
9 gallonage produced, purchased, sold or used in this state,
10 as provided in section four of this article. Gallonage
11 shall be included in the measure of the tax by refiners
12 and producers when such gallonage has been placed
13 into any tank from which withdrawals are made for sales
14 or transfer to any other person.

15 An importer shall use as the measure of the tax the
16 gallonage purchased and received for whatever use, as
17 provided in section six of this article.

18 A retail dealer shall use as the measure of the tax
19 the gallonage purchased or obtained by him, as provided
20 in section five of this article.

21 The excise tax imposed by this article shall be paid
22 by the person first producing, or receiving in this state,
23 the gallonage of gasoline which under this article shall
24 form the measure of such tax; but in no case shall any
25 such gallonage be used more than once in determining
26 taxes due hereunder.

27 The taxes imposed by this article are in addition to
28 all other taxes now imposed by law.

29 The excise tax imposed by this article shall accrue from
30 the date of production, purchase, sale or use of the gaso-
31 line. The penalties imposed by section thirteen of this
32 article shall accrue from the date they become due and
33 payable. A tax due and unpaid under this article shall
34 be a debt due the state of West Virginia. It shall be a
35 personal obligation of the taxpayer and shall be a lien
36 in favor of the state of West Virginia upon all property
37 and rights to property, whether real or personal, be-
38 longing to such taxpayer. The lien shall arise when a
39 taxpayer fails to file his return and remit the tax at the
40 time required by this article. Such lien shall not be
41 valid or enforceable against a purchaser, including lien
42 creditor, of real estate or personal property for a valuable
43 consideration without notice, unless docketed in the office
44 of the clerk of the county court as provided in sections
45 one and two, article ten-c, chapter thirty-eight of the
46 code of West Virginia, one thousand nine hundred thirty-
47 one, as last amended and reenacted by chapter ninety-

48 nine, acts of the Legislature, regular session, one thousand
49 nine hundred forty-three.

50 Whenever a distributor, importer or retail dealer ceases
51 to engage in business within this state by reason of the
52 discontinuance, sale or transfer of the business of such
53 distributor, importer or retail dealer, it shall be his duty
54 to notify the tax commissioner in writing at the time of
55 the discontinuance, sale or transfer. Such notice shall
56 give the date of discontinuance, and in the event of the
57 sale or transfer of the business, the date thereof and
58 the name and address of the purchaser or transferee
59 thereof; all taxes accruing under this article, but not yet
60 due and payable under the provisions of this article,
61 shall, notwithstanding such provisions, become due and
62 payable concurrently with such discontinuance, sale or
63 transfer, and it shall be the duty of such distributor,
64 importer or retail dealer to make a report and pay all
65 such taxes, and to surrender to the tax commissioner
66 the license certificate theretofore issued, under the pro-
67 visions of this article.

68 Unless the notice shall have been given to the tax
69 commissioner as above provided, such purchaser or trans-
70 feree shall be liable to the state of West Virginia, for
71 the amount of all taxes and penalties, under the article
72 accrued against such distributor, importer or retail dealer
73 so selling or transferring his business, on the date of
74 such sale or transfer, but only to the extent of the value
75 of the property and business thereby acquired from such
76 distributor, importer or retail dealer.

77 Any unexpended and unobligated revenue derived from
78 the one cent tax per gallon on gasoline imposed or levied
79 by chapter one hundred sixty-nine, acts of the Legislature,
80 regular session, one thousand nine hundred fifty-nine, to
81 match federal funds allocated for the interstate road
82 system in West Virginia, shall be used only for the pur-
83 poses set out in section twenty-two of this article.

§11-14-20a. Partial refund of tax on gasoline used by buses.

1 Any person who shall buy in quantities of twenty-five
2 gallons or more, at any one time, gasoline as defined by

3 this article, for use in any vehicle or vehicles regularly
4 operated by such person under a certificate of public
5 convenience and necessity or under a contract carrier
6 permit for transportation of persons, may, if the gasoline
7 tax imposed by this article shall have previously been
8 paid upon such gasoline, be refunded an amount equal
9 to four and one-half cents per gallon for each gallon of
10 gasoline upon which tax has been paid, upon presenting
11 to the tax commissioner an affidavit accompanied by
12 proof of such purchases as required in section twenty and
13 in the manner and subject to the requirements as therein
14 set forth. The right to a refund under this section shall
15 not be assignable, and any assignment so made shall be
16 void.

17 Notwithstanding any other provision of law, no refund
18 shall be made under authority of this section except on
19 gasoline and motor fuel used in the operation of urban
20 or suburban bus lines in this state, which are hereby de-
21 fined as bus lines the majority of whose passengers use
22 the buses for traveling a distance of not exceeding forty
23 miles, measured one way, on the same day between their
24 places of abode and their places of work, shopping areas
25 or schools.

CHAPTER 75

(House Bill No. 563—By Mr. Seibert)

[Passed February 6, 1970; in effect July 1, 1970. Approved by the Governor.]

AN ACT to amend and reenact article seventeen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to cigarette taxes.

Be it enacted by the Legislature of West Virginia:

That 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. CIGARETTE TAX ACT.

- §11-17-1. Short title.
- §11-17-2. Definitions.
- §11-17-3. Levy of tax; ratio.
- §11-17-4. Additional cigarette tax for support of schools.
- §11-17-4a. No cigarette tax by municipalities or other governmental subdivisions.
- §11-17-5. How tax paid; stamps; how affixed; violations.
- §11-17-6. Sales of stamps by deputies; fees; reports of deputies.
- §11-17-7. Form of stamps; custody; discounts; security for payments.
- §11-17-8. Discontinuance of business.
- §11-17-9. Discounts.
- §11-17-10. Refunds.
- §11-17-11. Surety bonds required; release of surety; new bond.
- §11-17-12. Reports required; due date; records to be kept; inspection of records; examination of witnesses; summons, etc.
- §11-17-13. Secrecy of returns and reciprocal exchange of information.
- §11-17-14. Assessment of tax; assessments as evidence; petition for reassessment; jeopardy assessment; distraint.
- §11-17-15. Injunction.
- §11-17-16. Hearing; appeals.
- §11-17-17. Forms, rules and regulations; enforcement powers.
- §11-17-18. Amounts allowed for administration.
- §11-17-19. Penalties; crimes.
- §11-17-20. Transportation of unstamped cigarettes; unstamped cigarettes in vending machines; forfeitures and sales of cigarettes and equipment.
- §11-17-21. Severability.

§11-17-1. Short title.

- 1 This article shall be known, and may be cited, as the
- 2 "Cigarette Tax Act."

§11-17-2. Definitions.

- 1 When used in this article the following words, terms
- 2 and phrases and any variations thereof required by the
- 3 context, shall have the meaning ascribed to them in this
- 4 article, except where the context indicates a different
- 5 meaning:
- 6 (1) "Cigarette" means:
- 7 (a) Any roll for smoking made wholly or in part
- 8 of tobacco, irrespective of size or shape and whether or
- 9 not such tobacco is flavored, adulterated or mixed with
- 10 any ingredient, the wrapping or cover of which is made
- 11 of paper or any substance or material, except tobacco.

12 (b) Any roll of tobacco wrapped in any substance
13 containing tobacco which, because of its appearance, the
14 type of tobacco used in the filler, or its packing and
15 labeling, is likely to be offered to, or purchased by, con-
16 sumers as a cigarette described in paragraph (a).

17 (2) "Commissioner" means the state tax commissioner
18 and where the meaning of the context requires, all
19 deputies or agents and employees duly authorized by
20 him.

21 (3) "Consumer" means a person who receives or in
22 any way comes into possession of cigarettes for the pur-
23 pose of consuming or giving them away or disposing of
24 them in any way other than by sale, barter or exchange.

25 (4) "Sale" means selling, exchange, transfer of title,
26 barter, gift, offer for sale or distribution or disposition of.

27 (5) "Sale at retail" or "retail sale" means a sale to
28 a consumer or to any person for any purpose other than
29 resale.

30 (6) "Sale by wholesaler" shall mean and include any
31 bona fide transfer of title to cigarettes by a wholesaler
32 for a valuable consideration, made in the ordinary course
33 of trade or in the usual conduct of the wholesaler's busi-
34 ness.

35 (7) "Stamp" or "meter impression" shall mean any
36 cigarette stamp or any meter or ink impression autho-
37 rized by the tax commissioner to serve as such stamp,
38 and shall be of the design and color as prescribed by the
39 tax commissioner.

40 (8) "Stamped cigarettes" means that the stamp or
41 meter impression as required by this article has been
42 affixed to the bottom of the package of cigarettes.

43 (9) "Subjobber" or "subjobber dealer" shall include
44 any person who purchases stamped cigarettes from any
45 other person who purchases from the manufacturer when
46 such other person is located in any state which levies
47 an excise tax on cigarettes and who purchases such cig-
48 arettes solely for the purpose of bona fide resale to retail
49 dealers.

50 (10) "Package" means the individual package, box or

51 other container in or from which retail sales of cigarettes
52 are normally made or intended to be made.

53 (11) "Person" shall mean and include any individual,
54 firm, association, company, partnership, corporation, joint-
55 stock company, club, agency, syndicate, municipal cor-
56 poration or other political subdivision of this state, trust,
57 receiver, trustee, fiduciary or conservator, and when used
58 in connection with any penalties imposed by this article,
59 shall mean and include officers, directors, trustees or
60 members of any firm, copartnership, association, corpora-
61 tion, trust or any other unit acting as a group.

62 (12) "Retail dealer" includes every person in this
63 state, other than a wholesaler or subjobber, engaged
64 in the selling of cigarettes at retail to a consumer or to
65 any person for any purpose other than resale.

66 (13) "Unstamped cigarettes" means that the stamp or
67 impression as required by this article has not been
68 affixed to the bottom of the package of cigarettes.

69 (14) "Vending machine operator" is any person oper-
70 ating one or more cigarette vending machines. The sale
71 of cigarettes through a vending machine will be con-
72 strued as sales at retail and will subject the vending
73 machine operator to the cigarette tax law and rules and
74 regulations pertaining to retail dealers.

75 Whenever any cigarette vending machine operator
76 purchases cigarettes directly from the manufacturer such
77 person or operator shall be deemed to be a wholesaler
78 and shall be liable for the excise tax and the affixing
79 of the required stamps.

80 (15) "Wholesaler" or "wholesale dealer" shall include
81 any person who purchases unstamped cigarettes directly
82 from the manufacturer.

§11-17-3. Levy of tax; ratio.

1 For the purpose of providing revenues for the general
2 revenue fund of the state an excise tax is hereby levied
3 and imposed on sales of cigarettes at the rate of four
4 cents on each ten cigarettes or fractional part thereof.
5 Only one sale of the same article shall be used in com-
6 puting the amount of tax due hereunder.

§11-17-4. Additional cigarette tax for support of schools.

1 For the purpose of providing additional revenue for
2 the support of free schools, there is hereby levied and
3 imposed, in addition to the tax imposed hereinbefore in
4 this article, an additional excise tax of two cents on each
5 ten cigarettes, or fractional part thereof, sold within this
6 state. Except as otherwise provided in this section, all
7 provisions of this article relating to the levy, imposition
8 and collection of the regular excise tax on the sale of
9 cigarettes shall be applicable to the levy, imposition and
10 collection of such additional tax. Notwithstanding other
11 provisions of this article to the contrary, all moneys
12 received from the additional tax imposed by this section,
13 less deductions allowed by this article for refunds and
14 for costs of administration and operation, shall be paid
15 by the tax commissioner into the general school fund,
16 to be used solely for the support of free schools.

§11-17-4a. No cigarette tax by municipalities or other governmental subdivisions.

1 No municipality or governmental subdivision shall levy
2 any excise or other tax requiring cigarettes to be stamped,
3 or requiring licenses for sale thereof, other than licenses
4 which may be imposed as a result of licenses provided for
5 in article twelve of this chapter.

§11-17-5. How tax paid; stamps; how affixed; violations.

1 The tax hereby imposed shall be paid by the purchase
2 of stamps as provided in this article. Payment for stamps
3 purchased from the commissioner shall be made by cash,
4 money order, bank draft, certified check or by non-
5 certified check. However, in the event a noncertified
6 check is returned unpaid by its bank, then it shall be
7 considered that payment has not been made for the
8 taxes due.

9 A stamp as required by this article, as described in
10 the cigarette tax rules and regulations, shall be affixed to,
11 or impressed upon each package of cigarettes of an aggregate
12 value of not less than the amount of tax upon the
13 contents thereof. The stamp or impression, so affixed,

14 shall be prima facie evidence of payment of the tax
15 imposed by this article. Stamps or meter impressions shall
16 be purchased from the commissioner or his deputy, by,
17 and paid for, by wholesalers.

18 Except as may be otherwise provided in the rules and
19 regulations prescribed by the commissioner, under au-
20 thority of this article, and unless such stamps have been
21 previously affixed, they shall be so affixed by each whole-
22 sale dealer who must be authorized to do business in this
23 state prior to the sale or delivery of any cigarettes to
24 any retail dealer or subjobber in this state.

25 Whenever any cigarettes are found in the place of
26 business of any retail dealer or subjobber without the
27 stamps so affixed, the prima facie presumption shall arise
28 that such cigarettes are kept therein in violation of the
29 provisions of this article.

30 The tax commissioner, if he shall determine that it is
31 practicable to stamp packages of cigarettes by impres-
32 sion by means of a metering device, shall provide that
33 such metering device and its impression may be used
34 in lieu of the stamps otherwise required by law. The
35 tax commissioner may authorize any wholesaler purchas-
36 ing unstamped cigarettes, and holding the business regis-
37 tration certificate or license as required by chapter eleven,
38 article twelve of this code, to use any metering device
39 approved by the commissioner, such devices to be sealed
40 by the commissioner or a deputy, or agent, authorized
41 by the commissioner, before being used, which device
42 shall be used only in accordance with the regulations
43 prescribed by the commissioner.

44 A wholesaler may elect to pay the tax in advance
45 where a metering device is used, in which event such
46 wholesaler shall deliver the metering device to the com-
47 missioner, or his agent authorized for that purpose, who
48 shall seal the meter in accordance with the prepayment
49 so made.

§11-17-6. Sales of stamps by deputies; fees; reports of deputies.

1 The tax commissioner may appoint, subject to such
2 conditions as he shall deem to be the best interest of

3 the state, any bank or trust company authorized to do
4 business in, and doing business in this state, as his deputy
5 for the purpose of selling such stamps and may require
6 bond, excepting that no such deputy shall be thereby
7 authorized to sell the same at a discount or on credit,
8 without prior written authority by the tax commissioner
9 and excepting, further, that provisions hereof relating
10 to sale of stamps shall not prevent any bank or trust
11 company from acting as the commissioner's deputy for
12 purposes of checking, setting, and sealing meters or sell-
13 ing stamps under other provisions of this article. The
14 tax commissioner is hereby authorized to allow such
15 deputy, authorized to sell stamps hereunder, a fee of one
16 eighth of one percent of the face value of all stamps sold
17 by such deputy. The state tax commissioner shall be
18 responsible for the delivery of stamps to any deputy
19 so appointed, and may prescribe such regulations and
20 forms of receipts and reports as he may deem necessary
21 and advisable for the transaction of the business of sell-
22 ing such stamps. Each such deputy shall remit by the
23 fifteenth of the month, for the previous month, or oftener,
24 as requested, to the tax commissioner all moneys arising
25 from the sale of such stamps by him, together with a
26 report showing the names of the purchasers and the
27 number of each denomination and the aggregate face
28 value sold by each such deputy. The tax commissioner
29 may sell stamps at his office.

§11-17-7. Form of stamps; custody; discounts; security for payments.

1 The commissioner shall design and procure stamps to
2 be used as herein provided for, affixed and attached to
3 containers, packages or receptacle of whatever kind that
4 may be used for containing cigarettes. In the preparing
5 of said stamp or stamps the same shall have printed
6 or impressed thereon the words "State of West Virginia—
7 Cigarette Tax Stamp" and such other words and figures
8 as the commissioner may deem proper. He shall also
9 prescribe the form of impression to be placed upon any
10 package or container of cigarettes by any metering de-

11 vice. The tax commissioner shall collect the taxes pro-
12 vided for by this article.

13 Such stamps shall be kept in the custody of the tax
14 commissioner or such deputies as he may designate to
15 sell the same. Such stamps shall be sold and accounted
16 for at the tax value thereof except that the tax commis-
17 sioner may authorize sale thereof, or sell to wholesalers
18 in this state, or to wholesalers outside of this state such
19 stamps at a discount of four percent of the tax value
20 of such stamps, the same to be allowed as a commission
21 for affixing the stamps and prepaying the cigarette tax;
22 and excepting further that the tax commissioner may,
23 by like regulation so certified, authorize the delivery
24 of stamps, to wholesalers in this state, or to wholesalers
25 outside of this state, on credit, allowing the same discount
26 as when sold for cash, if and when the purchaser shall
27 file with the tax commissioner a bond made payable to
28 the state of West Virginia, in such form and amount as
29 the commissioner shall prescribe, and with surety or
30 sureties to the satisfaction of the commissioner, conditioned
31 as he may require, to guarantee payment within thirty
32 days for stamps so delivered within such period of time
33 and by making of such reports and settlement as the
34 commissioner may require. The commissioner may, by
35 further regulations, provide for canceling, renewing or
36 increasing such bond or for the substitution of the surety
37 thereon.

38 For the purposes of this article "tax value" shall mean
39 the tax value of each stamp or meter impression, as im-
40 posed by this article.

§11-17-8. Discontinuance of business.

1 Whenever any person ceases by reason of the discon-
2 tinuance, sale or transfer of his business at any location,
3 he shall notify the tax commissioner in writing at the
4 time the discontinuance, sale or transfer takes effect.
5 The notice shall give the date of discontinuance, and in
6 the event of a sale or transfer of the business, the date
7 of such sale or transfer and the name and address of the
8 seller or transferor and the purchaser or transferee.
9 All taxes, penalties not yet due and payable under this

10 article shall, notwithstanding such provision(s), become
11 due and payable concurrently with the discontinuance,
12 sale or transfer and said person shall make the report
13 prescribed by this article and pay all taxes and penalties
14 imposed by this article.

15 The successor in business of any such person shall
16 withhold so much of the purchase money as will satisfy
17 the tax, interest, additions to tax and penalties which
18 may be due until the former owner shall produce a
19 receipt from the tax commissioner evidencing the pay-
20 ment thereof. If the purchaser of a business or stock
21 of goods shall fail to withhold purchase money as above
22 provided, and such tax, interest, additions to tax and
23 penalties remain unpaid after expiration of the thirty-
24 day period allowed for payment thereof, the seller or
25 purchaser shall be jointly and personally liable for the
26 payment of all such tax, interest, additions to tax and
27 penalties, and the same shall be recoverable by the tax
28 commissioner by whatever appropriate legal action to
29 prosecute said person as provided in this article.

§11-17-9. Discounts.

1 A discount of four percent will be allowed on all tax
2 due for persons affixing stamps, collecting and paying
3 of tax as required and prescribed by this article.

§11-17-10. Refunds.

1 The commissioner shall redeem any unused or muti-
2 lated, but identifiable, stamps, that any wholesaler or
3 retail dealer may present for redemption, on written
4 verified requests made by the purchaser, his adminis-
5 trators, executors, successors, or assigns, and refund
6 therefor, ninety-five percent of the face value of said
7 stamps, less any discounts allowed on the purchase of
8 said stamps. The commissioner shall pay on a like basis
9 for stamps destroyed by fire or flood upon presentation
10 of proof of such loss satisfactory to him. Such payments
11 shall for the purposes hereof be deemed to be refunds of
12 taxes improperly collected and shall be allowed and paid
13 from funds collected. Stamps or meter impressions on
14 cigarettes returned to the manufacturers will be subject

15 to refund upon the filing of an affidavit in duplicate
16 issued by the manufacturer evidencing the destruction of
17 stamps or meter impressions, the tax commissioner may
18 by regulation prescribe procedures for refund.

§11-17-11. Surety bonds required; release of surety; new bond.

1 The tax commissioner may require wholesalers, sub-
2 jobbers or retail dealers to file continuous surety bond
3 in an amount to be fixed by the tax commissioner except
4 that the amount shall not be less than one thousand
5 dollars. Upon completion of the filing of a surety bond
6 an annual notice of renewal, only, shall be required
7 thereafter. The surety must be authorized to engage in
8 business within this state. The bond shall be conditioned
9 upon faithfully complying with the provisions of this
10 article including the filing of the returns and payment
11 of all taxes prescribed by this article.

12 Any surety on a bond furnished hereunder shall be
13 released and discharged from all liability accruing on
14 such bond after the expiration of sixty days from the
15 date the surety shall have lodged, by certified mail, with
16 the tax commissioner a written request to be discharged.
17 This shall not relieve, release or discharge the surety
18 from liability already accrued, or which shall accrue be-
19 fore the expiration of the sixty-day period. Whenever
20 any surety shall seek release as herein provided, it shall
21 be the duty of the person to supply the tax commissioner
22 with another bond.

**§11-17-12. Reports required; due date; records to be kept; in-
specification of records; examination of witnesses;
summons, etc.**

1 On or before the fifteenth day of each month common
2 carriers, wholesalers, subjobbers, retail dealers, and
3 agents, or vending machine operators shall, when re-
4 quired by this article, or the tax commissioner, file a
5 report covering the business transacted in the previous
6 month covering such information as the commissioner
7 may deem necessary for the ascertainment or assessment
8 of the tax imposed by this article; and shall be signed
9 under penalty of perjury on such forms as the tax com-

10 missioner may prescribe and shall at this time remit
11 any taxes owed or due, if any.

12 The reports imposed by this section shall be deemed
13 as having been timely filed for the purpose of avoiding
14 penalties only if the postmark date thereon is clearly
15 within the said due date of the calendar month, or is
16 received within such period. If the due date falls on a
17 Saturday or Sunday, or a day which is a legal holiday
18 in the state of West Virginia, filing will be considered
19 timely if it is done on the next succeeding secular day
20 which is not a legal holiday.

21 The reports prescribed herein are required although a
22 tax might not be due, or no business transacted, for the
23 period covered by the report.

24 Each person required to file a report under this article
25 shall make and keep such records as shall be prescribed
26 by the tax commissioner that are necessary to substantiate
27 the returns required by this article including but not
28 limited to, inventories, receipts, disbursements and sales,
29 for a period of time not less than five years.

30 Unless otherwise permitted, in writing, by authority
31 of the tax commissioner, each delivery ticket or invoice
32 for each purchase or sale of cigarettes must be recorded
33 upon a serially numbered invoice showing the name and
34 address of the seller and the purchasers, point of delivery,
35 the date, quantity, price of product, and the tax must
36 be set out separate or the invoice must indicate whether
37 or not the West Virginia cigarette excise tax is included
38 in the total price and such other reasonable information
39 as the tax commissioner may require. However, these
40 invoicing requirements do not apply to cash sales, and a
41 person making such sales must maintain such records
42 as may be reasonably necessary to substantiate his re-
43 turn.

44 The tax commissioner or his deputy or agent authorized
45 by him may inspect or examine the records, books, papers,
46 and any equipment or records of any manufacturer,
47 wholesaler, subjobber, retail dealer, common carrier, or
48 any other person pertaining to the quantity of cigarettes
49 acquired or disbursed to verify the truth and accuracy of

50 any statement or report to ascertain whether the tax im-
51 posed by this article has been properly paid.

52 As a further means of obtaining the records, books and
53 papers of a manufacturer, common carrier, wholesaler,
54 subjobber, or retailer or any other person and ascertaining
55 the amount of taxes and reports due under this article
56 the commissioner and his duly appointed agent shall
57 have the power to examine witnesses under oath; and if
58 the witness shall fail or refuse at the request of the tax
59 commissioner or his duly appointed agent to grant access
60 to the books, records, or papers, the tax commissioner
61 or such agent shall certify the facts and names to the
62 circuit court of the county having jurisdiction of the
63 party and such court shall thereupon issue summons to
64 such party to appear before the tax commissioner or his
65 agent, at a place designated within the jurisdiction of
66 such court, on a day fixed, to be continued as the occasion
67 may require for good cause shown and give such evi-
68 dence and lay open for inspection such books and papers
69 as may be required for the purpose of ascertaining the
70 amount of tax and reports due, if any.

**§11-17-13. Secrecy of returns and reciprocal exchange of
information.**

1 (1) Except when required in an official investigation,
2 administrative tax hearing or proceedings in court in-
3 volving taxes payable under this article, and except as
4 provided in subsections (2) and (3) of this section, it
5 shall be unlawful for any officer or employee of the state
6 to divulge or make known in any manner the amount of
7 tax on cigarettes or any particulars set forth or dis-
8 closed in any report, return, or statement required to
9 be filed with the tax commissioner by this article or any
10 regulation of the tax commissioner issued hereunder and
11 any person who shall divulge such other information
12 shall be guilty of a misdemeanor, and, upon conviction
13 thereof, shall be fined not more than one thousand dollars
14 for each offense, or shall forfeit his office or appoint-
15 ment held or both.

16 (2) The tax commissioner, or his representative, may
17 upon request permit the proper officer of the United States

18 or any state, territory or political subdivision of the
19 United States, to inspect reports, returns or statements
20 filed with the tax commissioner or may furnish to such
21 officer or representative a copy of any such document
22 provided such other jurisdiction grants substantially
23 similar privileges to the tax commissioner of this state.
24 Subsection (1) of this section shall not be construed to
25 prohibit the publication of statistics so classified as to
26 prevent the identification of particular reports and the
27 items therein.

28 (3) Any taxpayer under this article may, in writing,
29 waive the secrecy rules provided in subsection (1) of
30 this section for such purpose and such period as he shall
31 therein state, and the tax commissioner, if he so deter-
32 mines may thereupon release to designated recipient said
33 taxpayer's tax, quantity of cigarettes or other particulars
34 filed under this article.

**§11-17-14. Assessment of tax; assessments as evidence; petition
for reassessment; jeopardy assessment; distraint.**

1 Whenever any person pursuant to the requirements of
2 this article shall neglect or refuse to make or file any
3 report or pay the taxes or penalties in the time required
4 by this article or related regulations or shall file an in-
5 correct or fraudulent report, the tax commissioner may
6 estimate, from any information obtainable, the number
7 of cigarettes manufactured, purchased, received, sold or
8 used with respect to which the person has incurred
9 liability under this article, the tax commissioner may
10 give a notice of assessment in person or by certified mail,
11 and, in any action or proceeding for the collection of
12 the tax or any penalties imposed by this article, an as-
13 sessment by the tax commissioner shall constitute prima
14 facie evidence of the claim of the state and the burden
15 of proof shall be upon the person assessed to show that
16 the assessment was incorrect and contrary to law.

17 If a taxpayer against whom an assessment has been
18 made desires to object to the assessment and obtain a
19 hearing as provided by section sixteen of this article he
20 shall file within thirty days from date of service of
21 the assessment with the commissioner, either personally
22 or by certified mail a petition for reassessment.

23 A petition for reassessment filed by certified mail will
24 be deemed to have complied with the foregoing require-
25 ments if the postmark date thereon is clearly within said
26 thirty days, or is received within such period. If the
27 thirtieth day falls on a Saturday or Sunday, or a day
28 which is a legal holiday in the state of West Virginia,
29 filing will be considered timely if it is done on the next
30 succeeding secular day which is not a legal holiday.

31 The petition for reassessment shall be in writing with
32 an original and one copy. It shall be complete in itself
33 so as to fully state the issues. The tax commissioner may
34 by regulations adopt procedures and forms relating to
35 petitions. No telegrams, telephone calls or similar com-
36 munication will be recognized as a petition.

37 Failure to file a petition for reassessment within thirty
38 days after receipt of the assessment shall result in the
39 assessment becoming due and payable and not subject
40 to judicial review.

41 In the case of jeopardy assessments, wherein the tax
42 commissioner believes that the collection of the tax will
43 be jeopardized by delay the amount assessed shall be
44 immediately due and payable and a bond with corporate
45 surety thereon in an amount to be fixed by the tax com-
46 missioner, conditioned upon the payment of all taxes,
47 penalties and costs legally due, shall accompany the peti-
48 tion for reassessment.

49 The commissioner may abate in whole or in part any
50 assessment issued under this article.

51 If the statement of tax or notice of assessment men-
52 tioned hereinbefore in this section is not paid and no
53 petition for reassessment is filed as hereinbefore pre-
54 scribed in this section then it shall be lawful for:

55 (1) The tax commissioner, or his duly appointed
56 agent to collect such tax and penalty by distraint and
57 sale of goods, chattels or effects, including stocks, securities
58 and evidence of debt, of the taxpayer liable for the pay-
59 ment of such tax and penalty.

60 (2) If goods, chattels or effects sufficient to pay such
61 tax and penalty due from such person are not found by
62 the tax commissioner, or his duly appointed agent, the

63 tax commissioner is authorized to collect such tax and
64 penalty stated hereinbefore by seizure and sale of real
65 estate. Further, the tax commissioner shall cause appropriate
66 action for the recovery of such tax and/or penalty,
67 or to enforce the lien of the state of West Virginia for
68 tax upon any real estate, to be brought in the name of the
69 state, and it shall be the duty of the attorney general
70 of this state or the prosecuting attorney of any county
71 to take whatever appropriate legal action to prosecute
72 said person, at the request of the tax commissioner, and
73 judgment shall be rendered for the amount found to be
74 due, together with cost, and the amount collected shall
75 be paid into the state treasury, as provided by this
76 article.

§11-17-15. Injunction.

1 If any taxpayer or person fails to comply with any
2 of the provisions of this article for a period of more than
3 thirty days the tax commissioner may institute a proceeding
4 to secure an injunction to restrain the taxpayer
5 or person from doing business in this state until said
6 person fully complies with the provisions of this article.

§11-17-16. Hearing; appeals.

1 Any person against whom an order or decision of the
2 tax commissioner, or his representative has been adversely
3 affected relating to the filing of returns, assessment
4 of taxes, granting of refunds, any other matter
5 wherein the findings are in the discretion of the tax
6 commissioner, may appeal from such determination by
7 requesting a hearing before the tax commissioner, or
8 his examiner, if such request is made within thirty days
9 from receipt of such order or decision.

10 The tax commissioner may designate an examiner
11 to conduct a hearing, and when the term "commissioner"
12 is used in this section relating to the conduct of the
13 hearing it shall likewise mean "examiner."

14 The tax commissioner may by regulation prescribe
15 the procedure for hearings.

16 The commissioner shall notify the petitioner, his counsel
17 or representative, by certified mail, of the time and

18 place of the hearing but not less than twenty days prior
19 to the hearing. The hearing shall be held in Charleston.
20 West Virginia unless the commissioner determines other-
21 wise, and such hearing shall be informal unless other-
22 wise stipulated in writing by either party.

23 The tax commissioner shall issue a ruling by certi-
24 fied mail within a reasonable time from the date of the
25 hearing.

26 An appeal may be taken by the taxpayer if the appeal
27 is filed with the circuit court of the county in which
28 the activity taxed was engaged, or in the circuit court
29 of Kanawha county, within thirty days after he shall
30 have received notice from the tax commissioner of his
31 determination as provided in this section.

32 The appeal shall be taken by written notice to the
33 tax commissioner and served as an original notice. When
34 said notice is so served it shall, with the return thereon,
35 be filed in the office of the clerk of the circuit court
36 and docketed as other cases with the taxpayer as plain-
37 tiff and the tax commissioner as defendant.

38 The court shall hear the appeal and determine anew
39 all questions submitted to it on appeal from the deter-
40 mination of the tax commissioner. In such an appeal
41 a certified copy of the tax commissioner's assessment
42 shall be admissible and shall constitute prima facie
43 evidence of the tax due under the provisions of this
44 article. The court shall render its decree thereon and
45 a certified copy of said decree shall be filed by the clerk
46 of said court with the tax commissioner who shall then
47 if necessary, correct the assessment in accordance with
48 said decree. An appeal may be taken by the taxpayer
49 or the tax commissioner to the supreme court of appeals
50 of this state.

§11-17-17. Forms, rules and regulations; enforcement powers.

1 The tax commissioner is hereby invested with full
2 power and authority and it is hereby made his duty
3 to prescribe the necessary forms and to promulgate
4 necessary and needful rules and regulations to ascer-

5 tain, assess and collect the taxes imposed by this article
6 and to enforce the provisions thereof.

7 Any employee or agent of the tax commissioner, so
8 designated by the tax commissioner, shall have all the
9 lawful powers delegated to members of the department
10 of public safety to enforce the provisions of this article,
11 in any county, or municipality in this state.

12 The state department of public safety is hereby autho-
13 rized and may be requested to assist in the enforcement
14 of the provisions of this article as directed by the tax
15 commissioner, or his agents.

16 Such employee shall execute a bond with security
17 in the sum of thirty-five hundred dollars, payable to
18 the state of West Virginia conditioned for the faithful
19 performance of his duties, as such, and such bond shall
20 be approved as to form by the attorney general, and
21 the same shall be filed with the secretary of state and
22 preserved in his office.

§11-17-18. Amounts allowed for administration.

1 The state tax commissioner, in the administration and
2 enforcement of this article, shall be allowed to expend
3 out of the taxes collected thereunder, or proceeds of
4 sales of stamps, a sum of not to exceed one and one-half
5 percent of the tax collected or stamps sold.

§11-17-19. Penalties; crimes.

1 (1) If any person:

2 (a) Fails to pay the taxes imposed by this article
3 when due, said taxes shall bear interest at the legal rate
4 of interest per annum for each month or fraction
5 thereof from the due date of the tax or return, each
6 assessment made by the tax commissioner shall bear in-
7 terest for failure to timely pay the taxes imposed by
8 this article, or

9 (b) Fails to make or file a return or whenever the
10 full amount of the tax on any portion or deficiency
11 thereof has not been paid in the time required by this
12 article, unless it be shown that such failure was due
13 to reasonable cause and not due to wilful neglect, there

14 may be added to the tax a penalty of five percent per
15 month if a failure is not for more than one month, with
16 an additional five percent for each additional month
17 or fraction thereof during which failure shall continue,
18 not to exceed twenty-five percent in the aggregate. If
19 no tax is due, the penalty will be twenty-five dollars
20 per month or fraction thereof for failure to file a tax
21 return: *Provided*, That in all cases of delinquency in
22 the payment of taxes due, interest shall be assessed.

23 (2) If any person:

24 (a) Files a false or fraudulent return with intent
25 to evade the tax imposed by this article, or in the case
26 of a wilful failure to file a return with intent to evade
27 the tax, or file a false claim for credit or refund there
28 shall be added to the tax due an amount equal to one
29 hundred percent of the tax due. The burden of prov-
30 ing fraud, wilfulness, or intent to evade tax shall be upon
31 the tax commissioner.

32 (3) If any person:

33 (a) Makes any false entry upon an invoice, package
34 or container of cigarettes required to be made under the
35 provisions of this article, or with intent to evade the tax
36 imposed by this article, presents any such false entry for
37 the inspection of the commissioner, or

38 (b) Prevents or hinders the commissioner or his dep-
39 uty from making a full inspection of any place where
40 cigarettes subject to the tax imposed by this state are
41 sold or stored, or prevents or hinders the full inspection
42 of invoices, books, records, or papers required to be
43 kept under the provisions of this article, or

44 (c) Sells cigarettes in this state without there hav-
45 ing been first affixed to each individual package thereof
46 the stamp or stamps required to be affixed thereto by
47 this article, or

48 (d) Being a retail dealer in this state, has in his
49 possession packages of cigarettes not bearing the stamps
50 herein required to be affixed thereto or, whoever fails
51 to produce on demand by the commissioner invoices
52 of all cigarettes purchased or received by him within

53 two years prior to such demand, unless upon satisfactory
54 proof it is shown that such nonproduction is due to
55 providential or other causes beyond his control, or

56 (e) Whenever any cigarettes are found in the place
57 of business of any retail dealer or subjobber without the
58 stamps so affixed, the prima facie presumption shall
59 arise that such cigarettes are kept therein in violation
60 of the provisions of this article, or

61 (f) If any wholesale dealer shall sell cigarettes to
62 any person in this state other than to another whole-
63 saler, subjobber, or retail dealer and no person in this
64 state other than a wholesaler, or subjobber, shall sell
65 cigarettes to a retail dealer. It shall be unlawful and a
66 violation of this article for any retail cigarette dealer
67 to purchase or acquire cigarettes from any person other
68 than a wholesaler or subjobber. The original whole-
69 saler who purchases unstamped cigarettes from the manu-
70 facturer is liable for the excise tax and the affixing of
71 the required stamps, or

72 (g) If a person, firm or corporation, who is not a
73 wholesaler, subjobber or retail dealer in tobacco products,
74 as provided by this article, shall have in his possession
75 within the state more than ten packages of cigarettes
76 not bearing cigarette tax paid indicia of this state, such
77 possession shall be presumed to be for the purpose of
78 evading the payment of the taxes due thereon, or

79 (h) Whoever violates any of the provisions of sub-
80 division (a), subsection (2), through subdivision (g),
81 subsection (3), of this section, or any lawful rule
82 or regulation promulgated by the commissioner under
83 authority of this article shall be guilty of a misde-
84 meanor, and, upon conviction thereof, shall be fined
85 not less than five hundred dollars nor more than five
86 thousand dollars, or imprisoned in the county jail for
87 not more than one year, or both, in the discretion of
88 the court.

89 (4) Whoever falsely or fraudulently makes, forges,
90 alters or counterfeits any stamp prescribed, or defined, by
91 the provisions of this article, or its related rules and regu-
92 lations, and any person who knowingly and wilfully

93 makes, causes to be made, purchases, receives or has in his
94 possession, any device for forging or counterfeiting any
95 stamp or has in his possession, any stamps not properly
96 issued by the commissioner or his agent or deputy, or
97 uses more than once any stamp provided for and required
98 by this article for the purpose of evading the tax hereby
99 imposed, shall be guilty of a felony, and, upon conviction
100 thereof, shall be sentenced to pay a fine of not less than
101 five thousand dollars nor more than ten thousand dollars
102 and imprisoned in the penitentiary for a term of not less
103 than one year nor more than five years.

104 (5) Whenever the commissioner or any of his dep-
105 uties or employees authorized by him for the purpose
106 shall discover any cigarettes subject to tax as provided
107 by this section and upon which the tax has not
108 been paid as herein required, the commissioner, or
109 such deputy or employee is hereby authorized and
110 empowered forthwith to seize and take possession of
111 such cigarettes, without a warrant, which shall there-
112 upon be deemed to be contraband, forfeited to the state
113 and the commissioner shall within a reasonable time
114 thereafter sell such forfeited cigarettes: *Provided, how-*
115 *ever,* That such seizure and sale shall not be deemed to
116 relieve any person from fine or imprisonment as pro-
117 vided herein for violation of any provisions of this arti-
118 cle. Such sale may be made in any county the tax com-
119 missioner deems most convenient and economical. No-
120 tice of such sale shall be published as a Class I legal ad-
121 vertisement in compliance with the provisions of article
122 three, chapter fifty-nine of this code, and the publica-
123 tion area for such publication shall be the county where-
124 in such seizure was made and the county wherein the
125 sale is to take place. Notice shall be published at least
126 five days prior to the sale. All taxes and penalties
127 collected under the provisions of this section shall be
128 paid into the state treasury and treated as other taxes
129 collected under this article.

130 (6) Justices of the peace shall have concurrent juris-
131 diction with any other courts having jurisdiction for
132 the trial of all misdemeanors arising under this article.

§11-17-20. Transportation of unstamped cigarettes; unstamped cigarettes in vending machines; forfeitures and sales of cigarettes and equipment.

1 Every person who shall transport cigarettes not stamped
2 as required by this article upon the public highways,
3 waterways, roads or streets of this state shall have in
4 his actual possession invoices or delivery tickets for such
5 cigarettes which shall show the true name and complete
6 and exact address of the consignor or seller, the true
7 name and complete and exact address of the consignee,
8 or purchaser, the quantity and brands of the cigarettes
9 transported and the true name and complete and exact
10 address of the person who has or shall assume payment
11 of the West Virginia state tax, or the tax, if any, of the
12 state or foreign country at the point of ultimate destination: *Provided*, That any common carrier which has issued
13 a bill of lading for a shipment of cigarettes and is without
14 notice to itself or to any of its agents or employees
15 that said cigarettes are not stamped as required by this
16 article shall be deemed to have complied with this article
17 and the vehicle or vessel in which said cigarettes are being
18 transported shall not be subject to confiscation hereunder.
19 In the absence of such invoices, delivery tickets or bills
20 of lading, as the case may be, the cigarettes so transported,
21 the vehicle or vessel in which the cigarettes are being
22 transported and any paraphernalia or devices used in
23 connection with the unstamped cigarettes, are declared
24 to be contraband goods and may be seized by the commissioner,
25 his agents or employees or by any peace officer of the state when directed by the commissioner,
26 his agents or employees so to do without a warrant.

29 If unstamped cigarettes are found in any vending
30 machine, both the cigarettes and the vending machine
31 shall be contraband goods and may be seized by the commissioner,
32 at the discretion of the commissioner, his
33 agents or employees, without a warrant.

34 Cigarettes and vending machines seized under this
35 section shall be forthwith sold in the manner provided
36 hereinafter in this section and such sale shall not relieve

37 the owner of the sold personal property of any action
38 by the commissioner for violations of any other sections
39 of this article.

40 The commissioner shall immediately, after any seizure
41 made pursuant to this section, institute a proceeding for
42 the confiscation thereof in the circuit court of the county
43 in which the seizure is made. The court may proceed
44 in a summary manner and may direct confiscation to the
45 commissioner: *Provided, however,* That anything to the
46 contrary notwithstanding that any person claiming to
47 be the holder of security interest in any vehicle or vessel,
48 or vending machine, the disposition of which is provided
49 for above, may present his petition so alleging and be
50 heard, and in the event it appears to the court that
51 the property was unlawfully used by a person other than
52 such claimant, and if the said claimant acquired his
53 security interest in good faith and without knowledge
54 that the vehicle or vessel or vending machine was
55 going to be so used, the court shall either waive for-
56 feiture in favor of such claimant and order the vehicle
57 or vessel or vending machine returned or delivered to
58 such claimant or if it is found that the value thereof
59 exceeds the amount of the claim, the court shall order
60 payment of the amount of the claim out of the proceeds
61 of the sale.

§11-17-21. Severability.

1 If any provision of this article or the application thereof
2 shall for any reason be adjudged by any court of com-
3 petent jurisdiction to be invalid, such judgment shall not
4 affect, impair or invalidate the remainder of said article,
5 but shall be confined in its operation to the provision
6 thereof directly involved in the controversy in which
7 such judgment shall have been rendered, and the ap-
8 plicability of such provision to other persons or circum-
9 stances shall not be affected thereby.

CHAPTER 76

(House Bill No. 598—By Mr. Speaker, Mr. Boiarsky,
and Mr. McManus)

[Passed February 10, 1970; in effect July 1, 1970. Vetoed by the
Governor and passed by both Houses notwithstanding veto.]

AN ACT to amend and reenact sections four-a, four-b and nine, article twenty-one, 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 a new section, designated section four-c, relating to the rates of the personal income tax, the effect of rate changes, and the determination of the meaning of terms as used in said article and chapter.

Be it enacted by the Legislature of West Virginia:

That sections four-a, four-b and nine, article twenty-one, chapter eleven 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 four-c, all to read as follows:

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-4a. Rate of tax—Taxable years beginning on or after January 1, 1963, and ending prior to January 1, 1970.

§11-21-4b. Same—Taxable years beginning on or after January 1, 1970.

§11-21-4c. Effect of rate changes during a taxable year.

§11-21-9. Meaning of terms.

§11-21-4a. Rate of tax—Taxable years beginning on or after January 1, 1963, and ending prior to January 1, 1970.

- 1 (a) *Rate of Tax on Individuals and Heads of House-*
- 2 *holds.*—The tax imposed by section three of this article
- 3 on the West Virginia taxable income of every individual,
- 4 every individual who is a head of a household in the
- 5 determination of his federal income tax for the taxable
- 6 year, and every estate and trust shall be determined in
- 7 accordance with the following table:

8 If the West Virginia taxable

9 income is:

The tax is:

10	Not over \$2,000.....	1.2% of the taxable income
11	Over \$2,000 but not over \$4,000.....	\$24.00, plus 1.3% of excess over \$2,000
12	Over \$4,000 but not over \$6,000.....	\$50.00, plus 1.6% of excess over \$4,000
13	Over \$6,000 but not over \$8,000.....	\$82.00, plus 1.8% of excess over \$6,000
14	Over \$8,000 but not over \$10,000.....	\$118.00, plus 2.0% of excess over \$8,000
15	Over \$10,000 but not over \$12,000.....	\$158.00, plus 2.3% of excess over \$10,000
16	Over \$12,000 but not over \$14,000.....	\$204.00, plus 2.6% of excess over \$12,000
17	Over \$14,000 but not over \$16,000.....	\$256.00, plus 2.8% of excess over \$14,000
18	Over \$16,000 but not over \$18,000.....	\$312.00, plus 3.0% of excess over \$16,000
19	Over \$18,000 but not over \$20,000.....	\$372.00, plus 3.1% of excess over \$18,000
20	Over \$20,000 but not over \$22,000.....	\$434.00, plus 3.4% of excess over \$20,000
21	Over \$22,000 but not over \$26,000.....	\$502.00, plus 3.5% of excess over \$22,000
22	Over \$26,000 but not over \$32,000.....	\$642.00, plus 3.7% of excess over \$26,000
23	Over \$32,000 but not over \$38,000.....	\$864.00, plus 3.9% of excess over \$32,000
24	Over \$38,000 but not over \$44,000.....	\$1,098.00, plus 4.1% of excess over \$38,000
25	Over \$44,000 but not over \$50,000.....	\$1,344.00, plus 4.3% of excess over \$44,000
26	Over \$50,000 but not over \$60,000.....	\$1,602.00, plus 4.5% of excess over \$50,000
27	Over \$60,000 but not over \$70,000.....	\$2,052.00, plus 4.7% of excess over \$60,000
28	Over \$70,000 but not over \$80,000.....	\$2,522.00, plus 4.9% of excess over \$70,000
29	Over \$80,000 but not over \$90,000.....	\$3,012.00, plus 5.0% of excess over \$80,000
30	Over \$90,000 but not over \$100,000.....	\$3,512.00, plus 5.2% of excess over \$90,000
31	Over \$100,000 but not over \$150,000.....	\$4,032.00, plus 5.3% of excess over \$100,000
32	Over \$150,000 but not over \$200,000.....	\$6,682.00, plus 5.4% of excess over \$150,000
33	Over \$200,000.....	\$9,382.00, plus 5.5% of excess over \$200,000

34 (b) *Rate of Tax in Case of Joint Return or Return of*
35 *Surviving Spouse.*—In the case of a joint return of a
36 husband and wife and the return of an individual who
37 is entitled to file his federal income tax return for the
38 taxable year as a surviving spouse, the tax imposed by
39 section three of this article on the West Virginia taxable
40 income shall be determined in accordance with the fol-
41 lowing table:

42 If the West Virginia taxable

43 income is:

The tax is:

44 Not over \$4,000.....	1.2% of the taxable income
45 Over \$4,000 but not over \$8,000.....	\$48.00, plus 1.3% of excess over \$4,000
46 Over \$8,000 but not over \$12,000.....	\$100.00, plus 1.6% of excess over \$8,000
47 Over \$12,000 but not over \$16,000.....	\$164.00, plus 1.8% of excess over \$12,000
48 Over \$16,000 but not over \$20,000.....	\$236.00, plus 2.0% of excess over \$16,000
49 Over \$20,000 but not over \$24,000.....	\$316.00, plus 2.3% of excess over \$20,000
50 Over \$24,000 but not over \$28,000.....	\$408.00, plus 2.6% of excess over \$24,000
51 Over \$28,000 but not over \$32,000.....	\$512.00, plus 2.8% of excess over \$28,000
52 Over \$32,000 but not over \$36,000.....	\$624.00, plus 3.0% of excess over \$32,000
53 Over \$36,000 but not over \$40,000.....	\$744.00, plus 3.1% of excess over \$36,000
54 Over \$40,000 but not over \$44,000.....	\$868.00, plus 3.4% of excess over \$40,000
55 Over \$44,000 but not over \$52,000.....	\$1,004.00, plus 3.5% of excess over \$44,000
56 Over \$52,000 but not over \$64,000.....	\$1,284.00, plus 3.7% of excess over \$52,000
57 Over \$64,000 but not over \$76,000.....	\$1,728.00, plus 3.9% of excess over \$64,000
58 Over \$76,000 but not over \$88,000.....	\$2,196.00, plus 4.1% of excess over \$76,000
59 Over \$88,000 but not over \$100,000.....	\$2,688.00, plus 4.3% of excess over \$88,000
60 Over \$100,000 but not over \$120,000.....	\$3,204.00, plus 4.5% of excess over \$100,000
61 Over \$120,000 but not over \$140,000.....	\$4,104.00, plus 4.7% of excess over \$120,000
62 Over \$140,000 but not over \$160,000.....	\$5,044.00, plus 4.9% of excess over \$140,000
63 Over \$160,000 but not over \$180,000.....	\$6,024.00, plus 5.0% of excess over \$160,000
64 Over \$180,000 but not over \$200,000.....	\$7,024.00, plus 5.2% of excess over \$180,000
65 Over \$200,000 but not over \$300,000.....	\$8,064.00, plus 5.3% of excess over \$200,000
66 Over \$300,000 but not over \$400,000.....	\$13,364.00, plus 5.4% of excess over \$300,000
67 Over \$400,000.....	\$18,764.00, plus 5.5% of excess over \$400,000

68 (c) *Effective Date.*—The provisions of this section
69 shall be given effect in determining the rate of tax im-
70 posed by this article for all taxable years or portions
71 thereof beginning on or after the first day of January,
72 one thousand nine hundred sixty-three, and ending
73 prior to January one, one thousand nine hundred seventy.

**§11-21-4b. Same—Taxable years beginning on or after
January 1, 1970.**

1 (a) *Rate of Tax on Individuals and Heads of House-*
2 *holds.*—The tax imposed by section three of this article
3 on the West Virginia taxable income of every individual,
4 every individual who is a head of a household in the
5 determination of his federal income tax for the taxable
6 year, and every estate and trust shall be determined
7 in accordance with the following table:

8 If the West Virginia taxable

9 income is:

The tax is:

10	Not over \$2,000.....	2.1% of the taxable income
11	Over \$2,000 but not over \$4,000.....	\$42.00, plus 2.3% of excess over \$2,000
12	Over \$4,000 but not over \$6,000.....	\$88.00, plus 2.8% of excess over \$4,000
13	Over \$6,000 but not over \$8,000.....	\$144.00, plus 3.2% of excess over \$6,000
14	Over \$8,000 but not over \$10,000.....	\$208.00, plus 3.5% of excess over \$8,000
15	Over \$10,000 but not over \$12,000.....	\$278.00, plus 4.0% of excess over \$10,000
16	Over \$12,000 but not over \$14,000.....	\$358.00, plus 4.6% of excess over \$12,000
17	Over \$14,000 but not over \$16,000.....	\$450.00, plus 4.9% of excess over \$14,000
18	Over \$16,000 but not over \$18,000.....	\$548.00, plus 5.3% of excess over \$16,000
19	Over \$18,000 but not over \$20,000.....	\$654.00, plus 5.4% of excess over \$18,000
20	Over \$20,000 but not over \$22,000.....	\$762.00, plus 6.0% of excess over \$20,000
21	Over \$22,000 but not over \$26,000.....	\$882.00, plus 6.1% of excess over \$22,000
22	Over \$26,000 but not over \$32,000.....	\$1,126.00, plus 6.5% of excess over \$26,000
23	Over \$32,000 but not over \$38,000.....	\$1,516.00, plus 6.8% of excess over \$32,000
24	Over \$38,000 but not over \$44,000.....	\$1,924.00, plus 7.2% of excess over \$38,000
25	Over \$44,000 but not over \$50,000.....	\$2,356.00, plus 7.5% of excess over \$44,000
26	Over \$50,000 but not over \$60,000.....	\$2,806.00, plus 7.9% of excess over \$50,000
27	Over \$60,000 but not over \$70,000.....	\$3,596.00, plus 8.2% of excess over \$60,000
28	Over \$70,000 but not over \$80,000.....	\$4,416.00, plus 8.6% of excess over \$70,000
29	Over \$80,000 but not over \$90,000.....	\$5,276.00, plus 8.8% of excess over \$80,000
30	Over \$90,000 but not over \$100,000.....	\$6,156.00, plus 9.1% of excess over \$90,000
31	Over \$100,000 but not over \$150,000.....	\$7,066.00, plus 9.3% of excess over \$100,000
32	Over \$150,000 but not over \$200,000.....	\$11,716.00, plus 9.5% of excess over \$150,000
33	Over \$200,000.....	\$16,466.00, plus 9.6% of excess over \$200,000

34 **(b) *Rate of Tax in Case of Joint Return or Return***
35 ***of Surviving Spouse.***—In the case of a joint return of a
36 husband and wife and the return of an individual who
37 is entitled to file his federal income tax return for the
38 taxable year as a surviving spouse, the tax imposed by
39 section three of this article on the West Virginia taxable
40 income shall be determined in accordance with the fol-
41 lowing table:

42 If the West Virginia taxable

43 income is:

The tax is:

44 Not over \$4,000	2.1% of the taxable income
45 Over \$4,000 but not over \$8,000	\$84.00, plus 2.3% of excess over \$4,000
46 Over \$8,000 but not over \$12,000	\$176.00, plus 2.8% of excess over \$8,000
47 Over \$12,000 but not over \$16,000	\$288.00, plus 3.2% of excess over \$12,000
48 Over \$16,000 but not over \$20,000	\$416.00, plus 3.5% of excess over \$16,000
49 Over \$20,000 but not over \$24,000	\$556.00, plus 4.0% of excess over \$20,000
50 Over \$24,000 but not over \$28,000	\$716.00, plus 4.6% of excess over \$24,000
51 Over \$28,000 but not over \$32,000	\$900.00, plus 4.9% of excess over \$28,000
52 Over \$32,000 but not over \$36,000	\$1,096.00, plus 5.3% of excess over \$32,000
53 Over \$36,000 but not over \$40,000	\$1,308.00, plus 5.4% of excess over \$36,000
54 Over \$40,000 but not over \$44,000	\$1,524.00, plus 6.0% of excess over \$40,000
55 Over \$44,000 but not over \$52,000	\$1,764.00, plus 6.1% of excess over \$44,000
56 Over \$52,000 but not over \$64,000	\$2,252.00, plus 6.5% of excess over \$52,000
57 Over \$64,000 but not over \$76,000	\$3,032.00, plus 6.8% of excess over \$64,000
58 Over \$76,000 but not over \$88,000	\$3,848.00, plus 7.2% of excess over \$76,000
59 Over \$88,000 but not over \$100,000	\$4,712.00, plus 7.5% of excess over \$88,000
60 Over \$100,000 but not over \$120,000	\$5,612.00, plus 7.9% of excess over \$100,000
61 Over \$120,000 but not over \$140,000	\$7,192.00, plus 8.2% of excess over \$120,000
62 Over \$140,000 but not over \$160,000	\$8,832.00, plus 8.6% of excess over \$140,000
63 Over \$160,000 but not over \$180,000	\$10,552.00, plus 8.8% of excess over \$160,000
64 Over \$180,000 but not over \$200,000	\$12,312.00, plus 9.1% of excess over \$180,000
65 Over \$200,000 but not over \$300,000	\$14,132.00, plus 9.3% of excess over \$200,000
66 Over \$300,000 but not over \$400,000	\$23,432.00, plus 9.5% of excess over \$300,000
67 Over \$400,000	\$32,932.00, plus 9.6% of excess over \$400,000

68 (c) *Effective Date.*—The provisions of this section
69 shall be given effect in determining the rate of tax im-
70 posed by this article for all taxable years or portions
71 thereof beginning on or after the first day of January,
72 one thousand nine hundred seventy.

§11-21-4c. Effect of rate changes during a taxable year.

1 If any rate of tax imposed by this article changes to
2 become effective after the thirty-first day of December,
3 one thousand nine hundred sixty-two, and if the tax-
4 able year includes the effective date of the change
5 (unless that date is the first day of the taxable year),
6 then: (1) Tentative taxes shall be computed by apply-
7 ing the rate for the period before the effective date of
8 the change, and the rate for the period on and after
9 such date, to the taxable income for the entire taxable
10 year; and (2) the tax for such taxable year shall be
11 the sum of that proportion of each tentative tax which
12 the number of days in each period bears to the number
13 of days in the entire taxable year.

§11-21-9. Meaning of terms.

1 Any term used in this article shall have the same
2 meaning as when used in a comparable context in the
3 laws of the United States relating to income taxes, un-
4 less a different meaning is clearly required. Any ref-
5 erence in this article to the laws of the United States
6 shall mean the provisions of the Internal Revenue Code
7 of 1954, as amended, and such other provisions of the
8 laws of the United States as relate to the determination
9 of income for federal income tax purposes. All amend-
10 ments made to the laws of the United States prior to
11 the first day of January, one thousand nine hundred
12 seventy, shall be given effect in determining the taxes
13 imposed by this article for the tax period beginning
14 the first day of January, one thousand nine hundred
15 seventy, and thereafter, but no amendment to laws of
16 the United States made on or after the first day of
17 January, one thousand nine hundred seventy, shall be
18 given effect.

CHAPTER 77

(Com. Sub. for House Bill No. 612—Originating in the House
Committee on the Judiciary)

[Passed February 12, 1970; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article two, chapter twenty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections ten and ten-a, article five of said chapter; to amend and reenact sections ten and eleven, article six of said chapter; to amend and reenact section twenty-seven, article seven of said chapter; and to amend article five of said chapter by adding thereto a new section, designated section seventeen-c, all relating to unemployment compensation, the department of employment security and the commissioner of said department.

Be it enacted by the Legislature of West Virginia:

That section five, article two, chapter twenty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that sections ten and ten-a, article five of said chapter be amended and reenacted; that sections ten and eleven, article six of said chapter be amended and reenacted; that section twenty-seven, article seven of said chapter be amended and reenacted; and that article five of said chapter be amended by adding thereto a new section, designated section seventeen-c, all to read as follows:

Article

2. The Commissioner of Employment Security.
5. Employer Coverage and Responsibility.
6. Employee Eligibility; Benefits.
7. Claim Procedure.

ARTICLE 2. THE COMMISSIONER OF EMPLOYMENT SECURITY.

§21A-2-5. Compensation; traveling expenses.

- 1 Notwithstanding the provisions of section two-a, article
- 2 seven, chapter six of the code of West Virginia, one thou-
- 3 sand nine hundred thirty-one, as amended, the com-

4 missioner of employment security shall receive a yearly
5 salary of twenty thousand dollars and the necessary
6 traveling expenses incident to the performance of his
7 duties. Requisition for traveling expenses shall be ac-
8 companied by a sworn itemized statement which shall
9 be filed with the auditor and preserved as a public
10 record.

ARTICLE 5. EMPLOYER COVERAGE AND RESPONSIBILITY.

§21A-5-10. Same—Decreased rates; adjustment of accounts and rates;
debit balance account rates.

§21A-5-10a. Same—Modification or suspension of decreased rates.

§21A-5-17c. Service of process on nonresident employer.

§21A-5-10. Same—Decreased rates; adjustment of accounts
and rates; debit balance account rates.

1 (a) On and after January one, one thousand nine
2 hundred fifty-four, after the requirements of section
3 nine have been complied with, an employer's payment
4 shall remain two and seven-tenths percent until:

5 (1) There have elapsed thirty-six consecutive months
6 immediately preceding the computation date through-
7 out which an employer's account was chargeable with
8 benefits.

9 (2) His payments credited to his account for all past
10 years exceed the benefits charged to his account by
11 an amount equal to at least the percent of his average
12 annual payroll as shown in Column B of Table II. His
13 rate shall be the amount appearing in Column C of Table
14 II on line with the percentage in Column B.

15 When the total assets of the fund as of January one
16 of a calendar year equal or exceed one hundred million
17 dollars, an employer's rate shall be the amount appearing
18 in Column D of Table II on line with the percentage
19 in Column B.

20 When the total assets of the fund as of January one
21 of a calendar year equal or exceed one hundred ten
22 million dollars, an employer's rate shall be the amount
23 appearing in Column E of Table II on line with the per-
24 centage in Column B.

25 If the commissioner, in accordance with the provi-
 26 sions of section ten-a, article five of this chapter, de-
 27 termines the fund to be below the sum of seventy-
 28 five million dollars, then, by the express provisions
 29 of this paragraph, the employer's rate shall immediately
 30 be the amount appearing in Column C of Table II on
 31 line with the percentage in Column B; and the pro-
 32 visions of section ten-a, article five of this chapter shall
 33 be fully applied by the commissioner. It is the express
 34 intent of this paragraph that the increases of the afore-
 35 said section ten-a be applied to and added to the em-
 36 ployers' rates set forth in the aforesaid Column C of
 37 Table II.

38 The commissioner shall determine an employer's com-
 39 pliance with these requirements.

40

TABLE II

41	Col. A	Col. B	Col. C	Col. D	Col. E
42		Percent of			
43		Average			
44		Annual Payroll			
45	Rate	by Which Credits Employer's			
46	Class	Exceed Charges	Rate		
47	(1)	0.0 to 6.0	2.7	2.2	1.7
48	(2)	6.0	2.5	2.0	1.5
49	(3)	7.0	2.3	1.8	1.3
50	(4)	8.0	2.1	1.6	1.1
51	(5)	9.0	1.9	1.4	0.9
52	(6)	10.0	1.7	1.2	0.7
53	(7)	10.5	1.5	1.0	0.5
54	(8)	11.0	1.3	0.8	0.3
55	(9)	11.5	1.1	0.6	0.1
56	(10)	12.0	0.9	0.4	0.0
57	(11)	12.5	0.7	0.2	0.0
58	(12)	13.0	0.5	0.0	0.0
59	(13)	14.0	0.3	0.0	0.0
60	(14)	16.0	0.1	0.0	0.0
61	(15)	18.0 and over	0.0	0.0	0.0

62 (b) All employer accounts in which charges for all
 63 past years exceed credits for such past years shall be

64 adjusted effective June thirty, one thousand nine hun-
65 dred sixty-seven, so that as of said date, for the purpose
66 of determining such employer's rate of contribution,
67 the credits for all past years shall be deemed to equal
68 the charges to such accounts.

69 Effective on and after the computation date of June
70 thirty, one thousand nine hundred sixty-eight, and
71 notwithstanding the provisions of subsection one of
72 section seven of article five relating to the noncrediting of
73 employers' accounts with the first seven tenths of one
74 percent of contributions paid; for the purpose of de-
75 termining whether or not an employer shall pay con-
76 tributions at a rate in excess of two and seven-tenths
77 percent as hereinafter set forth, but not for the purpose
78 of determining such rate, the department shall, only
79 for the purpose set forth herein and not as a credit
80 to such account, add to the accounts of all employers
81 having a debit balance, contribution payments made
82 by such employers on and after July one, one thousand
83 nine hundred sixty-seven, which payments are not
84 credited to employers' accounts by reason of the pro-
85 visions contained in subsection one of section seven of
86 article five. If, after such contribution payments have
87 been added to such employers' accounts, such accounts
88 continue to show a debit balance, such employers shall
89 make payments at a rate in excess of two and seven-
90 tenths percent. If, after such contribution payments have
91 been added to such employers' accounts, such accounts
92 show a credit balance, such employers shall make pay-
93 ments at the rate of two and seven-tenths percent. If,
94 under the conditions set forth in this paragraph, it is
95 determined that an employer shall pay contributions at
96 a rate in excess of two and seven-tenths percent, the
97 rate in excess of two and seven-tenths percent at which
98 an employer shall pay contributions shall then be de-
99 termined solely under the conditions set forth in the
100 following paragraphs of this subsection. The provisions
101 contained in this paragraph shall in no way be con-
102 sidered as providing for the crediting to an employer's
103 account, of amounts of employer contribution payments

104 which are expressly not credited to employers' accounts
105 in subsection one of section seven of article five.

106 Effective on and after the computation date of June
107 thirty, one thousand nine hundred sixty-seven, all em-
108 ployers with a debit balance account in which the bene-
109 fits charged to their account for all past years exceed
110 the payments credited to their account for such past
111 years by an amount up to and including ten percent
112 of their average annual payroll, shall make payments
113 to the unemployment compensation fund at the rate of
114 three percent of wages paid by them with respect to
115 employment.

116 Effective on and after the computation date of June
117 thirty, one thousand nine hundred sixty-seven, all em-
118 ployers with a debit balance account in which the bene-
119 fits charged to their account for all past years exceed
120 the payments credited to their account for such past
121 years by an amount in excess of ten percent of their
122 average annual payroll, shall make payments to the
123 unemployment compensation fund at the rate of three
124 and three-tenths percent of wages paid by them with
125 respect to employment.

126 "Debit balance account" for the purposes of this sub-
127 section means an account in which the benefits charged
128 for all past years exceed the payments credited for such
129 past years.

130 "Credit balance account" for the purposes of this sub-
131 section means an account in which the payments
132 credited for all past years exceed the benefits charged
133 for such past years.

134 Once a debit balance account rate is established for
135 an employer's account for a year, it shall apply for the
136 entire year notwithstanding the provisions of section
137 ten-a of this article.

§21A-5-10a. Same—Modification or suspension of decreased rates.

- 1 (1) As used in this section, unless the context clearly
- 2 requires otherwise:

3 "Due date" means the last day of the month next fol-
4 lowing a calendar quarter. In determining the amount
5 in the fund on any due date, contributions received, but
6 not benefits paid, for such month next following the
7 end of a calendar quarter shall be included.

8 (2) The commissioner shall as of the due date for
9 the payment of contributions for each calendar quarter
10 determine the amount in the unemployment compensa-
11 tion fund, including the trust fund, the clearing account,
12 and the benefit account; and if, at any such time or
13 times the fund is below the sum of seventy-five million
14 dollars, the commissioner shall, effective at the commence-
15 ment of the next calendar quarter, increase each em-
16 ployer's rate one step, and if, at any time or times the
17 fund is below the sum of seventy million dollars, the
18 commissioner shall further increase each employer's
19 rate one additional step; and if, at any such time or times
20 the fund is below the sum of sixty-five million dollars,
21 the commissioner shall further increase each employer's
22 rate one additional step.

23 Where the employer rates have been increased by
24 virtue of the provisions of this section, they shall be
25 correspondingly decreased in the same manner when
26 the balance in the fund returns to the successive levels
27 hereinabove set forth.

28 For purposes of this subsection the term "one step"
29 or "one additional step" shall mean four tenths of
30 one percent, except that, for an employer whose rate
31 is zero the term "one step" shall mean three tenths of
32 one percent: *Provided, however,* That under no circum-
33 stances shall an employer's rate be increased above two
34 and seven-tenths percent if such employer's contribution
35 rate, as computed by the commissioner in compliance
36 with subsection three, section seven, article five of this
37 chapter is two and seven-tenths percent or less: *Pro-*
38 *vided further,* That if the contribution rate of such em-
39 ployer as computed by the commissioner in compliance
40 with subsection three, section seven, article five of this
41 chapter is three percent or higher, then such employer's

42 rate shall not be increased above three and three-tenths
43 percent.

44 (3) If, as of the due date for the payment of contribu-
45 tions for any calendar quarter the unemployment com-
46 pensation fund, including the trust fund, clearing account
47 and benefit account, is below the sum of sixty million
48 dollars, the commissioner shall, effective at the com-
49 mencement of the next calendar quarter, suspend the
50 decreased rates as provided in this chapter, and all con-
51 tributions of employers due thereafter whose contribution
52 rate as computed by the commissioner in compliance
53 with subsection three, section seven of this article, is two
54 and seven-tenths percent or less, shall be paid at the
55 rate of two and seven-tenths percent; and all contribu-
56 tions of employers due thereafter whose contribution
57 rate as computed by the commissioner in compliance
58 with subsection (b), section ten of this article, is over
59 two and seven-tenths percent, shall remain and be paid
60 at said rate over two and seven-tenths percent.

61 (4) As of January first of the year next following
62 the date on which the unemployment compensation fund,
63 including the trust fund, clearing account and benefit
64 account, reaches and remains above the sum of sixty-five
65 million dollars, the commissioner shall supersede the
66 suspension of the decreased rates as provided for in sub-
67 section three.

§21A-5-17c. Service of process on nonresident employer.

1 If an employer is not a resident of West Virginia or
2 is a corporation not authorized to do business in this
3 state and for which employer services are performed in
4 insured work within the state of West Virginia and
5 liability for payment of unemployment compensation
6 contributions is due and payable to this state under
7 the provisions of the West Virginia unemployment com-
8 pensation law, such employer shall be deemed to appoint
9 the auditor of the state of West Virginia, or his successor
10 in office, to be the employer's true and lawful attorney
11 upon whom may be served all lawful process in any
12 action or any proceeding for all purposes under this chap-
13 ter and when served as hereinafter provided such service

14 shall have the same force, effect and validity as if said
15 nonresident employer were personally served with sum-
16 mons and complaint in this state.

17 Service shall be made by leaving the original and two
18 copies of both the summons and complaint, and a fee
19 of two dollars, with said auditor, or in his office, and
20 said service shall be sufficient upon said nonresident. In
21 the event any such summons and complaint is so served
22 on said auditor he shall immediately cause one of the
23 copies of the summons and complaint to be sent by
24 registered or certified mail, return receipt requested, to
25 the employer at the latter's last known or reasonably
26 ascertainable address. The employer's return receipt
27 or, if such registered or certified mail is returned to said
28 auditor refused by the addressee or for any other reason
29 is undelivered, such mail showing thereon the stamp
30 of the post-office department that delivery has been
31 refused, or other reason for nondelivery, shall be ap-
32 pended to the original summons and complaint, and filed
33 by the state auditor in the clerk's office of the court from
34 which said process issued.

ARTICLE 6. EMPLOYEE ELIGIBILITY; BENEFITS.

§21A-6-10. Benefit rate—Total unemployment; annual computation and publication of rates.

§21A-6-11. Same—Partial unemployment.

§21A-6-10. Benefit rate—Total unemployment; annual computation and publication of rates.

1 Each eligible individual who is totally unemployed in
2 any week shall be paid benefits with respect to that week
3 at the weekly rate appearing in Column (C) in Table A
4 in this paragraph, on the line on which in Column (A)
5 there is indicated the employee's wage class, except as
6 otherwise provided under the term "total and partial un-
7 employment" in section three, article one of this chapter.
8 The employee's wage class shall be determined by his base
9 period wages as shown in Column (B) in Table A. The
10 right of an employee to receive benefits shall not be prej-
11 udiced nor the amount thereof be diminished by reason
12 of failure by an employer to pay either the wages earned

13 by the employee or the contribution due on such wages.
 14 An individual who is totally unemployed but earns in ex-
 15 cess of fifteen dollars as a result of odd-job or subsidiary
 16 work in any benefit week shall be paid benefits for
 17 such week in accordance with the provisions of this
 18 chapter pertaining to benefits for partial unemploy-
 19 ment.

20

TABLE A

21	22 Wage 23 Class	24 Wages in Base Period (Column B)	Weekly Benefit Rate (Column C)	Maximum Benefit in Benefit Year for Total and/or Partial Unemployment (Column D)
25		Under \$700.00 Ineligible		
26	1	700.00— 799.99	\$12.00	\$312.00
27	2	800.00— 899.99	13.00	338.00
28	3	900.00— 999.99	14.00	364.00
29	4	1000.00—1149.99	15.00	390.00
30	5	1150.00—1299.99	16.00	416.00
31	6	1300.00—1449.99	17.00	442.00
32	7	1450.00—1599.99	18.00	468.00
33	8	1600.00—1749.99	19.00	494.00
34	9	1750.00—1899.99	20.00	520.00
35	10	1900.00—2049.99	21.00	546.00
36	11	2050.00—2199.99	22.00	572.00
37	12	2200.00—2349.99	23.00	598.00
38	13	2350.00—2499.99	24.00	624.00
39	14	2500.00—2599.99	25.00	650.00
40	15	2600.00—2699.99	26.00	676.00
41	16	2700.00—2799.99	27.00	702.00
42	17	2800.00—2899.99	28.00	728.00
43	18	2900.00—2999.99	29.00	754.00
44	19	3000.00—3099.99	30.00	780.00
45	20	3100.00—3199.99	31.00	806.00
46	21	3200.00—3349.99	32.00	832.00
47	22	3350.00—3499.99	33.00	858.00
48	23	3500.00—3649.99	34.00	884.00
49	24	3650.00—3799.99	35.00	910.00

50 Notwithstanding any of the foregoing provisions of this
 51 section, on and after July one, one thousand nine hundred

52 sixty-seven, the maximum weekly benefit rate shall be
53 forty percent of the average weekly wage in West Vir-
54 ginia.

55 Notwithstanding any of the foregoing provisions of this
56 section, on and after July one, one thousand nine hundred
57 seventy, the maximum weekly benefit rate shall be forty-
58 five percent of the average weekly wage in West Virginia.

59 The commissioner, after he has determined the maxi-
60 mum weekly benefit rate upon the basis of the above
61 formula, shall establish as many additional wage classes
62 as are required, increasing the amount of base period
63 wages required for each class by one hundred fifty dollars,
64 the weekly benefit rate for each class by one dollar, and
65 the maximum benefit by twenty-six dollars.

66 After he has established such additional wage classes,
67 the commissioner shall prepare and publish a table set-
68 ting forth such information.

69 Average weekly wage shall be computed by dividing
70 the number of employees in West Virginia earning wages
71 in covered employment into the total wages paid to em-
72 ployees in West Virginia in covered employment, and by
73 further dividing said result by fifty-two, and shall be de-
74 termined from employer wage and contribution reports
75 for the previous calendar year which are furnished to the
76 department on or before June one following such calen-
77 dar year. The average weekly wage, as determined by
78 the commissioner, shall be rounded to the next higher
79 dollar.

80 The computation and determination of rates as afore-
81 said shall be completed annually before July one, and any
82 such new wage class, with its corresponding wages in
83 base period, weekly benefit rate, and maximum benefit in
84 a benefit year established by the commissioner in the fore-
85 going manner effective on a July one, shall apply only to
86 a new claim established by a claimant on and after said
87 July one, and shall not apply to continued claims of a
88 claimant based on his new claim established before said
89 July one.

§21A-6-11. Same—Partial unemployment.

1 An eligible individual who is partially unemployed in
2 any week shall, upon claim therefor filed within such time
3 and in such manner as the commissioner may by regula-
4 tion prescribe, be paid benefits for such partial unem-
5 ployment in an amount equal to his weekly benefit rate,
6 as determined in accordance with section ten of this
7 article, less that part of wages from any source payable
8 to him with respect to such week which is in excess of
9 fifteen dollars: *Provided*, That such amount of benefits
10 if not a multiple of one dollar shall be computed to the
11 next higher multiple of one dollar. Such partial benefits
12 shall be paid to such individual for the week for which
13 he is claiming benefits without regard to the provisions
14 of subdivisions one and four of section one of this article.

ARTICLE 7. CLAIM PROCEDURE.**§21A-7-27. Appeal to supreme court of appeals.**

1 The appeal from the decision of the circuit court of
2 Kanawha county may be taken to the supreme court of
3 appeals if a proper petition for certiorari is filed within
4 sixty days of the date of the final decision of the circuit
5 court of Kanawha county. The cases shall go from the
6 circuit court of Kanawha county only on writ of certiorari
7 and need be heard only at the session of the supreme
8 court.

CHAPTER 78

(House Bill No. 681—By Mr. Seibert)

[Passed February 12, 1970; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the continuation and organization of the department of welfare, the office of commissioner of welfare; qualifications for holding the office of commissioner of welfare; the responsibilities, duties and powers of the department of welfare and of the commissioner of welfare; the acceptance of certain federal funds by the state;

the granting of assistance to those persons qualified therefor; the definition of certain words and terms used in this chapter; the advisory board to the commissioner; the department of welfare services fund and disbursements therefrom; the advisory council to the commissioner of welfare respecting the department of welfare medical services fund; exempting grants of all classes of welfare assistance from certain taxes and claims; release or reassignment of certain liens and insurance policies; making available certain information for public inspector; and providing penalties for violation of certain provisions.

Be it enacted by the Legislature of West Virginia:

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

CHAPTER 9. PUBLIC WELFARE.

Article

1. Legislative Purpose and Definitions.
2. Department of Welfare and Office of Commissioner of Welfare; Powers, Duties and Responsibilities Generally.
3. Application for and Granting of Assistance.
4. State Advisory Board, Medical Services Fund, Advisory Council, General Relief Fund.
5. Miscellaneous Provisions.

ARTICLE 1. LEGISLATIVE PURPOSE AND DEFINITIONS.

§9-1-1. Legislative purpose.

§9-1-2. Definitions.

§9-1-1. Legislative purpose.

- 1 The Legislature in enacting this chapter intends to
- 2 continue on a reorganized basis welfare assistance pro-
- 3 grams heretofore administered by the state department
- 4 of welfare and county councils to the end that residents
- 5 of the state who are subject to the recurring misfortunes
- 6 of life may continue to have such aid and encouragement
- 7 as the county alone, the state alone or the state in
- 8 cooperation with the federal government may provide.

§9-1-2. Definitions.

- 1 The following words and terms when used in this
- 2 chapter shall have the meaning hereafter ascribed to

3 them unless the context clearly indicates a different
4 meaning:

5 (a) The term "department" shall mean the state
6 department of welfare.

7 (b) The term "commissioner" shall mean the com-
8 missioner of welfare.

9 (c) The term "federal-state assistance" shall mean
10 and include (1) all forms of aid, care, assistance and
11 services to or on behalf of persons, which are authorized
12 by, and who are authorized to receive the same under
13 and by virtue of, subchapters one, four, five, ten, four-
14 teen, sixteen, eighteen and nineteen, chapter seven,
15 Title 42, United States Code, as those subchapters have
16 heretofore been and may hereafter be amended, sup-
17 plemented and revised by acts of Congress, and as those
18 subchapters so amended, supplemented and revised
19 have heretofore been and may hereafter be supplemented
20 by valid rules and regulations promulgated by autho-
21 rized federal agents and agencies, and as those subchap-
22 ters so amended, supplemented and revised have here-
23 tofore been and may hereafter be supplemented by
24 rules and regulations promulgated by the state depart-
25 ment of welfare, which department rules and regula-
26 tions shall be consistent with federal laws, rules and
27 regulations, but not inconsistent with state law, and
28 (2) all forms of aid, care, assistance and services to
29 persons, which are authorized by, and who are autho-
30 rized to receive the same under and by virtue of, any
31 act of Congress, other than the Federal Social Security
32 Act, as amended, for distribution through the state
33 department of welfare to recipients of any form of aid,
34 care, assistance and services to persons designated or
35 referred to in (1) of this definition and to recipients
36 of state assistance, including by way of illustration,
37 surplus food and food stamps, which Congress has
38 authorized the secretary of agriculture of the United
39 States to distribute to needy persons.

40 (d) The term "federal assistance" shall mean and
41 include all forms of aid, care, assistance and services
42 to or on behalf of persons, which are authorized by,

43 and who are authorized to receive the same under and
44 by virtue of, any act of Congress for distribution
45 through the state department of welfare, the cost of
46 which is paid entirely out of federal appropria-
47 tions.

48 (e) The term "state assistance" shall mean and in-
49 clude all forms of aid, care, assistance, services and
50 general relief made possible solely out of state and
51 county appropriations to or on behalf of indigent per-
52 sons, which are authorized by, and who are authorized
53 to receive the same under and by virtue of, department
54 rules and regulations.

55 (f) The term "welfare assistance" shall mean the
56 three classes of assistance administered by the depart-
57 ment, namely: Federal-state assistance, federal assistance
58 and state assistance.

59 (g) The term "indigent person" shall mean any per-
60 son who is domiciled in this state and who is actually
61 in need as defined by department rules and regulations
62 and has not sufficient income or other resources to
63 provide for such need as determined by the de-
64 partment.

65 (h) The term "domiciled in this state" shall mean
66 being physically present in West Virginia accompanied
67 by an intention to remain in West Virginia for an in-
68 definite period of time, and to make West Virginia his
69 or her permanent home. The department may by rules
70 and regulations supplement the foregoing definition of
71 the term "domiciled in this state," but not in such a
72 manner as would be inconsistent with federal laws,
73 rules, and regulations applicable to and governing fed-
74 eral-state assistance.

75 (i) The term "medical services" means medical,
76 surgical, dental and nursing services, and other remedial
77 services recognized by law, in the home, office, hospital,
78 clinic and any other suitable place, provided or pre-
79 scribed by persons permitted or authorized by law to
80 give such services; such services to include drugs and
81 medical supplies, appliances, laboratory, diagnostic and
82 therapeutic services, nursing home and convalescent

83 care and such other medical services and supplies as
84 may be prescribed by such persons.

85 (j) The term "general relief" shall mean cash or
86 its equivalent in services or commodities expended for
87 care and assistance to an indigent person other than
88 for care in a county infirmary, child shelter, or similar
89 institution.

**ARTICLE 2. DEPARTMENT OF WELFARE AND OFFICE OF COM-
MISSIONER OF WELFARE; POWERS, DUTIES
AND RESPONSIBILITIES GENERALLY.**

§9-2-1. Continuation of department of welfare.

§9-2-2. Commissioner to be administrative head of department; ap-
pointment, qualifications, etc.; not to hold other office or
engage in political activity.

§9-2-3. Acceptance of federal-state assistance and federal assistance.

§9-2-4. Organization of department of welfare.

§9-2-5. Responsibility and powers of department.

§9-2-6. Powers of commissioner.

§9-2-7. State's participation in federal work incentive program.

§9-2-1. Continuation of department of welfare.

1 The state department of welfare, first created as the
2 state department of public assistance by chapter one,
3 acts of the Legislature, first extraordinary session, one
4 thousand nine hundred thirty-six, and later reconsti-
5 tuted as the state department of welfare by chapter
6 one hundred ten, acts of the Legislature, regular session,
7 one thousand nine hundred sixty-one, shall be continued
8 and organized as provided and authorized by this chap-
9 ter and shall have those powers and duties respecting
10 the administration of the welfare assistance programs
11 as authorized, granted and imposed by this chapter and
12 elsewhere by law.

**§9-2-2. Commissioner to be administrative head of department;
appointment, qualifications, etc.; not to hold other
office or engage in political activity.**

1 The chief executive officer and administrative head of
2 the department shall be the commissioner of welfare,
3 who shall be appointed and compensated, and shall serve,
4 as provided by section two-a, article seven, chapter six
5 of this code.

6 The commissioner shall be selected with special refer-
7 ence and consideration given to his training, experience,
8 capacity and interest in or relating to the welfare assist-

9 ance programs administered by the state department of
10 welfare.

11 Before entering upon the duties of his office, the com-
12 missioner shall take and subscribe to the oath of office
13 prescribed by section five, article four of the state con-
14 stitution and shall execute a corporate surety bond in the
15 sum of fifteen thousand dollars for the faithful perform-
16 ance of his duties. The bond shall be in the form pre-
17 scribed by the attorney general and approved by the
18 governor, and both the certificate of the oath and the
19 bond shall be filed with the secretary of state. Premiums
20 upon the bond shall be paid out of the funds of the
21 department.

22 The commissioner shall not be a candidate for, or hold,
23 any other public office or public employment under the
24 federal government or under the government of this
25 state or any of its political subdivisions, or be a member
26 or officer of any political party committee, or serve as
27 an election official, or engage in any political activity,
28 other than to vote, in behalf of, or in opposition to, any
29 candidate, political party or public issue involved in an
30 election. Any violation by the commissioner of the pro-
31 visions of this paragraph shall automatically vacate his
32 appointment as commissioner.

§9-2-3. Acceptance of federal-state assistance and federal assistance.

1 The state assents to the purposes of federal-state assist-
2 ance and federal assistance, accepts federal appropriations
3 and other forms of assistance made under or pursuant
4 thereto, and authorizes the receipt of such appropriations
5 into the state treasury and the receipt of other forms of
6 assistance by the department for expenditure, disburse-
7 ment, and distribution by the department in accordance
8 with the provisions of this chapter and the conditions
9 imposed by applicable federal laws, rules and regulations.

§9-2-4. Organization of department of welfare.

1 Within limits of state appropriations and federal grants
2 and subject to provisions of state and federal laws, rules
3 and regulations, the commissioner shall organize the
4 department into such offices, divisions, agencies and other

5 administrative units, and, consistent with the require-
6 ments of article six, chapter twenty-nine of this code,
7 shall appoint and employ for the department such depu-
8 ties, assistants and employees, as may in his judgment
9 be necessary or desirable to carry out fully and in an
10 orderly, efficient and economical manner the powers,
11 duties and responsibilities of the department and of his
12 office.

§9-2-5. Responsibility and powers of department.

1 The department is charged with the responsibility of
2 administering for the state the welfare assistance pro-
3 grams, for which responsibility it shall have (1) all
4 powers, not inconsistent with state law, as may be neces-
5 sary for this state to obtain maximum federal funds made
6 available for federal-state assistance within whatever
7 limits or restrictions may be imposed by, or may exist by
8 reason of the amount of state funds appropriated for such
9 assistance under, the state's budget act and supplementary
10 appropriation acts, and (2) all powers, not inconsistent
11 with state law, as may be necessary for the disbursement
12 and distribution of welfare assistance to those persons
13 qualified therefor in as prompt, fair, orderly, efficient and
14 economical manner as possible.

§9-2-6. Powers of commissioner.

1 Within limits of state appropriations and federal grants
2 and subject to provisions of state and federal laws and
3 regulations, the commissioner, in addition to all other
4 powers, duties and responsibilities granted and assigned
5 to that office in this chapter and elsewhere by law, is
6 authorized and empowered to:

7 (1) Promulgate, amend, revise, and rescind depart-
8 ment rules and regulations respecting the organization
9 and government of the department and the execution and
10 administration of those powers, duties and responsi-
11 bilities granted and assigned by this chapter and else-
12 where by law to the department and the commissioner.

13 (2) Promulgate, amend, revise and rescind depart-
14 ment rules and regulations respecting qualifications for
15 receiving the different classes of welfare assistance con-

16 sistent with or permitted by federal laws, rules and
17 regulations, but not inconsistent with state law.

18 (3) Obtain by purchase or lease such grounds, build-
19 ings, office or other space, equipment, facilities and
20 services, as may be necessary for the execution and ad-
21 ministration of those powers, duties and responsibilities
22 granted and assigned by this chapter and elsewhere by
23 law to the department and the commissioner.

24 (4) Sign and execute in the name of the state by the
25 state department of welfare any contract or agreement
26 with the federal government or its agencies, other states,
27 political subdivisions of this state, corporations, associa-
28 tions, partnerships or individuals.

29 (5) Establish such special funds as may be required
30 by the Federal Social Security Act, as amended, or by
31 any other act or acts of Congress, in order for this state
32 to take full advantage of the benefits and provisions
33 thereof relating to the federal-state assistance and fed-
34 eral assistance programs administered by the depart-
35 ment, and to make payments into and disbursements
36 out of any such special fund or funds in accordance
37 with the requirements of the Federal Social Security Act,
38 as amended, or any other act or acts of Congress, and in
39 accordance with applicable state law and the objects
40 and purposes of this chapter. In addition, the state
41 department of welfare, through the commissioner, is
42 hereby authorized to accept any and all gifts or grants,
43 whether in money, land, services, or materials, which
44 gift or gifts, if in the form of moneys, shall be placed
45 in a separate fund and expended solely for the purpose
46 of welfare programs. No part of this special fund shall
47 revert to the general revenue funds of this state. No
48 expenses incurred pursuant to this special fund
49 shall be a charge against the general funds of this
50 state.

51 (6) Establish, in addition to the state advisory board
52 and advisory council provided for in this chapter, such
53 county advisory boards as may in his judgment be neces-
54 sary or desirable to advise the department and the com-
55 missioner with respect to the total welfare assistance

56 program administered by the department or any phase
57 thereof, such additional board or boards to consist of
58 such number of persons, professional, lay, or both, and
59 to have such responsibilities of an advisory nature, as
60 the commissioner may determine. However, (1) the
61 members of any such additional board or boards shall
62 not be compensated for their services but shall be en-
63 titled to reimbursement for actual expenses incurred
64 in the performance of their duties as a member of any
65 such board; and (2) the members of any such addi-
66 tional board or boards shall serve at the will and plea-
67 sure of the commissioner.

68 (7) Provide at department expense a program of
69 continuing professional, technical, and specialized in-
70 struction for the personnel of the department.

71 (8) Pay from available funds all or part of the rea-
72 sonable expenses incurred by a person newly employed
73 by the department in moving his household furniture,
74 effects and immediate family from his place of residence
75 in this state to his place of employment in this state;
76 and to pay from available funds all or part of the rea-
77 sonable expenses incurred by a department employee
78 in moving his household furniture, effects and immedi-
79 ate family as a result of a reassignment of the employee
80 which is considered desirable, advantageous to and in
81 the best interests of the state, but no part of the moving
82 expenses of any one such employee shall be paid more
83 frequently than once in twelve months or for any
84 movement other than from one place of employment
85 in this state to another place of employment in this
86 state.

87 (9) Establish and maintain such institutions as are
88 necessary for the temporary care, maintenance, and
89 training of children and other persons.

90 (10) Prepare and submit state plans which will meet
91 the requirements of federal laws, rules and regulations
92 governing federal-state assistance and federal assistance
93 and which are not inconsistent with state law.

94 (11) Organize within the department a board of
95 review, consisting of a chairman appointed by the com-

96 missioner and as many assistants or employees of the
97 department as may be determined by the commissioner
98 and as may be required by federal laws, rules and reg-
99 ulations respecting state assistance, federal-state assis-
100 tance and federal assistance, such board of review to
101 have such powers of a review nature and such additional
102 powers as may be granted to it by the commissioner
103 and as may be required by federal laws, rules and reg-
104 ulations respecting federal-state assistance and federal
105 assistance.

106 (12) Provide by rules and regulations such review
107 and appeal procedures within the department of wel-
108 fare as may be required by applicable federal laws,
109 rules and regulations respecting state assistance, federal-
110 state assistance and federal assistance and as will pro-
111 vide applicants for, and recipients of all, classes of wel-
112 fare assistance an opportunity to be heard by the board
113 of review, a member thereof, or individuals designated
114 by said board, upon claims involving denial, reduction,
115 closure, delay, or other action or inaction pertaining to
116 welfare assistance.

117 (13) Provide by rules and regulations, consistent
118 with requirements of applicable federal laws, rules and
119 regulations, application forms and application proce-
120 dures for the various classes of welfare assistance.

121 (14) Provide locations for making applications for
122 the various classes of welfare assistance.

123 (15) Provide a citizen or group of citizens an op-
124 portunity to file objections and to be heard upon objec-
125 tions to the grant of any class of welfare assistance.

126 (16) Delegate to the personnel of the department all
127 powers and duties vested in the commissioner, except
128 the power and authority to sign contracts and agree-
129 ments, but the commissioner shall remain responsible
130 therefor.

131 (17) Make such reports, in such form and containing
132 such information, as may be required by applicable fed-
133 eral laws, rules and regulations respecting federal-state
134 assistance and federal assistance.

135 (18) Invoke any legal, equitable or special remedies
136 for the enforcement of the provisions of this chapter.

§9-2-7. 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
4 establish work incentive programs. The commissioner
5 is hereby authorized to transfer moneys from any ap-
6 propriate public assistance grant account under his con-
7 trol to the special fund, administered by the United
8 States secretary of labor, created by such amendments.
9 Any moneys transferred by the commissioner to the
10 aforesaid special fund shall be considered as money ex-
11 pended for welfare grants. The commissioner is further
12 empowered to promulgate rules, establish plans and
13 perform any other acts necessary to implement this state's
14 participation in the aforesaid work incentive program.

15 The commissioner is directed and authorized to cooper-
16 ate and coordinate his activities in regard to such program
17 with the commissioner of the West Virginia department
18 of employment security as contemplated by section six-
19 teen-a, article two, chapter twenty-one-a of the code of
20 West Virginia.

**ARTICLE 3. APPLICATION FOR AND GRANTING OF ASSIST-
ANCE.**

§9-3-1. Application for and granting of federal-state or federal assist-
ance.

§9-3-2. Application for and granting of state assistance.

§9-3-3. Making application, investigation and grant.

**§9-3-1. Application for and granting of federal-state or fed-
eral assistance.**

1 Any person domiciled in this state, who shall make,
2 or have made in his or her behalf, an application therefor
3 and who is otherwise in all respects qualified to receive
4 the same, shall be granted federal-state assistance or
5 federal assistance in such form and amount, to such
6 extent, and for such period, as authorized by applicable
7 federal and state laws, rules and regulations and as deter-
8 mined by the department in accordance with such laws,
9 rules and regulations and within limits of available funds.

§9-3-2. Application for and granting of state assistance.

1 Any indigent person domiciled in this state, who shall
2 make, or have made in his or her behalf, an application
3 therefor and who is otherwise in all respects qualified
4 to receive the same, shall be granted state assistance in
5 such form and amount, to such extent, and for such
6 period, as authorized by applicable state laws, rules and
7 regulations of the department and as determined by the
8 department in accordance with such laws, rules and regu-
9 lations and within limits of available funds.

§9-3-3. Making application, investigation and grant.

1 All persons wishing to make application for any class
2 of welfare assistance shall have an opportunity to do so.
3 Upon receipt of an application for any class of welfare
4 assistance, the department shall make such investigation
5 as may be necessary and as the exigency of the case will
6 permit to determine the eligibility of the applicant for,
7 and the form, amount, extent, and period of, such assist-
8 ance.

9 When the department approves an application for any
10 class of welfare assistance, it shall fix the amount, form,
11 extent and period of such assistance in accordance with
12 applicable federal and state laws, rules and regulations
13 and within the limits of available funds.

ARTICLE 4. STATE ADVISORY BOARD, MEDICAL SERVICES FUND, ADVISORY COUNCIL, GENERAL RELIEF FUND.

§9-4-1. State advisory board.

§9-4-2. Medical services fund.

§9-4-3. Advisory council.

§9-4-4. General relief fund.

§9-4-1. State advisory board.

1 The state advisory board, created as an advisory body
2 to the commissioner by chapter one, acts of the Legis-
3 lature, first extraordinary session, one thousand nine
4 hundred thirty-six, shall be continued and organized as
5 provided by this section and shall have those advisory
6 powers and duties as are granted and imposed by this
7 section and elsewhere by law.

8 The term of office of those persons serving as members
9 of the state advisory board upon the effective date of
10 this article shall continue until their appointments would
11 have expired under the law applicable thereto in effect
12 at the time of their appointments. As those appointments
13 expire, all new appointments shall be made in accordance
14 with the provisions of this chapter.

15 The state advisory board shall be composed of five mem-
16 bers, who shall be appointed by the commissioner and
17 shall serve at his will and pleasure.

18 Members of the board shall be selected with special
19 consideration given to their interest in the welfare pro-
20 gram administered by the department.

21 Each member of the board shall receive an honorarium
22 of twenty-five dollars for each day actually served in
23 attendance at meetings of the board, and all reasonable
24 and necessary expenses actually incurred in the per-
25 formance of his duties and responsibilities under the pro-
26 visions of this section. Requisitions for all such expenses
27 shall be accompanied by a sworn and itemized statement,
28 which shall be filed with the auditor and preserved as a
29 public record.

30 The offices and meeting place of the board shall be in
31 the offices of the commissioner, and the board shall meet
32 on call of the commissioner.

33 The board shall be an advisory body to the commis-
34 sioner, and as such shall have the following advisory
35 powers and duties, viz., to:

36 (1) Study and reconsider the entire field of legislation
37 and administration relating to welfare assistance.

38 (2) Advise the commissioner concerning the organi-
39 zation and administration of the department.

40 (3) Recommend to the commissioner policies and
41 practices relative to his duties.

42 (4) Advise, and make recommendations to, the gover-
43 nor and Legislature relative to the welfare assistance
44 policy of the state.

45 (5) Advise the commissioner with respect to special
46 problems of different regions of the state and different
47 economic groups.

48 (6) Advise the commissioner with respect to the prep-
49 aration and amendment of rules and regulations to give
50 effect to the provisions of this chapter.

51 (7) Exercise any other advisory powers necessary or
52 reasonably implied within the provisions and purposes
53 of this chapter.

§9-4-2. Medical services fund.

1 The special fund known as the state of West Virginia
2 public assistance medical services fund established by
3 chapter one hundred forty-three, acts of the Legislature,
4 regular session, one thousand nine hundred fifty-three,
5 as amended by chapter two, acts of the Legislature, first
6 extraordinary session, one thousand nine hundred sixty,
7 and chapter forty-nine, acts of the Legislature, regular
8 session, one thousand nine hundred sixty-six, shall be
9 continued in accordance with the provisions of this sec-
10 tion so long as the same may be required by federal
11 laws, rules and regulations applicable to federal-state
12 assistance and thereafter so long as the commissioner
13 shall deem such fund to be otherwise necessary or de-
14 sirable, and henceforth such special fund shall be known
15 as the department of welfare medical services fund, here-
16 inafter referred to as the fund.

17 The fund shall consist of payments made into the fund
18 out of state appropriations for medical services to recipi-
19 ents of specified classes of welfare assistance and such
20 federal grants-in-aid as are made available for specified
21 classes of welfare assistance. Any balance in the fund at
22 the end of any fiscal year shall remain in the fund and
23 shall not expire or revert. Payments shall be made out
24 of the fund upon requisition of the commissioner by
25 means of a warrant signed by the auditor and treas-
26 urer.

27 Any county determined to be a non-state-aid county
28 by the department and having funds available to render
29 medical services for recipients of assistance shall be per-
30 mitted to contribute such funds into the department of
31 welfare medical services fund. Any such payment shall
32 entitle the recipients of assistance in said county to the
33 services provided by the state medical plan. Said county

34 payment shall be made in the form of a monthly con-
35 tribution at the same rate as determined by the de-
36 partment, said rate being equally applicable on a state-
37 wide basis. Any county making such contributions shall
38 receive the benefit of such federal grants-in-aid as are
39 available for this purpose under the Federal Social Se-
40 curity Act, as amended.

41 Recipients of those classes of welfare assistance as are
42 specified by the department, consistent with applicable
43 federal laws, rules and regulations, shall be entitled to
44 have costs of necessary medical services paid out of the
45 fund, in the manner and amounts, to the extent, and for
46 the period determined from time to time to be feasible by
47 the commissioner pursuant to rules, regulations and stan-
48 dards established by him. Such rules, regulations and
49 standards shall comply with requirements of applicable
50 federal laws, rules and regulations and shall be estab-
51 lished on the basis of money available for the purpose,
52 the number of recipients, the experience with respect to
53 the incidence of illness, disease, accidents, and other
54 causes among such recipients causing them to require
55 medical services and the costs thereof, the amounts which
56 recipients require otherwise in order to maintain a sub-
57 sistence compatible with decency and health, and any
58 other factor considered relevant and proper by the com-
59 missioner.

§9-4-3. Advisory council.

1 The advisory council, created by chapter one hundred
2 forty-three, acts of the Legislature, regular session, one
3 thousand nine hundred fifty-three, as an advisory body
4 to the commissioner with respect to the medical services
5 fund and disbursements therefrom, shall be continued
6 so long as the medical services fund remains in existence,
7 and thereafter so long as the commissioner shall deem
8 such advisory council to be otherwise necessary or de-
9 sirable, and it shall be organized as provided by
10 this section and shall have those advisory powers and
11 duties as are granted and imposed by this section and
12 elsewhere by law.

13 The term of office of those five persons serving as
14 members of the advisory council upon the effective
15 date of this article shall continue until their appoint-
16 ments would have expired under the law applicable
17 thereto in effect at the time of their appointments. As
18 those appointments expire, all new appointments shall
19 be made in accordance with the provisions of this sec-
20 tion.

21 The advisory council shall consist of nine members,
22 eight of whom shall be appointed by the commissioner
23 and shall serve at his will and pleasure, and the ninth
24 member shall be the state director of health, ex officio.
25 Of the eight members of the advisory council appointed
26 by the commissioner, one shall be a person of recognized
27 ability in the field of medicine and surgery with respect
28 to whose appointment the state medical association shall
29 be afforded the opportunity of making nomination of
30 three qualified persons, one shall be a person of recog-
31 nized ability in the field of dentistry with respect to
32 whose appointment the state dental association shall be
33 afforded the opportunity of making nomination of three
34 qualified persons, and the remaining six shall be chosen
35 from persons of recognized ability in the fields of hos-
36 pital organization and administration, nursing, welfare,
37 public health, or allied professions in the field of health,
38 or consumers of medical services.

39 The council shall meet on call of the commissioner.

40 Each member of the advisory council shall receive an
41 honorarium of twenty-five dollars for each day actually
42 served in attendance at meetings of the council, and all
43 reasonable and necessary expenses actually incurred in
44 the performance of his duties and responsibilities under
45 the provisions of this section. Requisitions for all such
46 expenses shall be accompanied by a sworn and itemized
47 statement, which shall be filed with the auditor and
48 preserved as a public record.

49 The advisory council shall assist the commissioner in
50 the establishment of rules, regulations and standards
51 necessary to carry out the provisions of this section and

52 shall serve as consultants to the commissioner in carrying
53 out the provisions of this section.

§9-4-4. General relief fund.

1 The special fund known as the "General Relief Fund of
2 ----- County", hereinafter county fund,
3 established by chapter one, acts of the Legislature, first
4 extraordinary session, one thousand nine hundred thirty-
5 six, shall be continued and governed as provided by this
6 section and rules and regulations promulgated by the
7 commissioner.

8 General relief shall remain the fiscal responsibility of
9 the county as declared in chapter one, acts of the Legis-
10 lature, first extraordinary session, one thousand nine
11 hundred thirty-six. To the extent that a county is unable
12 because of constitutional restrictions to meet reasonable
13 costs of general relief as required by this article, the
14 responsibility of the state is hereby recognized.

15 The state general relief fund, established by chapter
16 one, acts of the Legislature, first extraordinary session,
17 one thousand nine hundred thirty-six, shall be continued
18 and administered by the commissioner for the purpose
19 of supplementing the county fund for the support of
20 general relief.

21 The county court shall include as a separate item
22 within its levy estimate and shall provide each year to
23 the county fund not less than six percent of the total
24 which the county is legally authorized to levy for current
25 purposes by section ten, article eight, chapter eleven of
26 the code of West Virginia, one thousand nine hundred
27 thirty-one, as amended: *Provided, however,* That the
28 said six percent of such total shall not be required to be
29 provided by the county court if it shall be determined,
30 prior to the laying of the county's levies, that an amount
31 less than such percent will be sufficient to meet the rea-
32 sonably anticipated general needs of the county. Such
33 a determination shall require the agreement of at least
34 two of the following persons: The commissioner of wel-
35 fare, the tax commissioner and the president of the county
36 court at the time such determination is made. Such a
37 determination shall be in writing; shall state the specific

38 amount determined upon as sufficient to meet the reason-
39 ably anticipated general relief needs of the county; shall
40 be signed by the three persons designated or by at least
41 two of them; and shall be filed of record in the office of
42 the tax commissioner. Complete duplicates shall be filed
43 in the office of the commissioner of welfare and with the
44 county court, respectively.

45 The county court shall levy for general relief not less
46 than the amount so determined and agreed: *Provided,*
47 *further,* That if a county court finds that expenditures
48 mandatory under other provisions of law aggregate in
49 excess of ninety-four percent of the total amount which
50 the county court is authorized by law to levy for current
51 purposes, the court may petition the tax commissioner
52 for authority to provide an amount less than that re-
53 quired by the fourth paragraph of this section. If the
54 tax commissioner finds that other mandatory expendi-
55 tures for the county will exceed ninety-four percent
56 of the authorized total levy for current purposes, he
57 may authorize the county court to provide a lesser amount
58 than that required by said fourth paragraph, but he shall
59 require the maximum possible under the circumstances.

60 Such part or all of a county general relief fund as can
61 be matched by federal grants may be requisitioned from
62 the county court by the commissioner of welfare and
63 placed in a special fund in the department of welfare to
64 be known as "Special County General Relief Fund",
65 from which the commissioner of welfare shall pay for
66 office space in the county and the services in a county
67 not inconsistent with those for which the county general
68 relief fund was established; but only to the extent of
69 the amount requisitioned from that county and matched
70 by grants from the federal government.

71 A transfer from the county fund to any other fund
72 shall not be made without the prior approval of the
73 commissioner.

ARTICLE 5. MISCELLANEOUS PROVISIONS.

- §9-5-1. Exemption of grants from certain taxes and claims.
- §9-5-2. Release of liens and reassignment of insurance policies.
- §9-5-3. Recipient of assistance not a pauper.
- §9-5-4. Penalties for false statements, etc.

§9-5-5. Recipients of cash grants.

§9-5-6. Attorney general and prosecuting attorneys to render legal services to commissioner.

§9-5-7. Visitation by county employees.

§9-5-8. Authority to examine witnesses, administer oaths and take affidavits.

§9-5-9. Liability of relatives for support.

§9-5-10. Continuation of present aid.

§9-5-1. Exemption of grants from certain taxes and claims.

- 1 Grants of all classes of welfare assistance received
- 2 under the provisions of this chapter shall be exempted
- 3 from the collection of taxes except sales taxes, from levy
- 4 of execution, garnishment, suggestion, and any other
- 5 legal process.

§9-5-2. Release of liens and reassignment of insurance policies.

- 1 All liens and claims upon real and personal property
- 2 and all assignments of insurance policies, imposed, exist-
- 3 ing or made under the provisions of chapter one, acts
- 4 of the Legislature, first extraordinary session, one thou-
- 5 sand nine hundred thirty-six, chapter one hundred five,
- 6 acts of the Legislature, regular session, one thousand nine
- 7 hundred thirty-nine, chapter seventy-four, acts of the
- 8 Legislature, regular session, one thousand nine hundred
- 9 forty-one, chapter one hundred twenty-four, acts of the
- 10 Legislature, regular session, one thousand nine hundred
- 11 forty-seven, and chapter one hundred forty-three, acts
- 12 of the Legislature, regular session, one thousand nine
- 13 hundred fifty-three, which have not been released or
- 14 reassigned, shall be released or reassigned by the com-
- 15 missioner by the preparation, execution and acknowledg-
- 16 ment of a release of each lien or claim and by the delivery
- 17 of such release to the person or persons entitled thereto
- 18 for recordation and by a reassignment of each such in-
- 19 surance policy to the person or persons entitled thereto.

§9-5-3. Recipient of assistance not a pauper.

- 1 A recipient of any class of welfare assistance shall not
- 2 be deemed a pauper by reason of the receipt of such
- 3 assistance.

§9-5-4. Penalties for false statements, etc.

- 1 It shall be a misdemeanor to obtain or attempt to ob-
- 2 tain, or aid or abet an applicant or recipient in obtaining

3 or attempting to obtain, by means of a wilfully false
4 statement or misrepresentation or by impersonation or
5 any other fraudulent device:

6 (1) Any class of welfare assistance to which the ap-
7 plicant or recipient is not entitled.

8 (2) Any class of welfare assistance in excess of that
9 to which the applicant or recipient is justly entitled.

10 Any person who violates this section shall, upon con-
11 viction, be fined not more than ten thousand dollars,
12 or confined in jail not more than one year, or both; or in
13 the discretion of the court be fined not exceeding five
14 hundred dollars and confined in jail not more than one
15 year. Notwithstanding the provisions of any other law,
16 prosecutions for violations of this section shall be com-
17 menced within three years from the date of any such
18 violation.

§9-5-5. Recipients of cash grants.

1 Within such limitations as may be imposed by appli-
2 cable federal laws, rules and regulations, the depart-
3 ment of welfare shall make available for public inspec-
4 tion by the thirtieth day of each month a separate
5 alphabetical list of the names and addresses of all persons
6 receiving any class of welfare assistance in the form of
7 cash grants during the preceding month, together with
8 the amounts of such cash grants. This information shall
9 be delivered to the clerk of each county court in the
10 state who shall immediately file the same in his office
11 with respect to persons receiving such cash grants as
12 residents of that county. Such information shall be
13 retained in the files of said clerks of the county courts
14 for a period of two years from the date of receipt thereof.
15 All information other than names, addresses and
16 amounts of such cash grants shall be considered as con-
17 fidential.

18 It shall be unlawful, for commercial or political pur-
19 poses of any nature, for any person or persons, body,
20 association, firm, corporation or other agency to solicit,
21 disclose, receive, make use of, or to authorize, knowingly

22 permit, participate in, or acquiesce in the use of, any
23 lists of names of, or any information concerning, persons
24 applying for or receiving any class of welfare assistance,
25 directly or indirectly derived from the records, papers,
26 files, or communications of the department of welfare
27 or acquired in the course of performance of official duties.
28 The violation of this provision is a misdemeanor, punish-
29 able upon conviction, by a fine of not more than one
30 thousand dollars or imprisonment of not more than six
31 months, or both.

32 For the protection of applicants and recipients of wel-
33 fare assistance, the department shall be required to
34 establish reasonable rules and regulations governing the
35 custody, use and preservation of the records, papers, files
36 and communications of the department.

§9-5-6. Attorney general and prosecuting attorneys to render legal services to commissioner.

1 The attorney general of the state and his assistants,
2 and the prosecuting attorneys of the various counties
3 shall render to the commissioner, without additional
4 compensation, such legal services as he shall require of
5 them in the discharge of his duties. This section shall
6 not be construed to prohibit the department from de-
7 veloping plans for cooperation with courts, prosecuting
8 attorneys, and other law-enforcement officials in such a
9 manner as to permit the state and its citizens to obtain
10 maximum fiscal benefits under federal laws, rules and
11 regulations.

§9-5-7. Visitation by county employees.

1 Health officers, physicians, and nurses employed by the
2 county shall, at the request of the commissioner, make
3 home visits to indigent persons.

§9-5-8. Authority to examine witnesses, administer oaths and take affidavits.

1 The commissioner and employees of the department of
2 welfare shall have the power and authority to administer
3 oaths, examine witnesses and take and certify affidavits

4 in any matter or thing pertaining to the business of the
5 department of welfare.

§9-5-9. Liability of relatives for support.

1 The relatives of an indigent person, who are of suffi-
2 cient ability, shall be liable to support such person in the
3 manner required by the department of welfare and to pay
4 the expenses of burial when he dies, in the following
5 order:

6 (1) The children.

7 (2) The father.

8 (3) The brothers and sisters.

9 (4) The mother.

10 The commissioner may proceed by motion in the circuit
11 court of the county in which the indigent person may be,
12 against one or more of the relatives liable.

13 If a relative so liable does not reside in this state and
14 has no estate or debts due him within the state by means
15 of which the liability can be enforced against him, the
16 other relatives shall be liable as provided by this section,
17 but a relative shall not be compelled to receive the
18 indigent person in his own home.

19 If it appears that a relative liable for the support of
20 an indigent person is unable wholly to support him, but
21 is able to contribute toward his support, the court may
22 assess upon the relative the proportion which he shall
23 be required to contribute either to the past expense in-
24 curred by the department of welfare or to the future
25 support. The court may assess the residue upon the rela-
26 tives in the order of their liability.

27 Payment with interest and costs may be enforced by
28 execution.

§9-5-10. Continuation of present aid.

1 Except as otherwise provided in this chapter, aid or
2 assistance rendered under existing law shall not be
3 deemed to be discontinued.

CHAPTER 79

(Senate Bill No. 155—By Mr. Carrigan)

[Passed February 12, 1970; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section fourteen, article two; section six, article four; and section twenty-seven, article seven, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections one and five, article one of said chapter; to amend and reenact sections nine, twelve and sixteen, article two of said chapter; to amend and reenact section seventeen, article five of said chapter; to amend and reenact sections three and five, article six of said chapter; to amend and reenact section two, article six-a of said chapter; and to amend and reenact sections fourteen, twenty-three, twenty-six and twenty-eight, article seven of said chapter, all relating to child welfare.

Be it enacted by the Legislature of West Virginia:

That section fourteen, article two; section six, article four; and section twenty-seven, article seven, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that sections one and five, article one of said chapter be amended and reenacted; that sections nine, twelve and sixteen, article two of said chapter be amended and reenacted; that section seventeen, article five of said chapter be amended and reenacted; that sections three and five, article six of said chapter be amended and reenacted; that section two, article six-a of said chapter be amended and reenacted; and that sections fourteen, twenty-three, twenty-six and twenty-eight, article seven of said chapter be amended and reenacted, all to read as follows:

Article

1. **Purposes; Definitions.**
2. **State Responsibilities for the Protection and Care of Children.**
5. **Juvenile Courts.**
6. **Procedure in Neglect Cases.**
- 6A. **Reports of Child Abuse by Physicians and Others.**
7. **General Provisions.**

ARTICLE 1. PURPOSES; DEFINITIONS.

§49-1-1. Purpose.

§49-1-5. Definitions of other terms.

1 The purpose of this chapter is to provide a compre-
2 hensive system of child welfare throughout the state.

3 The child welfare service of the state shall be ad-
4 ministered by the state department of welfare and the
5 licensing board herein provided in accordance with the
6 provisions of this chapter.

7 The state department of welfare is designated as the
8 agency to cooperate with the children's bureau of the
9 United States department of health, education and wel-
10 fare in extending and improving child welfare services,
11 to comply with regulations of the children's bureau, and
12 to receive and expend federal funds for these services.

§49-1-5. Definitions of other terms.

1 For the purposes of this chapter:

2 (1) "State department" means the state department
3 of welfare;

4 (2) "State board" means the state advisory board;

5 (3) "Commissioner" means the commissioner of wel-
6 fare;

7 (4) "Child welfare agency" means any agency or
8 institution maintained by a municipality or county, or
9 any agency or institution maintained by a person, firm,
10 corporation, association or organization to receive chil-
11 dren for care and maintenance or for placement in a
12 family home, or day care center or any institution that
13 provides care for unmarried mothers and their chil-
14 dren, but shall not include county shelters established
15 and maintained for the detention of delinquent children
16 or those charged with delinquency;

17 (5) "Licensing board" means a board consisting of
18 the commissioner of welfare, the state director of health
19 and three persons appointed by the governor.

**ARTICLE 2. STATE RESPONSIBILITIES FOR THE PROTECTION
AND CARE OF CHILDREN.**

§49-2-9. Unsupervised foster homes—Generally.

§49-2-12. Same—Removal of child from undesirable foster home.

§49-2-16. State responsibility for child care.

§49-2-9. Unsupervised foster homes—Generally.

1 Any family home, not under the supervision of the
2 state department of welfare or of a child welfare agency,
3 in which one or more neglected children under the care
4 of the state department of welfare and under eighteen
5 years of age, separated from parents or guardian and not
6 related by blood or marriage to the person maintaining
7 the home, are received, cared for and maintained for
8 compensation, or otherwise, shall be considered an un-
9 supervised foster home. No person shall conduct an un-
10 supervised foster home without a certificate from the
11 state department.

§49-2-12. Same—Removal of child from undesirable foster home.

1 If at any time the state department shall find a child in
2 an unsupervised foster home where the child is subject
3 to undesirable influences or lacks proper or wise care and
4 management, it shall take necessary action to remove the
5 child and arrange for his care.

§49-2-16. State responsibility for child care.

1 The state department of welfare is authorized to provide
2 care, support and protective services for children who
3 are handicapped by dependency, neglect, illegitimate
4 birth, mental or physical disability, or who for other rea-
5 sons are in need of public service. The state department
6 of welfare is hereby authorized and empowered in its
7 discretion to accept children for care from their parent
8 or parents, guardian or relatives and to accept the custody
9 of children committed to its care by courts exercising
10 juvenile jurisdiction.

11 The state department of welfare shall provide care in
12 special boarding homes for children needing detention
13 pending disposition by a court having juvenile jurisdiction
14 or temporary care following such court action.

ARTICLE 5. JUVENILE COURTS.**§49-5-17. Probation officers of juvenile court—Generally.**

1 The commissioner of the state department of welfare
2 shall, with the approval of the juvenile court, designate

3 one of the employees of the state department of welfare
4 to act as a juvenile court probation officer, and when re-
5 quired one or more employees of the state department of
6 welfare to act as assistant or assistants to such probation
7 officer, and such employee or employees, when so assigned,
8 shall perform their duties under the sole supervision and
9 control of the juvenile court and the judge of said court
10 shall have the sole power to recommend the transfer or
11 dismissal of employees so assigned.

12 The foregoing provisions of this section shall not be
13 construed as abrogating or affecting in any way the
14 power and authority vested in any juvenile court by any
15 special act of the Legislature or otherwise to select, super-
16 vise and discharge its own probation officers and as-
17 sistants thereto.

ARTICLE 6. PROCEDURE IN NEGLECT CASES.

§49-6-3. Same—Temporary custody.

§49-6-5. Disposition of neglected children.

§49-6-3. Same—Temporary custody.

1 Until a hearing can be held upon the petition, the court
2 or judge may order that the child be delivered into the
3 custody of the state department of welfare or into such
4 other custody as the court or judge may deem proper.

§49-6-5. Disposition of neglected children.

1 In any case of a neglected child the court may:

2 (1) Return the child to his own home under supervision
3 of the state department of welfare;

4 (2) Commit the child to the custody of the state de-
5 partment of welfare or a licensed private child welfare
6 agency;

7 (3) When necessary for the welfare of the child,
8 terminate all the parental rights and responsibilities of
9 the parent or parents of the child and commit the child
10 to the permanent care and guardianship of the state
11 department or of a licensed private child welfare agency;

12 (4) Commit the child to a suitable person who may be
13 appointed guardian of the person of the child;

14 (5) Enter whatever other order may, in the discretion
15 of the court, be most conducive to the welfare of the child.

ARTICLE 6A. REPORTS OF CHILD ABUSE BY PHYSICIANS AND OTHERS.**§49-6A-2. Reports to department of welfare and to prosecuting attorney; form and contents.**

1 Any duly licensed physician or surgeon, resident physi-
2 cian or surgeon, or intern, or doctor of the healing arts,
3 examining, attending or treating a child under the age of
4 eighteen years, or any registered nurse, any visiting nurse,
5 any school teacher or any social worker, acting in his or
6 her official capacity as such, having a reason to believe
7 that a child under the age of eighteen years has had
8 serious injury or injuries inflicted upon him or her as a
9 result of abuse or neglect, shall report the matter prompt-
10 ly to the nearest office of the department of welfare and to
11 the prosecuting attorney of the county in which the injury
12 or abuse occurred or if the county in which the injury or
13 abuse occurred be unknown, to the prosecuting attorney of
14 the county in which such injury or abuse be discovered or
15 reported: *Provided*, That when attendance with respect
16 to a child is pursuant to the performance of services as a
17 member of the staff of a hospital or similar institution,
18 such staff member shall immediately notify the superin-
19 tendent, manager, or other person in charge of the insti-
20 tution, who shall immediately make the report to the
21 department of welfare and to the prosecuting attorney.
22 If the report is not made in writing in the first instance,
23 it shall be reduced to writing by the maker thereof as soon
24 as may be practicable thereafter and shall contain the
25 names and addresses of the child and his or her parent
26 or parents, or other person or persons responsible for his
27 or her care, if known, the name of the person or persons
28 delivering or accompanying the child for treatment, if
29 known, the child's age, the nature and extent of the child's
30 injury or injuries, including any evidence of previous in-
31 jury or injuries, and any other information that the maker
32 of the report believes to be helpful in establishing the
33 cause of the injury and the identity of the person or per-
34 sons responsible therefor, and such written report shall
35 be immediately filed with the department of welfare and
36 the prosecuting attorney.

ARTICLE 7. GENERAL PROVISIONS.

§49-7-14. Same—Recovery on forfeited bond.

§49-7-23. Preservation of records.

§49-7-26. Duty of prosecuting attorney.

§49-7-28. Proceeding by the state department of welfare.

§49-7-14. Same—Recovery on forfeited bond.

1 The penalty of a bond given upon suspension of sen-
2 tence which becomes forfeited shall be recoverable with-
3 out separate suit. The court or judge may cause cita-
4 tion or summons to issue to the principal and surety,
5 requiring that they appear at a time named by the court
6 or judge, not less than ten nor more than twenty days
7 from the issuance of the summons, and show cause why
8 judgment should not be entered for the penalty of such
9 bond and execution issued against the property of the
10 principal and of the surety. Upon failure to appear, or
11 failure to show sufficient cause, the court shall enter
12 judgment in behalf of the state of West Virginia against
13 the principal and surety in an amount not to exceed
14 the penalty of the bond plus costs.

15 Any money collected or paid upon an execution, or upon
16 the bond, shall be deposited with the clerk of the court
17 in which the bond was given. The money shall be
18 applied first to the payment of all court costs and then
19 to the treatment, care, or maintenance of the child
20 for whose delinquency conviction was had. If any money
21 so collected is not required for these purposes, it shall
22 be paid within one year into the state treasury.

§49-7-23. Preservation of records.

1 The proceedings, records, reports, case histories, and
2 all other papers or documents of or received by the
3 state department in the administration of this chapter
4 shall be filed of record and preserved.

§49-7-26. Duty of prosecuting attorney.

1 The prosecuting attorney shall render to the state de-
2 partment of welfare, without additional compensation,
3 such legal services as the department may require. This
4 section shall not be construed to prohibit the depart-
5 ment from developing plans for cooperation with courts,

6 prosecuting attorneys, and other law-enforcement offi-
7 cials in such a manner as to permit the state and its
8 citizens to obtain maximum fiscal benefits under federal
9 laws, rules and regulations.

§49-7-28. Proceeding by the state department of welfare.

1 The state department of welfare shall have the au-
2 thority to institute, in the name of the state, proceed-
3 ings incident to the performance of its duties under the
4 provisions of this chapter.

CHAPTER 80

(House Bill No. 526—By Mr. Watson and Mr. Seibert)

[Passed February 12, 1970; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seven, article one, chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section five, article two of said chapter, relating to the authority of the secretary of the workmen's compensation fund to act during the commissioner's absence or inability to act, and the payment of workmen's compensation premiums.

Be it enacted by the Legislature of West Virginia:

That section seven, article one, chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section five, article two of said chapter be amended and reenacted, all to

Article

1. General Administrative Provisions.

2. Employers and Employees Subject to Chapter; Premiums.

ARTICLE 1. GENERAL ADMINISTRATIVE PROVISIONS.

§23-1-7. Secretary to act during commissioner's absence or inability to act and in case of vacancy; bond of secretary.

1 Whenever it shall appear that the commissioner will
2 be absent or unable to act for one week or more, the

3 secretary of the commissioner may be designated by
4 the commissioner to act during his absence or inability
5 to act, and during such period he shall have all the
6 duties and powers of the commissioner. The secretary
7 shall give bond in the penalty of twenty-five thousand
8 dollars conditioned for the faithful performance of the
9 duties of his office, which bond shall be approved by
10 the attorney general as to form and by the governor
11 as to sufficiency. The surety of such bond may be a
12 bonding or surety company, in which case the premium
13 shall be paid out of the appropriation made for the ad-
14 ministration of this chapter.

15 In the event a vacancy occurs in the office of commis-
16 sioner, the secretary of the commissioner shall have all
17 the duties and powers of the commissioner until a com-
18 missioner is appointed by the governor in accordance
19 with section one of this article.

**ARTICLE 2. EMPLOYERS AND EMPLOYEES SUBJECT TO
CHAPTER; PREMIUMS.**

**§23-2-5. Payment of premiums; payroll report; effect of fail-
ure to pay premiums or make payroll report; re-
instatement; application for benefits; deposit to
insure payment of premiums; refund of deposit;
notice to employees.**

1 For the purpose of creating a workmen's compensation
2 fund each employer subject to this chapter shall pay the
3 premiums of liabilities based upon and being such a per-
4 centage of the payroll of such employer as may have
5 been determined by the commissioner and be then in
6 effect. The premiums shall be paid quarterly on or be-
7 fore the last day of the next succeeding month
8 for the preceding quarter, and shall be the prescribed
9 percentage of the total earnings of all employees within
10 the meaning of this chapter, for such preceding quarter.
11 The minimum premium to be paid by any employer for
12 any quarter shall be one dollar and fifty cents. The
13 premiums and deposits provided for in this chapter shall
14 be paid by the employers to the state compensation com-
15 missioner, who shall issue receipts for all sums so re-
16 ceived to the state treasurer and retain a copy for his

17 own records. All sums received by the state compensa-
18 tion commissioner as herein provided shall be deposited
19 in the state treasury to the credit of the workmen's com-
20 pensation fund in the manner now prescribed by law
21 for depositing money in the state treasury. Each em-
22 ployer shall make a payroll report to the commissioner
23 for each quarter as heretofore specified, and such report
24 shall be on the form or forms prescribed by the commis-
25 sioner, and furnish all information required by him.

26 Failure to pay premiums as herein provided or to make
27 the quarterly payroll reports required by the commis-
28 sioner shall deprive the employer so delinquent of the
29 benefits and protection afforded by this chapter, and
30 shall automatically terminate the election of such
31 employer to pay into the workmen's compensation fund
32 as herein provided, and such employer shall be liable to
33 his employees as provided in section eight of this article;
34 and the commissioner shall not be required to notify
35 the delinquent employer of such termination, but he
36 shall notify the employees of such employer by written
37 notice posted as hereinafter provided for in this section.
38 The termination of election of such delinquent employer
39 shall date from twelve o'clock p. m., of the last day of
40 the month in which he fails to pay the premiums or
41 make a payroll report, as above provided, for the pre-
42 ceding quarter.

43 The employer so delinquent may be reinstated upon
44 application under such terms as are prescribed by this
45 chapter and by the commissioner hereunder, after the
46 payment into the workmen's compensation fund of all
47 unpaid premiums, penalties and charges. Such reinstate-
48 ment shall be in effect from and after the date that the
49 new application is accepted by the commissioner: *Pro-*
50 *vided, however,* That such delinquent employer shall
51 be entitled to the benefits and protection of this chapter
52 until twelve o'clock p. m., of the last day of the month
53 immediately succeeding the month in which his election
54 is terminated, and his employees shall be entitled to
55 compensation for injuries received during such period,
56 but not thereafter unless such delinquent employer be-
57 comes reinstated as herein provided.

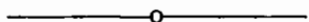
58 Any employer hereafter electing to avail himself of the
59 benefits of this chapter shall at the time of making
60 application to the commissioner deposit in the work-
61 men's compensation fund an amount estimated to be
62 equal to the amount of the premium which shall be
63 paid by him for the next succeeding quarter. Any em-
64 ployer whose deposit is less than the amount of his
65 premium for the last quarter shall, upon written request
66 from the commissioner mailed to his address as carried
67 upon the books of the commissioner by twelve o'clock
68 p. m., of the last day of the month in which request
69 is mailed, pay to the commissioner a sum sufficient to
70 make his deposit at least equal to the amount of his
71 premium for the last preceding quarter, and failure of
72 any employer to comply with such written request within
73 the time specified shall deprive him of the benefits
74 and protection afforded by this chapter, and shall auto-
75 matically terminate his election to pay into the work-
76 men's compensation fund as herein provided, and such
77 employer shall be liable to his employees as provided
78 in section eight of this article; and the commissioner
79 shall not be required to notify the delinquent employer
80 of such termination, but he shall notify the employees of
81 such employer by written notice posted as hereafter pro-
82 vided for in this section. The termination of election
83 of such employer shall date from twelve o'clock p. m.,
84 of the last day of the month in which he is notified
85 by the commissioner that his deposit is not equal to the
86 sum of his premium for the last preceding quarter. Such
87 employer may be reinstated upon application under such
88 terms as are prescribed by this chapter and the rules
89 of the commissioner. The deposit hereinbefore described
90 shall be credited to the employer's account on the books
91 of the commissioner and used to pay premiums and any
92 other sums due the fund when such employer becomes
93 delinquent in the payment of the same.

94 Upon withdrawal from the fund or termination of
95 election of any employer, he shall be refunded the balance
96 due him of his deposit, after deducting all amounts owed
97 by him to the workmen's compensation fund, and the
98 commissioner shall notify the employees of such em-

99 ployer of said termination in such manner as he may
100 deem best and sufficient.

101 Notices to employees in this section provided for shall
102 be given by posting written notice that the employer
103 is delinquent under the compensation law of West Vir-
104 ginia, and that neither the employer nor the employees
105 of such employer are protected by said law as to any
106 injury or death sustained after the date specified in said
107 notice. Such notice shall be in the form prescribed by
108 the commissioner and shall be posted in a conspicuous
109 place at the chief works of the employer, as the same
110 appear in records of the commissioner. If the said chief
111 works of the employer cannot be found or identified,
112 then said notices shall be posted at the front door of
113 the courthouse of the county in which said chief works
114 are located, according to the records in the commis-
115 sioner's office. Any person who shall, prior to the rein-
116 statement of the said employer, as hereinbefore provided
117 for, or prior to sixty days after the posting of said notice,
118 whichever shall first occur, remove, deface or render
119 illegible the said notice, shall be guilty of a misdemeanor,
120 and, upon conviction thereof, shall be fined not to ex-
121 ceed five hundred dollars, and the said notice shall state
122 this provision upon its face. The commissioner may re-
123 quire any sheriff, deputy sheriff, constable, or other
124 official of the state of West Virginia, who may be
125 authorized to serve civil process, to post such notice and
126 to make return thereof of the fact of such posting to the
127 commissioner, and any failure of such officer to post any
128 notice within ten days after he shall have received the
129 same from the commissioner, without just cause or ex-
130 cuse, shall constitute a wilful failure or refusal to per-
131 form a duty required of him by law within the meaning
132 of section twenty-eight, article five, chapter sixty-one
133 of the code of West Virginia. Any person actually in-
134 jured by reason of such failure shall have an action
135 against said official, and upon any official bond he may
136 have given, for such damages as such person may actually
137 have incurred, but not to exceed, in the case of any surety
138 upon said bond, the amount of the penalty of said bond.
139 Any official posting said notice as herein required shall

140 be entitled to the same fee as is now or may hereafter
141 be provided for the service of process in suits instituted
142 in courts of record in the state of West Virginia, which
143 fee shall be paid by the commissioner out of any funds
144 at his disposal, but shall be charged by him against the
145 account of the employer to whose delinquency such
146 notice relates.



CHAPTER 81

(House Bill No. 746—Originating in the House Committee
on the Judiciary)

[Passed February 12, 1970; in effect July 1, 1970. Approved by the Governor.]

AN ACT to amend and reenact sections one, three, six, six-a, eight-c, fifteen, fifteen-b and sixteen, article four, chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and to further amend said article four by adding thereto a new section, designated section twenty-one, all relating to workmen's compensation and occupational pneumoconiosis and to the severability of the provisions of said article.

Be it enacted by the Legislature of West Virginia:

That sections one, three, six, six-a, eight-c, fifteen, fifteen-b and sixteen, article four, chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, and that said article four be further amended by adding thereto a new section, designated section twenty-one, all to read as follows:

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.
- §23-4-3. 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.
- §23-4-6. 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.
- §23-4-8c. Same—Reports and distribution thereof; presumption; findings required of board; objection to findings; procedure thereon.
- §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.
- §23-4-16. Commissioner's jurisdiction over case continuous; modification of finding or order; time limitation on awards; reimbursement of claimant for expenses.
- §23-4-21. Severability.

§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
2 in 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 the 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 provided
10 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 provided
18 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 employees

26 have been exposed to the hazards of occupational pneumo-
27 coniosis or other occupational disease, and have con-
28 tracted occupational pneumoconiosis or other occupa-
29 tional disease, or have suffered a perceptible aggravation
30 of an existing pneumoconiosis or other occupational dis-
31 ease, in this state in the course of and resulting from
32 their employment, or to the dependents, if any, of such
33 employees, in case death has ensued, according to the
34 provisions hereinafter made: *Provided*, That compensa-
35 tion shall not be payable for the disease of occupational
36 pneumoconiosis, or death resulting therefrom, unless the
37 employee has been exposed to the hazards of occupational
38 pneumoconiosis in the state of West Virginia over a con-
39 tinuous period of not less than two years during the
40 ten years immediately preceding the date of his last
41 exposure to such hazards. An application for benefits
42 on account of occupational pneumoconiosis shall set forth
43 the name of the employer or employers and the time
44 worked for each, and the commissioner may allocate to
45 and divide any charges resulting from such claim among
46 the employers by whom the claimant was employed for
47 as much as sixty days during the period of three years
48 immediately preceding the date of last exposure to the
49 hazards of occupational pneumoconiosis. The allocation
50 shall be based upon the time and degree of exposure
51 with each employer.

52 For the purpose of this chapter disability or death
53 resulting from occupational pneumoconiosis, as defined
54 in the immediately succeeding sentence, shall be treated
55 and compensated as an injury by accident.

56 Occupational pneumoconiosis is a disease of the lungs
57 caused by the inhalation of minute particles of dust over
58 a period of time due to causes and conditions arising out
59 of and in the course of the employment. The term "occu-
60 pational pneumoconiosis" shall include, but shall not be
61 limited to, such diseases as silicosis, anthracosilicosis, coal
62 worker's pneumoconiosis, commonly known as black lung
63 or miner's asthma, silico-tuberculosis (silicosis accom-
64 panied by active tuberculosis of the lungs), coal worker's
65 pneumoconiosis accompanied by active tuberculosis of

66 the lungs, asbestosis, siderosis, anthrax and any and all
67 other dust diseases of the lungs and conditions and dis-
68 eases caused by occupational pneumoconiosis which are
69 not specifically designated herein meeting the definition
70 of occupational pneumoconiosis set forth in the immedi-
71 ately preceding sentence.

72 X-ray evidence shall not necessarily be held conclusive
73 insofar as it bears upon the absence of occupational
74 pneumoconiosis.

75 For the purpose of this chapter, occupational disease
76 means a disease incurred in the course of and resulting
77 from employment. No ordinary disease of life to which
78 the general public is exposed outside of the employment
79 shall be compensable except when it follows as an inci-
80 dent of occupational disease as defined in this chapter.
81 Except in the case of occupational pneumoconiosis, a
82 disease shall be deemed to have been incurred in the
83 course of or to have resulted from the employment only
84 if it is apparent to the rational mind, upon consideration
85 of all the circumstances (1) that there is a direct causal
86 connection between the conditions under which work is
87 performed and the occupational disease, (2) that it can
88 be seen to have followed as a natural incident of the work
89 as a result of the exposure occasioned by the nature of
90 the employment, (3) that it can be fairly traced to the
91 employment as the proximate cause, (4) that it does
92 not come from a hazard to which workmen would have
93 been equally exposed outside of the employment, (5)
94 that it is incidental to the character of the business and
95 not independent of the relation of employer and em-
96 ployee, and (6) that it must appear to have had its
97 origin in a risk connected with the employment and to
98 have flowed from that source as a natural consequence,
99 though it need not have been foreseen or expected before
100 its contraction.

101 Except in the case of silicosis, no award shall be made
102 under the provisions of this chapter for any occupational
103 disease contracted prior to the first day of July, one
104 thousand nine hundred forty-nine. An employee shall
105 be deemed to have contracted an occupational disease

106 within the meaning of this paragraph if the disease or
107 condition has developed to such an extent that it can
108 be diagnosed as an occupational 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.

7 The commissioner shall disburse and pay from the
8 fund for such personal injuries to such employees as may
9 be entitled thereto hereunder as follows:

10 (a) Such sums for medicines, medical, surgical, den-
11 tal and hospital treatment, crutches, artificial limbs and
12 such other and additional approved mechanical appli-
13 ances and devices, as may be reasonably required and as
14 are, in the case of medical, surgical, dental or hospital
15 treatment only, within the maximum amount provided
16 for by schedule established by the commissioner as afore-
17 said, but not as to any one injured employee in excess
18 of three thousand dollars: *Provided*, That in special
19 cases where the treatment required, in the opinion of
20 competent medical authority, is such as to necessitate
21 an expenditure in excess of said sum of three thousand
22 dollars, the commissioner may pay out of any available
23 funds such additional sum as may be necessary, but such
24 additional sum shall not be charged to the account of
25 the employer.

26 (b) Payment for such medicine, medical, surgical,
27 dental and hospital treatment, crutches, artificial limbs
28 and such other and additional approved mechanical ap-
29 pliances and devices authorized under subdivision (a)
30 hereof may be made to the injured employee, or to the
31 person, firm or corporation who or which has rendered

32 such treatment or furnished any of the items specified
33 above, or who has advanced payment for same, as the
34 commissioner may deem proper, but no such payments
35 or disbursements shall be made or awarded by him unless
36 duly verified statements on forms prescribed by the
37 commissioner shall be filed with the commissioner within
38 one year after the cessation of such treatment or the
39 delivery of such appliances: *Provided, however,* That no
40 payment hereunder shall be made unless such verified
41 statement shows no charge for or with respect to such
42 treatment or for or with respect to any of the items speci-
43 fied above has been or will be made against the injured
44 employee or any other person, firm or corporation, and
45 when an employee covered under the provisions of this
46 chapter is injured in the course of and as a result of his
47 employment and is accepted for medical, surgical, dental
48 or hospital treatment, the person, firm or corporation
49 rendering such treatment is hereby prohibited from mak-
50 ing any charge or charges therefor or with respect
51 thereto against the injured employee or any other person,
52 firm or corporation which would result in a total charge
53 for the treatment rendered in excess of the maximum
54 amount set forth therefor in the commissioner's schedule
55 established as aforesaid.

56 (c) No employer shall enter into any contracts with
57 any hospital, its physicians, officers, agents or employees
58 to render medical, dental or hospital service or to give
59 medical or surgical attention therein to any employee
60 for injury compensable within the purview of this chap-
61 ter, and no employer shall permit or require any em-
62 ployee to contribute, directly or indirectly, to any fund
63 for the payment of such medical, surgical, dental or hos-
64 pital service within such hospital for such compensable
65 injury. Any employer violating this section shall be
66 liable in damages to his or its employees and shall not
67 avail himself of any of the common-law defenses men-
68 tioned in section eight, article two of this chapter, and
69 any employer or hospital or agent or employee thereof
70 violating the provisions of this section shall be guilty of
71 a misdemeanor, and, upon conviction thereof, shall be
72 sentenced to pay a fine not exceeding one thousand dol-

lars or undergo imprisonment not exceeding one year, or both.

(d) When an injury has been reported to the commissioner by the employer without protest, the commissioner may pay, or order an employer who or which made the election and who or which received the permission mentioned in section nine, article two of this chapter to pay, within the maximum amount provided by schedule established by the commissioner as aforesaid, bills for medical or hospital services without requiring the injured employee to file an application for benefits.

§23-4-6. Classification of disability benefits.

Where compensation is due an employee under the provisions of this chapter for a personal injury, such compensation shall be as provided in the following schedule:

(a) The expressions "average weekly wage earnings, wherever earned, of the injured employee, at the date of injury" and "average weekly wage in West Virginia," as used in this chapter, shall have the meaning and shall be computed as set forth in section fourteen of this article.

(b) If the injury causes temporary total disability, the employee shall receive during the continuance thereof weekly benefits as follows: On and after July one, one thousand nine hundred sixty-nine, and through June thirty, one thousand nine hundred seventy, inclusive, the employee shall receive a minimum of twenty-six dollars per week and a maximum weekly benefit to be computed on the basis of sixty-six and two-thirds percent of the average weekly earnings, wherever earned, of the injured employee, at the date of injury, not to exceed forty-five percent of the average weekly wage in West Virginia; and on and after July one, one thousand nine hundred seventy, the employee shall receive a minimum of not less than twenty-six dollars per week and a maximum of sixty-six and two-thirds percent of the average weekly wage earnings, wherever earned, of the injured employee, at the date

28 of injury, not to exceed fifty percent of the average
29 weekly wage in West Virginia.

30 (c) Subdivision (b) shall be limited as follows: Ag-
31 gregate award for a single injury causing temporary
32 disability shall be for a period not exceeding two hun-
33 dred eight weeks.

34 (d) If the injury causes permanent disability, the
35 percentage of disability to total disability shall be de-
36 termined and the award computed and allowed as fol-
37 lows:

38 On and after July one, one thousand nine hundred
39 sixty-nine, and through June thirty, one thousand nine
40 hundred seventy, inclusive, for permanent disability of
41 from one percent to eighty-four percent, inclusive, sixty-
42 six and two-thirds percent of the average weekly earn-
43 ings, wherever earned, of the injured employee, at the
44 date of injury, not to exceed forty-five percent of the
45 average weekly wage in West Virginia, for a period
46 to be computed on the basis of four weeks compensation
47 for each percent of disability determined.

48 On and after July one, one thousand nine hundred
49 seventy, for permanent disability of from one percent
50 to eighty-four percent, inclusive, sixty-six and two-thirds
51 percent of the average weekly earnings, wherever earned,
52 of the injured employee at the date of injury, not to ex-
53 ceed fifty percent of the average weekly wage in West
54 Virginia, for a period to be computed on the basis of four
55 weeks compensation for each percent of disability de-
56 termined.

57 On and after July one, one thousand nine hundred
58 sixty-nine, through June thirty, one thousand nine hun-
59 dred seventy, inclusive, for a disability of eighty-five
60 percent to one hundred percent, inclusive, sixty-six
61 and two-thirds percent of the average weekly earn-
62 ings, wherever earned, of the injured employee, at the
63 date of injury, not to exceed forty-five percent of the
64 average weekly wage in West Virginia, during the
65 remainder of life.

66 On and after July one, one thousand nine hundred
67 seventy, for a disability of eighty-five percent to one

68 hundred percent, inclusive, sixty-six and two-thirds
69 percent of the average weekly earnings, wherever earned,
70 of the injured employee, at the date of injury, not to
71 exceed fifty percent of the average weekly wage in West
72 Virginia, during the remainder of life.

73 (e) If the injury results in the total loss by sever-
74 ance of any of the members named in this subdivision,
75 the percentage of disability shall be determined in accord-
76 ance with the following table, and award made as pro-
77 vided in subdivision (d) of this section:

78 The loss of a great toe shall be considered a ten per-
79 cent disability.

80 The loss of a great toe (one phalanx) shall be consid-
81 ered a five percent disability.

82 The loss of other toes shall be considered a four per-
83 cent disability.

84 The loss of other toes (one phalanx) shall be consid-
85 ered a two percent disability.

86 The loss of all toes shall be considered a twenty-five
87 percent disability.

88 The loss of forepart of foot shall be considered a
89 thirty percent disability.

90 The loss of foot shall be considered a thirty-five per-
91 cent disability.

92 The loss of a leg shall be considered a forty-five per-
93 cent disability.

94 The loss of thigh shall be considered a fifty percent dis-
95 ability.

96 The loss of thigh at hip joint shall be considered a
97 sixty percent disability.

98 The loss of a little or fourth finger (one phalanx)
99 shall be considered a three percent disability.

100 The loss of little or fourth finger shall be considered
101 a five percent disability.

102 The loss of ring or third finger (one phalanx) shall
103 be considered a three percent disability.

104 The loss of ring or third finger shall be considered a
105 five percent disability.

106 The loss of middle or second finger (one phalanx) shall
107 be considered a three percent disability.

108 The loss of middle or second finger shall be consid-
109 ered a seven percent disability.

110 The loss of index or first finger (one phalanx) shall
111 be considered a six percent disability.

112 The loss of index or first finger shall be considered
113 a ten percent disability.

114 The loss of thumb (one phalanx) shall be consid-
115 ered a twelve percent disability.

116 The loss of thumb shall be considered a twenty per-
117 cent disability.

118 The loss of thumb and index finger shall be consid-
119 ered a thirty-two percent disability.

120 The loss of index and middle finger shall be consid-
121 ered a twenty percent disability.

122 The loss of middle and ring finger shall be considered
123 a fifteen percent disability.

124 The loss of ring and little finger shall be considered
125 a ten percent disability.

126 The loss of thumb, index and middle finger shall be
127 considered a forty percent disability.

128 The loss of index, middle and ring finger shall be
129 considered a thirty percent disability.

130 The loss of middle, ring and little finger shall be consid-
131 ered a twenty percent disability.

132 The loss of four fingers shall be considered a thirty-
133 two percent disability.

134 The loss of hand shall be considered a fifty percent
135 disability.

136 The loss of forearm shall be considered a fifty-five
137 percent disability.

138 The loss of arm shall be considered a sixty percent
139 disability.

140 The total and irrecoverable loss of the sight of one eye
141 shall be considered a thirty-three percent disability.
142 For the partial loss of vision in one, or both eyes, the
143 percentage of disability shall be determined by the
144 commissioner, using as a basis the total loss of one eye.

145 The total and irrecoverable loss of the hearing of one
146 ear shall be considered a fifteen percent disability, and
147 the injured employee shall be entitled to compensation
148 for a period of sixty weeks. The total and irrecoverable
149 loss of hearing of both ears shall be considered a forty-
150 five percent disability, and the injured employee shall
151 be entitled to compensation for a period of one hun-
152 dred eighty weeks.

153 For the partial loss of hearing in one, or both ears,
154 the percentage of disability shall be determined by the
155 commissioner, using as a basis the total loss of hearing
156 in both ears.

157 (f) Should a claimant to whom has been made a
158 permanent partial award of from one percent to eighty-
159 four percent, both inclusive, die from sickness or non-
160 compensable injury, the unpaid balance of such award
161 shall be paid to claimant's dependents as defined in this
162 chapter, if any; such payment to be made in the same
163 installments that would have been paid to claimant if
164 living: *Provided, however,* That no payment shall be
165 made to any widow of such claimant after her remar-
166 riage, and that this liability shall not accrue to the
167 estate of such claimant and shall not be subject to any
168 debts of, or charges against, such estate.

169 (g) The award for permanent disabilities interme-
170 diate to those fixed by the foregoing schedule and per-
171 manent disability of from one percent to eighty-four
172 percent shall be in the same proportion and shall be
173 computed and allowed by the commissioner.

174 (h) The percentage of all permanent disabilities
175 other than those enumerated in subdivisions (d), (e),
176 (f) and (g) of this section shall be determined by the
177 commissioner, and award made in accordance with the
178 provisions of subdivision (d).

179 (i) Compensation payable under any subdivision of
180 this section shall be limited as follows: Not to exceed
181 the maximum weekly benefit specified in subdivision
182 (b) of this section, nor to be less than a minimum of
183 twenty-six dollars a week.

184 (j) Where an injury results in temporary total dis-
185 ability for which compensation is awarded under sub-

186 division (b) of this section and such injury is later de-
187 termined permanent partial disability under subdivision
188 (d), the amount of compensation so paid in excess of
189 fifteen weeks shall be considered as payment of the com-
190 pensation payable for such injury in accordance with
191 the schedule in subdivision (d): *Provided*, That in cases
192 where the amount of permanent partial disability is
193 specifically provided for under subdivision (e) of this
194 section, payments made under subdivision (b) shall not
195 be considered as payment of the compensation for such
196 injury. Compensation, either total temporary or per-
197 manent partial, under this section shall be payable only
198 to the injured employee and the right thereto shall not
199 vest in his or her estate, except that any unpaid com-
200 pensation which would have been paid or payable to
201 the employee up to the time of his death, if he had
202 lived, shall be paid to the dependents of such injured
203 employee if there be such dependents at the time of
204 death.

205 (k) The following permanent disabilities shall be
206 conclusively presumed to be total in character:

207 Loss of both eyes or the sight thereof.

208 Loss of both hands or the use thereof.

209 Loss of both feet or the use thereof.

210 Loss of one hand and one foot or the use thereof.

211 In all other cases permanent disability shall be de-
212 termined by the commissioner in accordance with the
213 facts in the case, and award made in accordance with
214 the provisions of subdivision (d).

215 (l) A disability which renders the injured employee
216 unable to engage in substantial gainful activity requir-
217 ing skills or abilities comparable to those of any gainful
218 activity in which he has previously engaged with some
219 regularity and over a substantial period of time shall be
220 considered in determining the issue of total disability.

**§23-4-6a. Benefits and mode of payment to employees and
dependents for occupational pneumoconiosis; fur-
ther adjustment of claim for occupational pneumo-
coniosis.**

1 If an employee is found to be permanently disabled

2 due to occupational pneumoconiosis, as defined in sec-
3 tion one of this article, the percentage of permanent
4 disability shall be determined by the commissioner in
5 accordance 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 per-
9 manent disability under the provisions of subdivisions
10 (d), (f), (g), (h), (i), (k) and (l) of the preceding section
11 of this article.

12 If the employee dies from occupational pneumoconiosis
13 within ten years from the date of his last exposure to
14 such disease, the benefits shall be in the amounts and
15 to the persons provided for in section ten of this article;
16 as to such benefits sections eleven to fourteen, inclusive,
17 of this article shall apply.

18 In cases of permanent disability or death due to occu-
19 pational pneumoconiosis, as defined in section one of this
20 article, accompanied by active tuberculosis of the lungs,
21 compensation shall be payable as for disability or death
22 due to occupational pneumoconiosis alone.

23 The provisions of section sixteen, article four and sec-
24 tions one-a, one-b, one-c and one-d, article five of this
25 chapter providing for the further adjustment of claims
26 shall be applicable to the claim of any claimant who
27 receives a permanent partial disability award for occu-
28 pational pneumoconiosis.

§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
4 its 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 exam-
12 inations produced by or on behalf of the employee or
13 claimant, 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 chronic respiratory
21 disability, then it shall be presumed that such claimant
22 is suffering or such deceased employee was suffering at
23 the time of his death from occupational pneumoconiosis
24 which arose out of and in the course of his employment.
25 This presumption shall not be conclusive.

26 (c) The findings and conclusions of the board shall
27 set forth, among other things, the following:

28 (1) Whether or not the claimant or the deceased
29 employee has contracted occupational pneumoconiosis,
30 and, if so, the percentage of permanent disability result-
31 ing therefrom.

32 (2) Whether or not the exposure in the employment
33 was sufficient to have caused the claimant's or deceased
34 employee's occupational pneumoconiosis or to have per-
35 ceptibly aggravated an existing occupational pneumo-
36 coniosis, or other occupational disease.

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 thirty 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 board's
47 findings and conclusions to which he objects. After the
48 time has expired for the filing of objections to the find-

49 ings and conclusions of the board, the commissioner shall
50 proceed to act as provided in this chapter. If after the
51 time has expired for the filing of objections to the find-
52 ings and conclusions of the board no objections have
53 been filed, the report of a majority of the board of its
54 findings and conclusions on any medical question shall
55 be taken to be plenary and conclusive evidence of the
56 findings and conclusions therein stated. If objection has
57 been filed to the findings and conclusions of the board,
58 notice thereof shall be given to the board, and the mem-
59 bers thereof joining in such findings and conclusions
60 shall appear at the time fixed by the commissioner for
61 the hearing to submit to examination and cross-exam-
62 ination in respect to such findings and conclusions. At
63 such hearing evidence to support or controvert the find-
64 ings and conclusions of the board shall be limited to
65 examination and cross-examination of the members of
66 the board, and to the taking of testimony of other quali-
67 fied physicians and roentgenologists.

§23-4-15. Application for benefits; report of injuries by employer.

1 To entitle any employee or dependent of a deceased em-
2 ployee to compensation under this chapter, other than for
3 occupational pneumoconiosis or other occupational dis-
4 ease, the application therefor must be made on the form
5 or forms prescribed by the commissioner and filed in the
6 office of the commissioner within one year from and after
7 the injury or death, as the case may be, and all proofs
8 of dependency in fatal cases must likewise be filed with
9 the commissioner within one year from and after the
10 death. In case the employee is mentally or physically
11 incapable of filing such application, it may be filed by
12 his attorney or by a member of his family. It shall be
13 the duty of every employer to report to the commissioner
14 every injury sustained by any person in his employ. Such
15 report shall be on forms prescribed by the commissioner
16 and shall be made within sixty days from the date the
17 employer first receives knowledge of such injury.

18 To entitle any employee to compensation for occupa-
19 tional pneumoconiosis under the provisions hereof, the

20 application therefor must be made on the form or forms
21 prescribed by the commissioner and filed in the office of
22 the commissioner within three years from and after the
23 last day of the last continuous period of sixty days or
24 more during which the employee was exposed to the
25 hazards of occupational pneumoconiosis or within one
26 year from and after the employee's occupational pneumo-
27 coniosis was made known to him by a physician or which
28 he should reasonably have known, whichever shall last
29 occur, or, in the case of death, the application shall be
30 filed as aforesaid by the dependent of such employee
31 within one year from and after such employee's death.

32 To entitle any employee to compensation for occupa-
33 tional disease other than occupational pneumoconiosis
34 under the provisions hereof, the application therefor must
35 be made on the form or forms prescribed by the commis-
36 sioner and filed in the office of the commissioner within
37 three years from and after the day on which the em-
38 ployee was last exposed to the particular occupational
39 hazard involved, or, in the case of death, the application
40 shall be filed as aforesaid by the dependent of such em-
41 ployee within one year from and after such employee's
42 death.

**§23-4-15b. Determination of nonmedical questions by commis-
sioner—Claims for occupational pneumoconiosis;
hearing.**

1 If a claim for occupational pneumoconiosis benefits be
2 filed by an employee within three years from and after
3 the last day of the last continuous period of sixty days
4 exposure to the hazards of occupational pneumoconiosis,
5 the commissioner shall determine whether the claimant
6 was exposed to the hazards of occupational pneumoconi-
7 osis for a continuous period of not less than sixty days
8 while in the employ of the employer within three years
9 prior to the filing of his claim, whether in the state of
10 West Virginia the claimant was exposed to such hazard
11 over a continuous period of not less than two years
12 during the ten immediately preceding the date of his
13 last exposure thereto and whether the claimant was
14 exposed to such hazard over a period of not less than

15 ten years during the fifteen years immediately pre-
16 ceding the date of his last exposure thereto. If a claim
17 for occupational pneumoconiosis benefits be filed by a
18 dependent of a deceased employee, the commissioner
19 shall determine whether the deceased employee was ex-
20 posed to the hazards of occupational pneumoconiosis for a
21 continuous period of not less than sixty days while in
22 the employ of the employer within ten years prior to
23 the filing of the claim, whether in the state of West
24 Virginia the deceased employee was exposed to such
25 hazard over a continuous period of not less than two
26 years during the ten years immediately preceding the
27 date of his last exposure thereto and whether the claimant
28 was exposed to such hazard over a period of not less than
29 ten years during the fifteen years immediately preceding
30 the date of his last exposure thereto. The commissioner
31 shall also determine such other nonmedical facts as may
32 in his opinion be pertinent to a decision on the validity
33 of the claim.

34 The commissioner shall give each interested party
35 notice in writing of his findings with respect to all such
36 nonmedical facts and such findings shall be subject to
37 objection and hearing as provided in section one, article
38 five of this chapter.

**§23-4-16. Commissioner's jurisdiction over case continuous;
modification of finding or order; time limitation on
awards; reimbursement of claimant for expenses.**

1 The power and jurisdiction of the commissioner over
2 each case shall be continuing and he may from time to
3 time, after due notice to the employer, make such modi-
4 fications or changes with respect to former findings or
5 orders as may be justified: *Provided, however,* That no
6 further award may be made in fatal cases arising after
7 March seventh, one thousand nine hundred twenty-nine,
8 except within two years after the death of the employee,
9 or in case of nonfatal injuries, on and after March
10 seventh, one thousand nine hundred twenty-nine, ex-
11 cept within three years after payments for temporary
12 disability shall have ceased or not more than two times

13 within five years after the commissioner shall have made
14 the last payment in any permanent disability case: *And*
15 *provided further*, That no such modification or change
16 may be made in any case in which no award has been
17 made, except within three years after the date of injury.
18 If any case in which an injured employee shall make
19 application for a further adjustment of his claim, if
20 such application be in writing and filed within the applic-
21 able time limit as prescribed herein, the commissioner
22 shall pass upon and determine the merits of such appli-
23 cation within thirty days after the filing thereof.

24 If such application is based on a report of any medical
25 examination made of the claimant and submitted by the
26 claimant to the commissioner in support of his applica-
27 tion, and the claim is opened for further consideration
28 and additional award is later made, the claimant shall be
29 reimbursed for the expenses of such examination. Such
30 reimbursement shall be made by the commissioner to
31 the claimant, in addition to all other benefits awarded,
32 upon due proof of the amount thereof being furnished
33 the commissioner by the claimant, but shall in no case
34 exceed the sum of one hundred dollars.

§23-4-21. Severability.

1 If any provision of this article or the application thereof
2 to any person or circumstance is held unconstitutional or
3 invalid, such unconstitutionality or invalidity shall not
4 affect other provisions or applications of the article, and
5 to this end the provisions of this article are declared to
6 be severable.

CHAPTER 82

(House Bill No. 759—By Mr. Nelson, of Cabell)

[Passed February 12, 1970; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two, four, five and six,
chapter one hundred seventy-eight, acts of the Legis-

lature, regular session, one thousand nine hundred fifty-nine, as last amended and reenacted by chapter two hundred, acts of the Legislature, regular session, one thousand nine hundred sixty-three, relating to the Cabell county youth center.

Be it enacted by the Legislature of West Virginia:

That sections two, four, five and six, chapter one hundred seventy-eight, acts of the Legislature, regular session, one thousand nine hundred fifty-nine, as last amended and reenacted by chapter two hundred, acts of the Legislature, regular session, one thousand nine hundred sixty-three, be amended and reenacted to read as follows:

CABELL COUNTY YOUTH CENTER.

§2. Board of supervisors; composition; how elected; terms of members; reimbursement of expenses; qualifications; removal; oath; organization; powers.

§4. Foster homes division.

§5. Recreation division; recreational facilities; operating personnel.

§6. Estimate of construction, maintenance and operating costs; county court to provide funds; payment of expenses; special fund; gifts and bequests.

§2. **Board of supervisors; composition; how elected; terms of members; reimbursement of expenses; qualifications; removal; oath; organization; powers.**

1 The Cabell county youth center and its integral parts
2 shall be governed by a board known as the board of
3 supervisors of the Cabell county youth center, and which
4 said board of supervisors shall be created as herein-
5 after set forth, for the purpose of establishing, construct-
6 ing buildings and making land improvements, equip-
7 ping, developing, operating, financing, administering
8 and managing said youth center and its integral
9 parts.

10 The board of supervisors shall consist of twelve reg-
11 ular members elected one by and from each of the
12 following organizations: Huntington ministerial asso-
13 ciation; Cabell county medical association; Cabell county
14 bar association; county court of Cabell county; Hunting-
15 ton district labor council; womens interclub council;
16 Cabell county parent-teachers association; Cabell county
17 board of education; family services, inc.; Ona parent-

18 teachers association; Cabell county department of wel-
19 fare; and the juvenile division of the Huntington police
20 department.

21 The terms of the first four hereinabove named shall
22 expire on the thirtieth day of June, one thousand nine
23 hundred sixty-three; the terms of the second group of
24 four hereinabove named shall expire on the thirtieth
25 day of June, one thousand nine hundred sixty-four;
26 and the terms of all the remaining members herein-
27 above named shall expire on the thirtieth day of June,
28 one thousand nine hundred sixty-five. Upon the expira-
29 tion of the terms specifically set out hereinabove, each
30 person thereafter shall be appointed for a term of three
31 years, except that any person appointed to fill a vacancy
32 occurring prior to the expiration of the term for which
33 his predecessor was chosen, shall be chosen only for
34 the remainder of such term. Members shall be eligible
35 to succeed themselves.

36 The mayor of the city of Huntington, or someone
37 designated by him, the mayors of the towns of Barbours-
38 ville and Milton, the sheriff of Cabell county, or a deputy
39 sheriff designated by him, and the Cabell county agricul-
40 tural agent shall be ex officio members of said board
41 of supervisors with voting privileges equal to that of
42 each and every other member.

43 The board of supervisors shall serve without com-
44 pensation except they may be reimbursed for any ex-
45 penses incurred in the performance of their duties.

46 Each regular member of the board of supervisors
47 shall be a bona fide citizen and resident of said county
48 and any regular member thereof who shall cease to be
49 a bona fide citizen and resident of said county shall
50 thereby be disqualified as a member of the board,
51 and his office shall thereupon become vacant.

52 Any regular member of the board of supervisors may
53 be removed from office for dishonesty, incompetency
54 or neglect of duty in office in the same manner and
55 for the same reasons as, by the constitution and stat-
56 utes of this state, are made and provided for the removal
57 of general county officers.

58 Prior to entering upon their duties each member of
59 the board of supervisors shall take an oath in writing
60 to support the constitution of the United States and
61 of the state of West Virginia and to faithfully perform
62 the duties of a member of said board. Said oaths shall
63 be filed in the office of the clerk of the county court of
64 Cabell county.

65 The board shall designate one of its members as
66 president, another as vice president, and shall select a
67 secretary from the board membership or otherwise. It
68 shall fix the time and place of its meetings and six
69 members present shall constitute a quorum.

70 The board of supervisors shall provide for the em-
71 ployment of an executive director whose duties shall
72 be to execute the orders of the board of supervisors
73 and direct the overall management of the youth center.
74 The board shall also have the power to employ and
75 fix the compensation of any and all persons as in its
76 opinion may be necessary for the operation, mainte-
77 nance, administration and management of the property
78 under its control, limited however, by the authority
79 vested in the West Virginia department of welfare by
80 section four hereof, and limited further by the appro-
81 priation of funds for such purposes by the county court
82 of Cabell county. The board of supervisors shall have
83 the power to make rules and regulations and to enforce
84 same, as may be necessary for the management and
85 control of the youth center and each of its integral parts.

§4. Foster homes division.

1 The foster homes division of the Cabell county youth
2 center shall be erected and maintained at the Cabell
3 county farm at Ona, West Virginia, as homes for Cabell
4 county children who are orphans, homeless, neglected
5 or deserted, or who, if permitted to run ungoverned
6 or undisciplined, are apt to become delinquent, and
7 which said children are within the age prescribed by
8 the statutes of this state for juveniles.

9 The board of supervisors of the Cabell county youth
10 center with the approval of the Cabell county court,

11 is authorized to erect and maintain at said farm suffi-
12 cient cottages and of capacity to comfortably house
13 the aforementioned juveniles. Each cottage when chil-
14 dren are housed therein shall have as "cottage parents"
15 a husband and wife team in charge, both of whom
16 shall be persons of good moral character, experienced
17 in child care, having proper understanding of children
18 and temperamentally fit to care and rear them. Each
19 cottage shall be conducted comparable to a well ordered
20 home, with proper supervision and understanding dis-
21 cipline maintained by the "cottage parents". The chil-
22 dren therein housed shall be treated as members of
23 a well ordered family where there is proper intellectual,
24 physical, spiritual and exemplary moral training. Each
25 child shall be given a home therein so long as its need
26 therefor exists and it remains a juvenile or until a sat-
27 isfactory permanent home has been found or it is placed
28 for adoption.

29 The foster homes division shall be made available for
30 any and all Cabell county children now or hereafter to
31 be under the control of the state or county department
32 of welfare.

33 Both the West Virginia department of welfare and
34 the Cabell county department of welfare may recom-
35 mend for admittance to the foster homes division any
36 juvenile that is in the custody or under the care of
37 the department. Upon receipt of the department's
38 recommendation, the board of supervisors shall deter-
39 mine whether the juvenile is to be placed in the foster
40 homes division.

41 For the support and maintenance of the children
42 placed in said foster homes division by the departments
43 of welfare, they shall contribute according to the in-
44 stitutional formula used for payment by the depart-
45 ments in other counties of the state. The money so
46 contributed shall be paid to the county court of Cabell
47 county and by that court set aside for the use of said
48 foster homes division.

49 The "cottage parents" and all other personnel re-
50 quired for the efficient operation of said cottages in

51 which children are maintained shall be carefully
52 selected by the board of supervisors. Said "cottage
53 parents" shall be responsible for the supervision and
54 training of all the children committed to their care;
55 for keeping them in school during school terms and
56 hours; for teaching them to do a reasonable amount of
57 work, and for making each cottage as nearly self-sup-
58 porting as possible.

59 The children residing in said foster homes shall be
60 required, when within school age, and when their
61 health and physical condition permits, to attend the
62 public schools. The board of education of said county
63 shall make provisions for them in the public school at
64 Ona, West Virginia, or if any one or more of them be
65 in a grade higher than is taught at Ona, then provision
66 therefor shall be made in a school wherein such grade
67 is taught.

68 Complete supervision of the foster homes division
69 together with the employment and discharge of any
70 and all personnel including "cottage parents" shall be
71 under the board of supervisors. The salary of each
72 person so employed shall be reasonable and be deter-
73 mined by the board, and when approved by the said
74 board of supervisors shall be certified for payment as
75 is provided in section six hereof. In the submission by
76 the board of supervisors of the estimate of all monetary
77 needs of the Cabell county youth center to the county
78 court as provided in section six hereof, the board shall
79 include all reasonable monetary needs of the foster
80 homes division for the next fiscal year, said estimate
81 shall cover all anticipated costs for services for all em-
82 ployees and personnel employed in the reasonable oper-
83 ation of said foster homes, and all other reasonable
84 expenses incident thereto.

**§5. Recreation division; recreational facilities; operating per-
sonnel.**

1 The board of supervisors is authorized to maintain
2 a place for recreation for the youth of Cabell county
3 at the Cabell county farm at Ona, West Virginia. The
4 board is hereby authorized to erect, at said farm, such

5 playgrounds, swimming pools, tennis courts, ball parks,
6 golf courses, and such other facilities as to the board
7 may seem advisable, where Cabell county youth may
8 assemble, for play, sport, entertainment, recreation or
9 instruction. The board is also authorized to erect and
10 maintain as the needs require, cottages, assembly halls,
11 kitchens, mess halls, and camping quarters, which may
12 be leased at terms and rates as to the board may appear
13 proper. It is the intent hereof to provide a place for
14 assembly of youth groups from churches, scouts, clubs
15 or any other worthy youth organizations, for purposes
16 hereinabove set out and to the end that the recreation
17 division may be used as a preventive of delinquency in
18 youth and for the building of strong bodies and strong
19 characters.

20 The board of supervisors is authorized to employ a
21 camp manager and such other personnel as may be re-
22 quired to operate said facilities and to the end that the
23 greatest possible value may accrue to youth and that
24 same may be as nearly self-supporting as possible. The
25 manager and personnel shall be answerable to the board
26 and under the direct supervision of the executive di-
27 rector.

**§6. Estimate of construction, maintenance and operating costs;
county court to provide funds; payment of expenses;
special fund; gifts and bequests.**

1 The board of supervisors shall annually prepare and
2 submit to the county court of Cabell county, in advance
3 of the levy term of said court, an estimate of all the
4 monetary needs of the Cabell county youth center and
5 each of its integral parts, for the next fiscal year, said
6 estimate shall cover anticipated costs for construction,
7 maintenance and operation of buildings, and all antici-
8 pated expenses relative to the operation of said youth
9 center for the ensuing fiscal year. The county court of
10 Cabell county shall receive said estimate and may provide
11 in the annual budget of the county, for the reasonable
12 requirements of said youth center as set forth in said
13 estimate and for each of its divisions. No obligations
14 shall be incurred or debts contracted by the board of

15 supervisors in excess of said budget, without prior con-
16 sent of the county court.

17 All current expenses for salaries, supplies and such
18 other things as are required for the efficient operation
19 of the said youth center, including construction costs,
20 shall be certified for payment at the end of each calendar
21 month to the county court of Cabell county by the presi-
22 dent and secretary of the board of supervisors, in writing,
23 and signed by each of them. Thereupon the county court
24 shall cause same to be paid out of the separate fund
25 created for said Cabell county youth center, and other-
26 wise to be paid in the same manner as general current
27 county expenses are paid.

28 The county court of Cabell county shall have the power
29 and authority to transfer moneys from inactive funds,
30 special unused funds, or the general county fund to
31 a separate fund for the use of the Cabell county youth
32 center, as needs may require. The county court of Cabell
33 county is further authorized and empowered to receive
34 and expend for the purposes herein provided, gifts, be-
35 quests and donations from any person, corporation, firm
36 or association.

CHAPTER 83

(Senate Bill No. 11—By Mr. Martin)

[Passed February 12, 1970; in effect from passage. Approved by the Governor.]

AN ACT to provide a stable method of financing the operation of the Martinsburg public library, Berkeley county, West Virginia, organized under chapter ten, article one of the code of West Virginia, one thousand nine hundred thirty-one, as amended.

Be it enacted by the Legislature of West Virginia:

MARTINSBURG PUBLIC LIBRARY.

- §1. Levies by county court, county board of education and city of Martinsburg to support Martinsburg public library.
§2. Disbursements.
§3. Status of employees.

§4. Effect of future amendments of general law.

§5. Severability.

§1. Levies by county court, county board of education and city of Martinsburg to support Martinsburg public library.

1 In order to provide for the support, maintenance, and
2 operation of the Martinsburg public library, Berkeley
3 county, West Virginia, and any and all branches thereof,
4 the Berkeley county board of education, the Berkeley
5 county court and the city of Martinsburg, hereinafter de-
6 scribed as the supporting agencies, shall, upon written
7 request by the board of directors of the Martinsburg
8 public library, levy annually on each one hundred dollars
9 of assessed valuation of the property taxable according to
10 the last assessment for state and county purposes, amounts
11 as follows: By the board of education of the county
12 of Berkeley, Class I, one-half cent; Class II, one cent;
13 Class III, two cents; Class IV, two cents; by the county
14 court of Berkeley county, Class I, one-half cent; Class II,
15 one cent; Class III, two cents; Class IV, two cents; and by
16 the city of Martinsburg, Class I, one-half cent; Class II,
17 one cent; Class IV, two cents.

18 Each year the board of directors shall request each of
19 the three supporting agencies to levy within the above
20 rates on each one hundred dollars of assessed valuation of
21 property of the same class, and each of the three support-
22 ing agencies shall levy within the rates aforesaid. In addi-
23 tion, each supporting agency may contribute to the public
24 library any other general or specific revenues or excess
25 levies. All income realized by the operation of the public
26 library from any sources other than the above levies shall
27 be used by the board of directors for the support and
28 maintenance of the public library.

§2. Disbursements.

1 All money collected or appropriated by the three sup-
2 porting agencies for library purposes shall be deposited in
3 a bank account as directed by the library board of di-
4 rectors and disbursed by it for salaries, wages, books,
5 other library materials such as magazines, pamphlets,

6 papers, works of art, records, also machinery, equipment,
7 supply services and other cost and expenses of operating
8 a public library and maintaining, repairing, improving
9 and replacing its property as well as acquiring additional
10 property.

§3. Status of employees.

1 All employees of the Martinsburg public library shall
2 be entitled to the benefits of the provisions of chapter
3 twenty-three and of articles seven and ten of chapter five
4 of the code of West Virginia, one thousand nine hundred
5 thirty-one, as amended.

§4. Effect of future amendments of general law.

1 Amendments to article one, chapter ten of the code of
2 West Virginia, one thousand nine hundred thirty-one, as
3 amended, and other general laws shall not control this act
4 except to the extent that they do not conflict with the
5 special features hereof, or unless the intent to amend this
6 act is clear, specific and unmistakable.

§5. Severability.

1 If any provision hereof is held invalid, such invalidity
2 shall not affect other provisions hereof which can be given
3 effect without the invalid provision, and to this end the
4 provisions of this act are declared to be severable.

CHAPTER 84

(House Bill No. 630—By Mr. Keesecker)

[Passed February 11, 1970; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact chapter one hundred seventy-seven, acts of the Legislature, regular session, one thousand nine hundred sixty-five, empowering the county court of Morgan county to appropriate and contribute county funds toward the support and maintenance of the "Morgan County Library", located on state property at Berkeley Springs in the county of Morgan.

Be it enacted by the Legislature of West Virginia:

That chapter one hundred seventy-seven, acts of the Legislature, regular session, one thousand nine hundred sixty-five, be amended and reenacted to read as follows:

MORGAN COUNTY LIBRARY.

§1. Morgan county court authorized to contribute county funds for support and maintenance of library.

- 1 The county court of Morgan county, West Virginia, as
- 2 an aid to education in said county, is hereby authorized
- 3 and empowered to appropriate and pay out of the general
- 4 county fund, a sum equal to three and one-half percent
- 5 of the yearly budget of said county court as submitted
- 6 annually toward the support and maintenance of the
- 7 Morgan county library, located at Berkeley Springs in
- 8 said county.

CHAPTER 85

(House Bill No. 603—By Mr. Grewe and Mr. Stamp)

[Passed January 29, 1970; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact chapter two hundred, acts of the Legislature, regular session, one thousand nine hundred fifty-five, as last amended by chapter one hundred seventy-nine, acts of the Legislature, regular session, one thousand nine hundred sixty-five, relating to the authority of the board of commissioners of the county of Ohio to use all or part of debt levies, not required for bonded indebtedness, for the purpose of the construction, equipment and maintenance of an airport, and for the construction, equipment and maintenance of any county building.

Be it enacted by the Legislature of West Virginia:

That chapter two hundred, acts of the Legislature, regular session, one thousand nine hundred fifty-five, as last amended and reenacted by chapter one hundred seventy-nine, acts of

the Legislature, regular session, one thousand nine hundred sixty-five, be amended and reenacted to read as follows:

OHIO COUNTY AIRPORT AND COUNTY BUILDINGS.

§1. Board of commissioners of the county of Ohio authorized to lay an additional levy, and to use proceeds therefrom for construction and maintenance of an airport and county buildings.

§2. Inconsistent acts repealed.

§1. Board of commissioners of the county of Ohio authorized to lay an additional levy, and to use proceeds therefrom for construction and maintenance of an airport and county buildings.

1 For a period of five years commencing with the fiscal
2 year one thousand nine hundred seventy—one thousand
3 nine hundred seventy-one, in addition to the levies hereto-
4 fore authorized to be laid by county courts for general
5 county current expense, and for the payment of interest
6 and sinking fund requirements on bonded indebtedness
7 incurred subsequent to the passage of the tax levy limita-
8 tion amendment, the board of commissioners of the
9 county of Ohio is hereby authorized and empowered to
10 lay such additional levy as may not be required for
11 bonded indebtedness, on all of the property in Ohio
12 county, but not to exceed four and nine-tenths cents on
13 each one hundred dollars' assessed valuation on Class I
14 property; nine and eight-tenths cents on Class II property,
15 and nineteen and six-tenths cents on Classes III and IV
16 property. The proceeds of said levy shall be placed in a
17 separate fund designated "public improvement fund," to
18 be used solely for the construction, equipment, and
19 maintenance of an airport, and for the construction,
20 equipment and maintenance of any county building.

§2. Inconsistent acts repealed.

1 All acts and parts of acts inconsistent or in conflict
2 herewith, insofar as the same may be applicable to the
3 county of Ohio, or the said board of commissioners of the
4 county of Ohio, are hereby repealed.

RESOLUTIONS

(Only resolutions of general interest adopted by the Legislature are included in this volume.)

HOUSE CONCURRENT RESOLUTION NO. 22

(By Messrs. Myles and Toney and Miss Crandall)

[Adopted January 31, 1970]

Opposing the approval of construction of water storage facilities on the New River in the states of North Carolina and Virginia pending further comprehensive studies.

WHEREAS, The New River in West Virginia is a unique and irreplaceable scenic and recreational resource that is enjoyed by hundreds of thousands of West Virginians and nonresident tourists each year; and

WHEREAS, The State Department of Natural Resources in cooperation with the United States Army Corps of Engineers has determined by means of a flow study undertaken in the New River below Bluestone Dam at Hinton, West Virginia, that flows in excess of four thousand cubic feet of water per second will seriously alter and possibly eliminate recreational activities upon the river, including boating, swimming and fishing as well as aquatic life propagation; and

WHEREAS, The ecology of this valuable resource is now threatened by the proposed construction of water control facilities in the states of North Carolina and Virginia under an application now pending before the Federal Power Commission and known as Project No. 2317, Blue Ridge Hydroelectric and Pumped Storage Project; and

WHEREAS, Such project calls for release of an average flow into the New River throughout the recreational season in a volume which will alter the flow and temperature of the New River so as to drastically reduce West Virginia's recreation in excess of one hundred miles of the stream; and

WHEREAS, The ruling of the Federal Power Commission's presiding examiner dated October 1, 1969, favors furtherance

of the Blue Ridge Project although ultimate approval rests with the Commission itself; and

WHEREAS, It appears that no effort has been made by the United States Department of the Interior to study the potentially drastic effect this project will have on the lower New River valley nor has any such information been brought to the attention of the Federal Power Commission; therefore, be it

Resolved by the Legislature of West Virginia:

That this body opposes the initial report of the presiding examiner of the Federal Power Commission recommending that a license be granted for the Blue Ridge Project No. 2317; and, be it

Further Resolved, That the granting of a license for this project be withheld until such time as the United States Department of the Interior can make available to the Federal Power Commission the findings of a detailed study of the effect of the Blue Ridge Project upon the riparian State of West Virginia, request for which study is hereby made, and that assurances be given through project modifications that the natural features of the New River will be preserved; and, be it

Further Resolved, That the Clerk of the House of Delegates is hereby directed to send copies of this resolution to the appropriate officials of the United States Department of the Interior and the Federal Power Commission.

HOUSE CONCURRENT RESOLUTION NO. 26

(By Mr. Nelson, of Cabell, and Mr. Lohr)

[Adopted February 5, 1970]

Conveying the extreme concern of the conservationists, citizens and Legislature of the State of West Virginia because of actions taken by the United States Forest Service under the direction of the Department of Agriculture of the United States concerning clear-cutting in the national forest lands located within the State of West Virginia, and creating a special commission to study, evaluate and report to the Joint Committee on Government and Finance on this problem.

WHEREAS, The increasing use of clear-cutting of national forest lands located within the State of West Virginia could possibly cause erosion, flooding and other major catastrophes and may be detrimental to the other uses of the forest such as outdoor recreation, wild life, fishing, hunting and aesthetics; and

WHEREAS, It has not been satisfactorily demonstrated to the conservationists, citizens and Legislature of the State of West Virginia that clear-cutting of national forest lands in West Virginia is a totally valuable and wise forest management policy in keeping with the conservation objectives of this State and with the goals of President Richard M. Nixon's National Environmental Policy Act of 1969; and

WHEREAS, Until it is conclusively determined that the clear-cutting of West Virginia National Forests is a truly beneficial and constructive conservation policy; therefore, be it

Resolved by the Legislature of West Virginia:

That the Legislature of West Virginia hereby expresses its extreme concern with the United States Forest Service's policy of permitting the clear-cutting of the national forests located within the State of West Virginia, particularly the Gauley Ranger District, Otter Creek, the Cranberry Back Country and the Greenbrier District; and, be it

Further Resolved, That the Legislature of West Virginia respectfully requests that the Honorable Clifford M. Hardin, Secretary of Agriculture of the United States, immediately order a suspension in letting clear-cutting contracts in the national forests located within the State of West Virginia, particularly the Gauley Ranger District, Otter Creek, the Cranberry Back Country and the Greenbrier District, until the special commission created by this resolution has completed its study and made its report as provided below; and, be it

Further Resolved, That a special Commission to be known as the "Forest Management Practices Commission," composed 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, one of whom the President shall designate as cochairman, 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, one of whom the Speaker shall designate as cochairman, and four persons residing within the State who must be knowledgeable in the fields of conservation and forestry, two of whom shall be appointed by the President of the Senate and two of whom shall be appointed by the Speaker of the House of Delegates, is hereby created to conduct a comprehensive study of, and ascertain and evaluate all information relating to the effects of clear-cutting of the national forest lands located within the State of West Virginia, particularly the Gauley Ranger District, Otter Creek, the Cranberry Back Country and the Greenbrier District, and submit its findings and recommendations to the Joint Committee on Government and Finance no later than August 1, 1970.

That the President and Speaker shall make their appointments no later than February 12, 1970.

That the Commission is hereby expressly authorized to meet with officials of the United States Forest Service and the West Virginia Congressional Delegation and to personally survey national forests within West Virginia and to travel as necessary for this purpose; and, be it

Further Resolved, That the expenses necessary to conduct the study and to prepare a report be paid from legislative appropriations to the Joint Committee on Government and Finance; and, be it

Further Resolved, That the Clerk of the House of Delegates be directed to cause copies of this resolution to be forwarded to the Honorable Clifford M. Hardin, Secretary of Agriculture of the United States, to the Chief of the United States Forest Service, United States Department of Agriculture, and to each member of the West Virginia Congressional delegation.

HOUSE CONCURRENT RESOLUTION NO. 31

(By Mr. Nelson, of Kanawha)

[Adopted January 31, 1970]

Directing the West Virginia state board of investments to examine the federal program designed to guarantee stu-

dent loans and expressing the hope of the Legislature in connection therewith.

WHEREAS, Investment in student loans, guaranteed by the federal government, by the State Board of Investments would allow more students to participate in this loan program; and

WHEREAS, Such participation would enable West Virginia youth to secure a better education; and

WHEREAS, The rate of return on investments in student loans guaranteed by the federal government is greater than the rate of return now secured by the board; therefore, be it

Resolved by the Legislature of West Virginia:

That the West Virginia State Board of Investments examine the federal program designed to guarantee student loans and give consideration to the possibility of investing in federally guaranteed student loans, it being the hope of the Legislature that the State Board of Investments will invest in federally guaranteed student loans if said board determines that such investment would be consistent with the standards established in section twelve, article six, chapter twelve of the Code of West Virginia, one thousand nine hundred thirty-one, as amended.

HOUSE CONCURRENT RESOLUTION NO. 37

(By Mr. Shaffer and Mr. Edgar)

[Adopted January 22, 1970]

Commending our fighting men in Vietnam; their valor, their self-sacrifice, their service to the State and Nation.

WHEREAS, Our country has for many years been engaged in an agonizing armed conflict in Vietnam and has once again called upon its youth to serve the Nation in war; and

WHEREAS, The young men of West Virginia have bravely answered their country's call, contributing greatly, both in number and in valor; and

WHEREAS, The people of the State, saddened by their many relatives and friends that have been lost, wounded or killed

in Vietnam, are nevertheless proud of the courage and service that West Virginia soldiers and sailors are contributing to the cause of freedom; and

WHEREAS, The West Virginia servicemen in Vietnam strengthen and reassert the State motto that "Mountaineers Are Always Free"; therefore, be it

Resolved by the Legislature of West Virginia:

That the Legislature of the State of West Virginia, on behalf of the people of the State, does hereby express its gratitude and commendation to all West Virginians, in each branch of the Armed Services, who are now fighting in Vietnam; and, be it

Further Resolved, That the Legislature also expresses its sympathy to the relatives and friends of killed or wounded West Virginia servicemen, to whom the people of this State, and of this Nation, owe so much.

HOUSE CONCURRENT RESOLUTION NO. 48

(By Miss Crandall and Mrs. Withrow)

[Adopted February 12, 1970]

Directing the Department of Mental Health, through its Division of Alcoholism, to be responsible for initiating the development of a core staff for the planning and implementation of programs in education, prevention, treatment and rehabilitation in the field of drug abuse.

WHEREAS, The alarming increase in the abuse of drugs by all age groups is becoming daily more apparent; and

WHEREAS, There has recently been evidence of increasing instances of drug abuse within the State of West Virginia; and

WHEREAS, The federal government has recently enacted legislation on this problem, which will provide a supplementary resource to citizens of West Virginia and will therefore necessitate development of programs within the State which can be effectively correlated with such federal programs; and

WHEREAS, There is evidence that in many instances misuse of drugs is directly related to misuse of alcohol; and

WHEREAS, There is also evidence that drug abuse problems are similar in nature to the problems of alcoholism; and

WHEREAS, The deteriorating effects of immoderate and immature use of drugs are borne by society at large, not just the individual user; and

WHEREAS, The Division of Alcoholism of the West Virginia Department of Mental Health has been charged by law with the responsibility for development of programs in education, prevention, treatment and rehabilitation in the field of alcoholism and has developed specific staff and expertise for the implementation of such programs which have been successfully carried out for six years; therefore, be it

Resolved by the Legislature of West Virginia:

That the Department of Mental Health of the State of West Virginia, through its Division of Alcoholism, is hereby charged with the responsibility of initiating the development of a core staff for the planning and implementation of programs in education, prevention, treatment and rehabilitation in the field of drug abuse; and, be it

Further Resolved, That a report relative to such planning and implementation be submitted to the one thousand nine hundred seventy-one session of the West Virginia Legislature for its consideration.

HOUSE CONCURRENT RESOLUTION NO. 63

(By Mr. Seibert)

[Adopted February 12, 1970]

Approving the issuance of additional revenue bonds for the State Building Commission of West Virginia in an amount not to exceed nine million dollars for the purpose of acquiring land for the construction of new State office buildings and parking facilities and for the construction, equipping and furnishing of the same and for the plans and specifications necessary and incidental thereto.

WHEREAS, Article six, Chapter five of the Code of West Virginia, one thousand nine hundred thirty-one, as amended, creating the State Building Commission of West Virginia and prescribing its powers, responsibilities and duties, provides that no bonds or obligations may be issued in accordance with its provisions 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 additional revenue bonds by the State Building Commission of West Virginia in an amount not to exceed nine million dollars is hereby approved by the Legislature for the purpose of acquiring the necessary land for the construction of new State office buildings and parking facilities, and for the purpose of constructing, equipping and furnishing a Center for Science and Culture including an Archives and History Building; and, be it

Further Resolved, That the purpose for which said additional 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.

COMMITTEE SUBSTITUTE
FOR
HOUSE CONCURRENT RESOLUTION NO. 80
(Originating in the Committee on Rules)

[Adopted February 12, 1970]

Directing the Joint Committee on Government and Finance and the Commission on Interstate Cooperation to make 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; and

WHEREAS, There are additional matters that require comprehensive study and the development of factual information in order for the Legislature to take proper action at its 1971 regular session; therefore, be it

Resolved by the Legislature of West Virginia:

That the studies authorized by the following resolutions be continued and that all provisions thereof, except as to the time for reports to be made to the Legislature, shall be continued in force:

1. Senate Concurrent Resolution No. 11, adopted regular session, 1957, and last continued by Senate Concurrent Resolution No. 20, adopted regular session, 1969, relating to institutions of higher education;

2. Senate Concurrent Resolution No. 15, adopted regular session, 1968, and continued by Senate Concurrent Resolution No. 20, adopted regular session, 1969, relating to a highway safety program;

3. Senate Concurrent Resolution No. 18, adopted regular session, 1969, relating to private school standards;

4. Senate Concurrent Resolution No. 27, adopted regular session, 1969, relating to the Uniform Consumer Credit Code;

5. Senate Concurrent Resolution No. 29, adopted regular session, 1969, relating to county employees;

6. House Concurrent Resolution No. 6, adopted first extraordinary session, 1969, relating to civil service;

7. House Concurrent Resolution No. 8, adopted regular session, 1968, and continued by Senate Concurrent Resolution No. 20, adopted regular session, 1969, relating to the Potomac River Basin Compact;

8. House Concurrent Resolution No. 20, adopted regular session, 1969, relating to nonpublic school and college aid;

9. House Concurrent Resolution No. 31, adopted regular session, 1969, relating to the tax structure of West Virginia;

10. Senate Concurrent Resolution No. 22, adopted regular session, 1969, relating to mental health and public institutions; and, be it

Further Resolved, That the Joint Committee on Government and Finance conduct a comprehensive study of Titles 1, 2, 3 and 4 of the Federal Coal Mine Health and Safety Act of 1969 and all West Virginia statutes relating to the health and safety of persons working in the coal mining industry in order to bring the West Virginia statutes into required compliance with the provisions and standards required by the Federal Act; and, be it

Further Resolved, That the Joint Committee on Government and Finance be and hereby is directed to study the subject of public employer-employee relations, and that the Joint Committee be authorized to receive the aid and advice of a citizens advisory committee, that the Speaker of the House of Delegates and the President of the Senate each be authorized to appoint five citizens of the State to create a ten member citizens advisory committee to aid and advise the Joint Committee in this study, and that the members of this citizens advisory committee shall be reimbursed for their actual and necessary travel expense incurred in connection therewith; and, be it

Further Resolved, That the Joint Committee on Government and Finance make a study of all waters within the State, these waters being one of the State's self-perpetuating, self-replenishing natural resources used and enjoyed by the public, for the purpose of determining how to conserve, utilize, control and derive maximum benefit therefrom for the public; and, be it

Further Resolved, That the Joint Committee on Government and Finance conduct a study of the need, desirability and feasibility of an additional consumers sales tax on meals and lodging; and, be it

Further Resolved, That all reports, together with findings, conclusions, recommendations, and any proposed drafts of legislation, be made to the Legislature at its regular session, 1971; and, be it

Further Resolved, That the expenses necessary to conduct such studies, to prepare reports and to draft any proposed legislation be paid from legislative appropriations to the Joint Committee on Government and Finance.

HOUSE CONCURRENT RESOLUTION NO. 86

(Originating in the Committee on Banking and Insurance)

[Adopted February 12, 1970]

Directing the Joint Committee on Government and Finance to conduct a study of the banking laws of the State of West Virginia, with particular reference to branch banking.

WHEREAS, For many years the subject of branch banking in this State has caused much controversy; and

WHEREAS, It has been questioned whether the establishing of branch banking in West Virginia would enhance the economic structure of this State and whether it would be beneficial to the citizens as well as to the business and industrial growth in this State; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance conduct a study of the banking laws of this State, including the feasibility and advisability of establishing branch banks, mergers and holding companies and to report to the regular session of the Legislature, 1971, on its findings, conclusions and recommendations, together with drafts of proposed legislation necessary to carry its recommendations into effect; and, be it

Further Resolved, That the expenses necessary to conduct such studies, to prepare a report and to draft proposed legislation be paid from appropriations to the Joint Committee on Government and Finance.

HOUSE CONCURRENT RESOLUTION NO. 88

(Originating in the Committee on Finance)

[Adopted February 12, 1970]

Declaring the support and encouragement by the Legislature that the blind and severely handicapped residents of this State be given the opportunity by the State Building Commission of West Virginia to provide, maintain and operate food and beverage concessions in the new State office buildings.

WHEREAS, It is the policy of the State of West Virginia to encourage and enable blind and severely handicapped persons

to participate fully in the social and economic life of the State and to engage in remunerative employment; and

WHEREAS, It is the policy of the State of West Virginia that blind and severely handicapped persons be employed in the State service, the service of the political subdivisions of the State, in the public schools, and in all other employment supported in whole or in part by public funds on the same terms and conditions as persons without such disabilities; and

WHEREAS, It has been the policy of the State to furnish without cost corridor space in State office buildings to the blind and severely handicapped for the operation of food and drink concessions; and

WHEREAS, There is reason to believe that the State Building Commission of West Virginia is considering contracting with an out-of-state vending machine company to provide food and beverages by vending machines in the new State office buildings; and

WHEREAS, There are fifteen handicapped persons who will be employed if given the opportunity to operate the food and beverage concessions in the new State office buildings, and there are also thirty-eight blind persons who are employed in this same type of employment who will benefit from this employment; therefore, be it

Resolved by the Legislature of West Virginia:

That the State Building Commission of West Virginia be advised that the members of the Legislature support and encourage continuance of the policy of this State in allowing blind and severely handicapped persons to operate food and beverage concessions in the new State office buildings.

HOUSE JOINT RESOLUTION NO. 4

(By Mr. Speaker, Mr. Boiarsky, and Mr. Watson)

[Adopted February 9, 1970]

Proposing an amendment to the Constitution of the State, amending section four, article seven thereof, relating to the eligibility of the Governor to serve two terms.

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 four, article seven thereof be amended to read as follows:

ARTICLE VII. EXECUTIVE DEPARTMENT.

§4. Eligibility.

None of the executive officers mentioned in this article shall hold any other office during the term of his service. A person who has been elected or who has served as Governor during all or any part of two consecutive terms shall be ineligible for the office of Governor during any part of the term immediately following the second of the two consecutive terms. The person holding the office of Governor when this section is ratified shall not be prevented from holding the office of Governor during the term immediately following the term he is then serving.

HOUSE JOINT RESOLUTION NO. 6

(By Mr. Myles and Mr. Files)

[Adopted February 11, 1970]

Proposing an amendment to the Constitution of the State, amending section five, article twelve thereof, relating to support of free schools, and repealing section two, article ten thereof, relating to capitation tax.

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 ten be

repealed, and that section five, article twelve be amended to read as follows:

ARTICLE XII. EDUCATION.

§5. Support of free schools.

The Legislature shall provide for the support of free schools by appropriating thereto the interest of the invested "school fund", the net proceeds of all forfeitures and fines accruing to this State under the laws thereof and by general taxation of persons and property or otherwise. It shall also provide for raising in each county or district, by the authority of the people thereof, such a proportion of the amount required for the support of free schools therein as shall be prescribed by general laws.

HOUSE JOINT RESOLUTION NO. 8

(By Mr. Speaker, Mr. Boiarsky, and Mr. Seibert)

[Adopted February 12, 1970]

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 convening 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 determined by yeas and nays and entered on the Journals.

§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.

Members of the Legislature shall receive such compensation in connection with the performance of their respective duties as members of the Legislature and such allowances for travel and other expenses in connection therewith as shall be (1) established in a resolution submitted to the Legislature by the Citizens Legislative Compensation Commission hereinafter created, and (2) thereafter enacted into general law

by the Legislature at a regular session thereof, subject to such requirements and conditions as shall be prescribed in such general law. The Legislature may in any such general law reduce but shall not increase any item of compensation or expense allowance established in such resolution. All voting on the floor of both Houses on the question of passage of any such general law shall be by yeas and nays to be entered on the Journals.

The Citizens Legislative Compensation Commission is hereby created. It shall be composed of seven members who have been residents of this State for at least ten years prior to the date of appointment, to be appointed by the Governor within twenty days after ratification of this amendment, no more than four of whom shall be members of the same political party. The members shall be broadly representative of the public at large. Members of the Legislature and officers and employees of the State or of any county, municipality or other governmental unit of the State shall not be eligible for appointment to or to serve as members of the Commission. Each member of the Commission shall serve for a term of seven years, except of the members first appointed, one member shall be appointed for a term of one year, and one each for terms ending two, three, four, five, six and seven years after the date of appointment. As the term of each member first appointed expires, a successor shall be appointed for a seven-year term. Any member may be reappointed for any number of terms, and any vacancy shall be filled by the Governor for the unexpired term. Any member of the Commission may be removed by the Governor prior to the expiration of such member's term for official misconduct, incompetency or neglect of duty. The Governor shall designate one member of the Commission as chairman. The members of the Commission shall serve without compensation, but shall be entitled to be reimbursed for all reasonable and necessary expenses actually incurred in the performance of their duties as such members.

The Commission shall meet as often as may be necessary and shall within fifteen days after the beginning of the regular session of the Legislature in the year one thousand nine hundred seventy-one and within fifteen days after the beginning of the regular session in each fourth year thereafter

submit by resolution to the Legislature its determination of compensation and expense allowances, which resolution must be concurred in by at least four members of the Commission.

Notwithstanding any other provision of this Constitution, such compensation and expense allowances as may be provided for by any such general law shall be paid on and after the effective date of such general law. Until the first such general law becomes effective, the provisions of this section in effect immediately prior to the ratification of this amendment shall continue to govern.

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 to be 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. 35

(By Mr. Palumbo)

[Adopted February 12, 1970]

Directing the Commission on Interstate Cooperation to make a study of the Uniform Probate Code.

WHEREAS, The National Conference of Commissioners on Uniform State Laws has approved the Uniform Probate Code and has recommended it for passage by the various state legislatures; and

WHEREAS, The Uniform Probate Code is the result of work of the National Conference that began with this special project in 1962, after a continuing effort of the Conference since the late 1920's to improve the procedures for settling a decedent's estate; and

WHEREAS, The cost, complications and delays necessary in the probate of wills, administration and settlement of a decedent's estate and related procedures under the existing statutes in this State are subject to criticism, and the statutes are in need of study, reevaluation and improvement; therefore, be it

Resolved by the Legislature of West Virginia:

That the Commission on Interstate Cooperation make a study of the Uniform Probate Code, approved by the National

Conference of Commissioners on Uniform State Laws, and of related statutes and procedures presently in existence in West Virginia to determine whether or not West Virginia should adopt the Uniform Probate Code; and, be it

Further Resolved, That the Commission on Interstate Cooperation report to the regular session of the Legislature, 1971, on its findings, conclusions and recommendations, together with drafts of proposed legislation necessary to carry its recommendations into effect; and, be it

Further Resolved, That the expense necessary to conduct such study, to prepare a report, and to draft proposed legislation be paid from appropriations to the Commission on Interstate Cooperation or from appropriations to the Joint Committee on Government and Finance if advance approval of the Joint Committee is obtained before incurring any expense to be paid out of its appropriations.

SENATE CONCURRENT RESOLUTION NO. 49

(By Mr. Gainer and Mr. Holliday)

[Adopted February 11, 1970]

Expressing to the House Public Works Committee of the United States House of Representatives the support of the Legislature of West Virginia for a study of a proposed multipurpose reservoir on the Gauley River near Swiss, Nicholas County, West Virginia.

WHEREAS, Congressmen James Kee and John Slack of West Virginia have introduced a bill in the United States House of Representatives directed to the Committee on Public Works authorizing the United States Army Corps of Engineers to make a study of a proposed multipurpose reservoir on the Gauley River near Swiss, Nicholas County, West Virginia; and

WHEREAS, The Gauley River is a part of the Kanawha River Basin, and such dam has heretofore been proposed by the Kanawha Basin Comprehensive Study Coordinating Committee, a unit comprised of representatives of Virginia, North Carolina, West Virginia, the Corps of Engineers, U.S. Soil

Conservation Service, Department of Interior, the Federal Power Commission, Department of Transportation and the Department of Health, Education and Welfare; and

WHEREAS, The Kanawha River Basin area is subject to flooding, has a present and future need for additional water supply, has a need for greater water quality control, and has a great potential for recreational use; and

WHEREAS, The Swiss dam would provide approximately twenty-five percent of the water flow estimated as required in the lower Kanawha Basin by the year 2000, or 10,000 cubic feet per second; the present flow now being 1300 cubic feet per second at Gauley Bridge; and

WHEREAS, To provide the water needs of the lower basin the flow in the New River without the aid of increased flow from the Swiss dam would have to be at the rate of 5000 to 6000 cubic feet per second which would eliminate the recreational value of the New River because of the swiftness of the flow; and

WHEREAS, If the Swiss dam is not built there will be a lowering of priorities on such values as fishing and water recreation by depending on the proposed power projects farther up the New River; and

WHEREAS, This comprehensive water basin plan when reviewed from all aspects—industrial development, recreation, water supply and water pollution—appears to be the key to providing maximum benefits to all of the people living in the Kanawha Basin; and

WHEREAS, The Swiss dam would have an exceedingly beneficial economic effect on the entire area; therefore, be it

Resolved by the Legislature of West Virginia:

That the Legislature hereby expresses to the House Public Works Committee of the United States House of Representatives its support of a study of a multipurpose reservoir on the Gauley River near Swiss, Nicholas County, West Virginia; and, be it

Further Resolved, That the Clerk of the Senate is hereby directed to send copies of this resolution to each member of

West Virginia's Congressional delegation and to the Honorable George H. Fallon, chairman of the Committee on Public Works of the United States House of Representatives.

SENATE CONCURRENT RESOLUTION NO. 52

(By Mr. Martin)

[Adopted February 12, 1970]

Directing the Joint Committee on Government and Finance to make a study of the area of employer-employee relations in public employment.

WHEREAS, The State of West Virginia has at present no clear statute relating to the rights and duties of governmental employers and employees and relating to the prevention and settlement of labor disputes in public employment; and

WHEREAS, The entire area of labor relations in the public sector could benefit from statutory clarification of the rights and duties of public employers and employees; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance be and hereby is directed to study the subject of public employer-employee relations; and, be it

Further Resolved, That the Committee be authorized to receive the aid and advice of a citizens advisory committee; and, be it

Further Resolved, That the Speaker of the House of Delegates and the President of the Senate each be authorized to appoint five citizens of the State to create a ten member citizens advisory committee to aid and advise the Joint Committee in this study; and, be it

Further Resolved, That the Committee report to the regular session of the Legislature, 1971, on its findings, conclusions and recommendations, together with any proposed legislation that the Committee may recommend; and, be it

Further Resolved, That the expense necessary to conduct such a study and to reimburse the members of the citizens ad-

visory committee for any actual and necessary travel expenses be paid from legislative appropriations to the Joint Committee on Government and Finance.

SENATE CONCURRENT RESOLUTION NO. 53

(By Mr. Gainer)

[Adopted February 12, 1970]

Directing the Joint Committee on Government and Finance to conduct a comprehensive study of the Federal Coal Mine Health and Safety Act of 1969 and related West Virginia statutes.

WHEREAS, The United States Congress has declared that "there is an urgent need to provide more effective means and measures for improving the working conditions and practices in the nation's coal mines in order to prevent death and serious physical harm, and in order to prevent occupational diseases originating in such mines"; and

WHEREAS, The Federal Coal Mine Health and Safety Act of 1969 is an attempt by Congress to improve the working conditions and safety standards in coal mines; and

WHEREAS, The enumerated dates for compliance by the states with the provisions and standards of the Federal Coal Mine Health and Safety Act of 1969 vary according to the particular facet of coal mining specified in the Act; and

WHEREAS, It is in the best interest of the coal mines, coal industry and State of West Virginia that the West Virginia statutes, relating to the health and safety of persons working in the coal mining industry, be made to comply with the provisions and standards of the Federal Coal Mine Health and Safety Act by the 1971 regular session of the West Virginia Legislature; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance conduct a comprehensive study of Titles 1, 2, 3 and 4 of the Federal Coal Mine Health and Safety Act of 1969 and all

West Virginia statutes relating to the health and safety of persons working in the coal mining industry in order to bring the West Virginia statutes into required compliance with the provisions and standards required by the Federal Act; and, be it

Further Resolved, That the Committee report to the regular session of the Legislature, 1971, 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.

SENATE CONCURRENT RESOLUTION NO. 55

(By Mr. Carrigan and Mr. Holliday)

[Adopted February 12, 1970]

Directing the Joint Committee on Government and Finance to investigate the construction or renovation of additional maximum security prison facilities.

WHEREAS, A subcommittee of this Senate has heretofore recommended that the present facilities used to house maximum security prisoners are of improper design and of poor construction; and

WHEREAS, A special grand jury of Marshall County has found that the facilities at the Moundsville state prison for maximum security prisoners are of improper design and of poor construction; and

WHEREAS, Said grand jury has found that these conditions materially contributed to the escape of prisoners on December 2, 1969; and

WHEREAS, It has not been determined if the cost of improving the existing facilities is greater than the cost of building a new maximum security facility; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance is hereby directed to conduct an exhaustive study of the entire area of the improvement of the existing maximum security facilities at the state penitentiary or the construction of new maximum security facilities at another location, and that such committee shall make a full report of its investigation and recommendation for legislative or other action to the Legislature on or before January 1, 1971.

LEGISLATURE OF WEST VIRGINIA

ACTS OF 1969

FIRST EXTRAORDINARY SESSION (July 21-25, 1969)

CHAPTER 1

(Com. Sub. for Senate Bill No. 18—By Mr. Jackson, Mr. President,
and Mr. Carrigan)

[Passed July 25, 1969; in effect from passage. Approved by the Governor.]

AN ACT making supplementary appropriations of public money out of the treasury for certain spending units of state government by amending chapter six, acts of the Legislature, regular session, one thousand nine hundred sixty-nine, known as the Budget Bill, all embracing appropriations for commissions, departments, officers and other spending units of state government.

WHEREAS, The Governor has advised the Legislature that as a result of the balances remaining in the general fund state revenue and in certain special revenue accounts for the fiscal year ending June 30, 1969, exceeding the estimate of such balances previously made, economies put into effect, cutbacks in expenditure of appropriations for said fiscal year, and a revised estimate of funds available for the fiscal year ending June 30, 1970, including estimated expirations for the fiscal year 1969-70, in the amount of \$6,500,000.00, he finds that an amount in excess of the supplementary appropriations made by this act

is now available or will be available by the time such appropriations will be expended, and that he recommends that the supplemental appropriations embraced herein be made; therefore,

Be it enacted by the Legislature of West Virginia:

That Account No. 210, Account No. 300 and Account No. 405, title two, chapter six, acts of the Legislature, regular session, one thousand nine hundred sixty-nine, be amended and re-enacted, that said chapter be further amended by adding thereto a new account, designated Account No. 8285, and said chapter be further amended by making supplemental appropriations to various accounts, all to read as follows:

TITLE 2. APPROPRIATIONS.

§1. Appropriations from general revenue.

BUSINESS AND INDUSTRIAL RELATIONS

Department of commerce—Acct. No. 465

CHARITIES AND CORRECTION

West Virginia penitentiary—Acct. No. 375

EDUCATIONAL

Glenville state college—Acct. No. 322

West Virginia university—Acct. No. 300

EXECUTIVE

Department of finance and administration—Acct. No. 210

Governor's office—Acct. No. 120

HEALTH AND WELFARE

Department of welfare—Acct. No. 405

Hopemont state hospital—Acct. No. 430

JUDICIAL

State law library—Acct. No. 114

§2. Appropriations from other funds.

PAYABLE FROM SPECIAL REVENUE FUND

Public service commission—Acct. No. 8285

West Virginia board of regents (special capital improvement fund)—
Acct. No. 854

6—State Law Library

Acct. No. 114

Personal Services	\$	5,280.56
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8—Governor's Office

Acct. No. 120

West Virginia Housing Development Fund	\$	25,000.00
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Civil Contingent Fund		2,955.50
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14—Department of Finance and Administration

Acct. No. 210

Personal Services	\$	826,820.00
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Current Expenses		445,000.00
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Repairs and Alterations	125,000.00
Equipment	17,000.00
Postage	230,000.00
Records Management	49,000.00
Office of State Emergency Planning	24,900.00
State Agency Surplus Property	29,000.00
Information Systems Service Division	300,000.00
Major Building Repairs	325,000.00
National Youth Science Camp	80,000.00
Total	\$ 2,451,720.00

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

Any unexpended balance remaining in the "Major Building Repairs Account" at the close of the fiscal year 1968-69 is hereby reappropriated for expenditure during the fiscal year 1969-70.

Any unexpended balance remaining in the "Postage Account" at the close of the fiscal year

1968-69 is hereby reappropriated for expenditure during the fiscal year 1969-70.

The State Road Commission shall reimburse the appropriation of the Department of Finance and Administration monthly for all actual expenses incurred pursuant to (the provisions of) Chapter 17, Article 2-A, Section 13 of the Code of West Virginia.

31—*West Virginia University*

Acct. No. 300

Personal Services	\$18,097,225.00
Current Expenses	2,700,000.00
Repairs and Alterations	650,000.00
Equipment	1,200,000.00
Oak Wilt Control Research	10,000.00
State aid to students of Veterinary Medicine	43,800.00
Bureau for Coal Research	200,000.00
Forestry Products	82,800.00
Educational TV Program	300,000.00
Regional Research Institute	74,500.00
Intensive Agriculture-Demonstration Trial	26,000.00
Total	<u>\$23,384,325.00</u>

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

37—*Glennville State College*

Acct. No. 322

Repairs and Alterations (Science Building)	\$ 78,736.00
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53—*West Virginia Penitentiary*

Acct. No. 375

Personal Services	\$ 228,000.00
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60—*Department of Welfare*

Acct. No. 405

Personal Services	\$ 4,992,380.00
Current Expenses	1,650,000.00
Equipment	50,000.00
Public Assistance Grants (Classified Aid)	10,300,000.00
Aid to Crippled Children	770,000.00
Medical Services	2,500,000.00
Conservation of Vision and Prevention of Blindness	40,000.00
Child Welfare Services	231,000.00
General Relief and Boarding Care	3,120,000.00
Social Security Matching Fund	476,700.00
Day Care	50,000.00
Legal Services	25,000.00
Total	<u>\$24,205,080.00</u>

71—*Hopemont State Hospital*

Acct. No. 430

Personal Services	\$ 60,000.00
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79—*Department of Commerce*

Acct. No. 465

Personal Services	\$ 4,905.00
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139-A—*Public Service Commission—Gas Pipeline Division*

Acct. No. 8285

TO BE PAID FROM SPECIAL REVENUE FUND

Personal Services	\$ 55,504.00
Current Expenses	21,025.00
Equipment	6,931.00
Social Security Matching Fund	2,540.00
Retirement Matching Fund	4,000.00
Total	<u>\$ 90,000.00</u>

The total amount of this appropriation shall be paid from Special Revenue Fund out of receipts collected for or by the Public Service Commission pursuant to and in the exercise of regulatory authority over pipeline companies.

147—*West Virginia Board of Regents—Special Capital
Improvement Fund*

Acct. No. 854

TO BE PAID FROM SPECIAL REVENUE FUND

That items in lines 42, 43 and 44 be transferred as
to priority to read as follows:

Glenville State College

Land Acquisition	\$ 100,000.00
Classroom Building and Heating Complex	2,425,000.00
Total	\$ 2,525,000.00

The foregoing supplementary and deficiency appropriations are hereby appropriated from the State Fund, General Revenue, except as otherwise provided, in the amounts as itemized, for expenditure during the fiscal year one thousand nine hundred seventy, to supplement the 1969-70 appropriations and shall be available for expenditure upon the effective date of this act.

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CHAPTER 2

(House Bill No. 15—By Mr. Speaker, Mr. Boiarsky, and Mr. Seibert)

[Passed July 25, 1969; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections three and seven, article six, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the powers of the state building commission and increasing the aggregate amount of all issues of bonds outstanding at one time for authorized projects.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. STATE BUILDING COMMISSION.

§5-6-3. Powers of commission.

§5-6-7. Commission empowered to issue state building revenue bonds; form and requirements for bonds; procedure for issuance; temporary bonds; funds, grants and gifts.

§5-6-3. Powers of commission.

The commission shall have power:

1. To sue and be sued, plead and be impleaded;
2. To have a seal and alter the same at pleasure;
3. To contract to acquire and to acquire, in the name of the commission or of the state, by purchase or otherwise, real property or rights or easements necessary or convenient for its corporate purposes and to exercise the power of eminent domain to accomplish such purposes;
4. To acquire, hold and dispose of personal property for its corporate purposes;
5. To make bylaws for the management and regulation of its affairs;
6. With the consent of the attorney general of the state of West Virginia to use the facilities of his office, assistants and employees in all legal matters relating to or pertaining to the commission;
7. To appoint officers, agents and employees, and fix their compensation;
8. To make contracts, and to execute all instruments necessary or convenient to effectuate the intent of, and to exercise the powers granted to it by, this article;
9. To renegotiate all contracts entered into by it whenever, due to a change in situation, it appears to the commission that its interest will be best served;
10. To construct a building or buildings on real property, which it may acquire, or which may be owned by the state of West Virginia, in the city of Charleston, as convenient as may be to the capitol building, together with incidental approaches, structures and facilities, subject to such consent and approval of the city of Charleston in any case as may be necessary; and, in addition, to acquire or construct a warehouse, including office space therein, in Kanawha county for the West Virginia

alcohol beverage control commissioner, and equip and furnish the same; and to acquire or construct buildings and additions to buildings (and equip and furnish the same), including remodeling, renovation and repair, as may be required for the safety and care of patients, guests and inmates at hospitals under the jurisdiction and supervision of the department of mental health and at institutions under the jurisdiction and supervision of the commissioner of public institutions; and to formulate and program plans for the orderly and timely capital improvement of all of said hospitals and institutions and the state capitol buildings; and to construct a building or buildings in Kanawha county to be used as a general headquarters by the department of public safety to accommodate that department's executive staff, clerical offices, technical services, supply facilities and dormitory accommodations; and to develop, improve and expand state parks and recreational facilities to be operated by the department of natural resources; and to establish one or more systems or complexes of buildings and projects under control of the commission and, subject to prior agreements with holders of bonds previously issued, to change the same from time to time, in order to facilitate the issuance and sale of bonds of different series on a parity with each other or having such priorities between series as the commission may determine; and to acquire by purchase, eminent domain or otherwise all real property or interests therein necessary or convenient to accomplish the purposes of this subdivision;

11. To maintain, construct and operate a project authorized hereunder;

12. To charge rentals for the use of all or any part of a project or building at any time financed, constructed, acquired or improved in whole or in part with the proceeds of sale of bonds issued pursuant to this article, subject to and in accordance with such agreements with bondholders as may be made as hereinafter provided;

13. To issue negotiable bonds and to provide for the rights of the holders thereof;

14. To enter on any lands and premises for the purpose of making surveys, soundings and examinations;

15. To invest in United States government obligations, on a short-term basis, any surplus funds which the commission may have on hand pending the completion of any project or projects;

16. To do all things necessary or convenient to carry out the powers given in this article.

The rights and powers set forth in subdivision 10 of this section shall not be construed as in derogation of any rights and powers now vested in the West Virginia alcohol beverage control commissioner, the department of mental health, the commissioner of public institutions or the department of natural resources.

§5-6-7. Commission empowered to issue state building revenue bonds; form and requirements for bonds; procedure for issuance; temporary bonds; funds, grants and gifts.

The commission is hereby empowered to raise the cost of a project, as defined hereinabove, by the issuance of state building revenue bonds of the state, the principal of and interest on which bonds shall be payable solely from the special fund herein provided for such payment. Subject to the proceedings pursuant to which any bonds outstanding were authorized and issued pursuant to this article, the commission shall pledge the moneys in such special fund, except such part of the proceeds of sale of any bonds to be used to pay the cost of a project, for the payment of the principal of and interest on bonds issued pursuant to this article, such pledge to apply equally and ratably to separate series of bonds or upon such priorities as the commission shall determine. Such bonds shall be authorized by resolution of the commission which shall recite an estimate by the commission of such cost, and shall provide for the issuance of bonds in an amount sufficient, when sold as hereinafter provided, to produce such cost, less the amount of any funds, grant or grants, gift or gifts received, or in the opinion of the commission expected to be received from the United States of America or from any other source. The acceptance by the commission of any and all such funds, grants and gifts, whether in money or in land, labor or materials, is hereby expressly authorized. All such bonds shall have and

are hereby declared to have all the qualities of negotiable instruments. Such bonds shall bear interest at not more than eight percent per annum, payable semiannually, and shall mature in not more than forty years from their date or dates, and may be made redeemable at the option of the state, to be exercised by the commission, at such price and under such terms and conditions as the commission may fix prior to the issuance of such bonds. The commission shall determine the form of such bonds, including coupons to be attached thereto to evidence the right of interest payments, which bonds shall be signed by the chairman and secretary of the commission, under the great seal of the state, attested by the secretary of state, and the coupons attached thereto shall bear the facsimile signature of said chairman of the commission. In case any of the officers whose signatures appear on the bonds or coupons issued as hereinbefore authorized shall cease to be such officers before the delivery of such bonds, such signatures shall nevertheless be valid and sufficient for all purposes the same as if they had remained in office until such delivery. The commission shall fix the denominations of said bonds, the principal and interest of which shall be payable at the office of the treasurer of the state of West Virginia, at the capitol of said state, or, at option of the holder, at some bank or trust company in the city of New York to be named in the bonds in such medium as may be determined by the commission. The said bonds and interest thereon shall be exempt from taxation by the state of West Virginia, or any county or municipality therein. The commission may provide for the registration of such bonds in the name of the owner as to principal alone, and as to both principal and interest under such terms and conditions as the commission may determine, and shall sell such bonds in such manner as it may determine to be for the best interest of the state, taking into consideration the financial responsibility of the purchaser, and the terms and conditions of the purchase, and especially the availability of the proceeds of the bonds when required for payment of the cost of the project, such sale to be made at a price not lower than a price which, computed upon standard tables of bond values, will show a net return of not more than eight percent per annum to the purchaser upon the amount paid therefor. The proceeds of such bonds shall be used solely for the payment of the cost

of the project for which bonds were issued, and shall be deposited and checked out as provided by section four of this article, and under such further restrictions, if any, as the commission may provide. If the proceeds of bonds issued for a project shall exceed the cost thereof, the surplus shall be paid into the fund hereinafter provided for payment of the principal and interest of such bonds. Such fund may be used for the purchase of any of the outstanding bonds payable from such fund at the market price, but at not exceeding the price, if any, at which such bonds shall in the same year be redeemable, and all bonds redeemed or purchased shall forthwith be cancelled, and shall not again be issued. Prior to the preparation of definitive bonds, the commission may, under like restrictions, issue temporary bonds with or without coupons, exchangeable for definitive bonds upon the issuance of the latter. Notwithstanding the provisions of sections nine and ten, article six, chapter twelve of this code, revenue bonds issued under the authority herein granted shall be eligible as investments for the workmen's compensation fund, teachers retirement fund, department of public safety death, disability and retirement fund, West Virginia public employees retirement system and as security for the deposit of all public funds. Such revenue bonds may be issued without any other proceedings or the happenings of any other conditions or things than those proceedings, conditions and things which are specified and required by this article, or by the constitution of the state. The aggregate amount of all issues of bonds outstanding at one time for all projects authorized hereunder shall not exceed sixty-two million five hundred thousand dollars including the renegotiation, reissuance or refinancing of any such bonds. No bonds or other obligations shall be issued or incurred hereunder, unless and until the Legislature by concurrent resolution has approved the purpose and amount of each separate project.

CHAPTER 3

(Com. Sub. for House Bill No. 14—By Mr. Speaker, Mr. Boiarsky,
and Mr. Seibert)

[Passed July 25, 1969; in effect from passage. Approved by the Governor.]

AN ACT to repeal sections three and three-a, article nine, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section one of said article, relating to the department of commerce; abolishing the planning and research division of said department; and eliminating certain of the department's powers, duties and responsibilities in connection with recreational facilities and planning and coordinating activities.

Be it enacted by the Legislature of West Virginia:

That sections three and three-a, article nine, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that section one of said article be amended and reenacted to read as follows:

ARTICLE 9. DEPARTMENT OF COMMERCE.

§5-9-1. Department created; appointment and compensation of commissioner; divisions of department; powers and duties of commissioner and division directors; general powers and duties of department.

There is hereby created in the state government a department of commerce and the office of commissioner of commerce. The commissioner shall be the chief executive officer of the department and shall be appointed by the governor by and with the advice and consent of the Senate and shall be paid a salary, all as provided in section two-a, article seven, chapter six of this code. There shall be in the department of commerce an industrial development division and a travel development division. Each division shall be headed by a director, who shall be appointed by the commissioner of commerce, to serve at the will and pleasure of the commissioner of commerce. Each division director shall be qualified in his respective field by

special training and experience. The director of the industrial development division shall be trained and have experience in the field of industrial development. The director of the travel development division shall be trained and have experience in the field of travel development.

The commissioner of commerce shall have control and supervision of the department of commerce and shall be legally responsible for the work of each of its divisions. Under his control, each division director shall be accountable to the commissioner for the work of his division. The commissioner of commerce shall have the authority to employ such assistants as may be necessary for the efficient operation of the department.

The department of commerce shall have the authority and, within the limits of available funds, it shall be its duty to:

(1) Investigate, study and undertake ways and means of promoting and encouraging the prosperous development and protection of the legitimate interests and welfare of West Virginia business, industry and commerce, within and outside the state.

(2) Serve as a clearinghouse for industrial problems of the state.

(3) Promote and encourage the expansion and development of markets for West Virginia products.

(4) Promote and encourage the location and development of new business in the state and the maintenance and expansion of existing business.

(5) Investigate and study conditions affecting West Virginia business, industry and commerce; collect and disseminate information, and engage in technical studies, scientific investigations, statistical research and education activities necessary or useful for the proper execution of the powers and duties of the department.

(6) Plan and develop an effective business information service that will directly assist West Virginia industry and also encourage industries outside the state to use business facilities within the state.

(7) Compile, collect and periodically make available scientific indices and other information relating to current business conditions.

(8) Encourage and develop commerce with other states and devise methods of removing trade barriers that hamper the free flow of commerce between this and other states, and for these purposes cooperate with interstate commissions engaged in formulating and promoting the adoption of interstate compacts and agreements helpful to business, industry and commerce.

(9) Conduct or encourage research designed to further new and more extensive uses of the natural and other resources of the state with a view to the development of new products and industrial processes.

(10) Compile periodically a census of business and industry in the state, in cooperation with other agencies, and analyze and publish the information in such form as to be most valuable to business and industry.

(11) Compile periodically a census of the crafts, trades, skills and occupations of all adult persons in the state, in cooperation with other agencies, and analyze and publish the information in such form as to be most valuable to business and industry.

(12) Study long-range trends and developments in the industries of the state, and analyze the reasons underlying such trends; study costs and other factors affecting successful operation of businesses within the state.

(13) Advertise and publicize the material, economic and other advantages of the state which render it a desirable place for business and residence.

(14) Collect, compile and distribute information and literature concerning the advantages and attractions of the state, its historic and scenic points of interest, and the highway, transportation and other facilities of the state.

(15) Plan and carry out a program of information and publicity designed to attract to West Virginia tourists, visitors and other interested persons from outside the state.

(16) Encourage and cooperate with other public and private organizations or groups in their efforts to publicize the attractions and industrial advantages of the state.

(17) Accept and expend, without the necessity of appropriation by the Legislature, any gift or grant of money made to the department for any or all of the purposes specified in this section.

(18) Initiate, promote and conduct, or cause to be conducted, research designed to further new and more extensive uses and consumption of natural and other resources and their by-products; and for such purposes, to enter into contracts and agreements with research laboratories maintained by educational or endowed institutions in this state, and to extend appropriations to the department for such purposes.

(19) Prepare and maintain a comprehensive plan for the economic development of the state; and the department shall prepare and keep current a proposed long-range program of major state improvements relating to the comprehensive development of natural and artificial resources of this state, and shall cooperate with existing federal and state departments and other agencies or groups in perfecting and promoting the aforesaid comprehensive plan.

(20) Assist voluntary county or regional councils or groups in order to help effectuate the purposes of this article on a local level.

(21) Make recommendations to the governor and the Legislature of any legislation deemed necessary to facilitate the carrying out of any of the foregoing powers and duties, and to exercise any other power that may be necessary or proper for the orderly conduct of the business of the department and the effective discharge of the duties of the department.

CHAPTER 4

(House Bill No. 11—By Mr. Speaker, Mr. Boiarsky, and Mr. Seibert)

[Passed July 25, 1969; in effect from passage. Approved by the Governor.]

AN ACT to repeal articles twenty-three and twenty-four, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and to enact in lieu thereof a new article twenty-three of said chapter, relating to horse racing; relating to the West Virginia racing commission, its organization and operation; providing for the regulation and control of horse racing; requiring a license to hold or conduct a horse race meeting; requiring a permit to engage in certain types of employment in connection with a horse race meeting and establishing certain citizenship and residency requirements; providing definitions; establishing qualifications for members and employees of the West Virginia racing commission; specifying the powers and authority of the West Virginia racing commission; providing for applications for and the issuance of licenses and permits; authorizing the West Virginia racing commission to promulgate reasonable rules and regulations; providing that the West Virginia racing commission may by reasonable rules and regulations authorize stewards, starters and other racing officials to impose reasonable fines or other sanctions and stewards to rule individuals off the grounds of any horse race track; relating to the compensation and expenses of members and of other employees of the West Virginia racing commission; relating to purses in connection with horse race meetings; authorizing the West Virginia racing commission to refuse, suspend or revoke a license or permit and establishing the grounds therefor; authorizing stewards to suspend or revoke a permit; relating to the determination of racing dates; authorizing the pari-mutuel system of wagering upon horse races held or conducted under the regulation and control of the West Virginia racing commission and excepting such wagering from the gaming statutes; prohibiting minors from wagering at any horse race track;

establishing the maximum commission which may be deducted from pari-mutuel pools by licensees of the West Virginia racing commission; establishing a different maximum commission which may be deducted from pari-mutuel pools resulting from harness racing than the maximum commission which may be deducted from the pari-mutuel pools resulting from thoroughbred racing; imposing a daily license tax and a pari-mutuel pool tax on horse racing conducted under the regulation and control of the West Virginia racing commission; establishing a different tax on pari-mutuel pools resulting from harness racing than the tax on pari-mutuel pools resulting from thoroughbred racing; relating to the remitting of all daily license taxes and pari-mutuel pool taxes to the West Virginia racing commission; providing that such license tax is in lieu of other taxes except a license tax which may be imposed by a municipality on a horse race track located within or partly within such municipality; relating to the financial responsibility of licensees of the West Virginia racing commission; relating to the disposition of funds for the payment of outstanding and unredeemed pari-mutuel tickets; establishing procedures for making such tickets irredeemable and providing for certain awards from the resulting funds; authorizing certain permit and registration fees; providing a relief fund; authorizing the West Virginia racing commission to hold hearings; expressly providing that the provisions of chapter twenty-nine-a of the code shall govern the promulgation of all reasonable rules and regulations and the holding of hearings; authorizing the West Virginia racing commission to issue subpoenas and subpoenas duces tecum; relating to hearing costs; providing an automatic stay or suspension of execution of certain orders; providing for judicial review of the decisions of the West Virginia racing commission made following hearings; relating to the stay or suspension of execution of decisions pending judicial determination; authorizing certain appeals to the supreme court of appeals; providing for legal counsel for the West Virginia racing commission; authorizing injunctive relief; relating to the construction and establishment of horse race tracks for horse race meetings; requiring construction permits therefor; re-

lating to administrative procedures and hearings in connection therewith; providing for local option elections and procedures in connection with and incidental to the construction and establishment of horse race tracks; relating to criminal offenses and providing criminal penalties; providing a repealer; relating to the effect of article on existing rules and regulations, licenses, permits and construction permits; and providing a severability clause.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 23. HORSE RACING.

PART I. LICENSE REQUIRED FOR HORSE RACING AND PARI-MUTUEL WAGERING IN CONNECTION THEREWITH; PERMITS REQUIRED FOR CERTAIN HORSE RACE TRACK POSITIONS.

- §19-23-1. License required for horse racing and pari-mutuel wagering in connection therewith.
- §19-23-2. Permits required for horse race track positions; residency requirements for employees of licensees.

PART II. DEFINITIONS; WEST VIRGINIA RACING COMMISSION—ORGANIZATION AND OPERATION.

- §19-23-3. Definitions.
- §19-23-4. West Virginia racing commission continued; public corporation; vacancies in office; qualifications of members; compensation and expenses of members; organization and meetings of racing commission; transaction of business; annual report.

PART III. RACING SECRETARY AND OTHER PERSONNEL AND EMPLOYEES OF RACING COMMISSION.

- §19-23-5. Racing secretary; stewards and employees; qualifications; compensation and expenses; payment of compensation and expenses generally.

PART IV. POWERS AND AUTHORITY OF RACING COMMISSION.

- §19-23-6. Powers and authority of racing commission.

PART V. LICENSE AND PERMIT PROCEDURES.

- §19-23-7. Application for license; time for filing; disclosure required; verification.
- §19-23-8. Consideration of application; issuance of license or permit; contents of license or permit; denial of application; determination of racing dates; license not transferable or assignable; limitation on license; validity of permit; permit not transferable or assignable.

**PART VI. PARI-MUTUEL SYSTEM OF WAGERING AUTHORIZED;
COMMISSIONS DEDUCTED FROM PARI-MUTUEL POOLS.**

§19-23-9. Pari-mutuel system of wagering authorized; no other wagering to be permitted; commissions of licensees on pari-mutuel pools; auditing; minors.

**PART VII. TAXATION OF HORSE RACING AND PARI-MUTUEL
WAGERING; DISPOSITION OF REVENUES.**

§19-23-10. Daily license tax; pari-mutuel pools tax; how taxes paid.

§19-23-11. Revenues to be paid into general revenue fund.

§19-23-12. License tax to be in lieu of all other license, etc., taxes; exception.

**PART VIII. DISPOSITION OF FUNDS FOR PAYMENT OF OUTSTANDING
AND UNREDEEMABLE PARI-MUTUEL TICKETS;
IRREDEEMABLE TICKETS; AWARDS.**

§19-23-13. Disposition of funds for payment of outstanding and unredeemed pari-mutuel tickets; irredeemable tickets; awards to resident owners, etc., of winning horses.

**PART IX. DISPOSITION OF PERMIT FEES, REGISTRATION
FEES AND FINES.**

§19-23-14. Disposition of permit fees, registration fees and fines.

PART X. HEARING PROCEDURES; JUDICIAL REVIEW.

§19-23-15. Suspension or revocation of license or permit.

§19-23-16. Procedures for hearing.

§19-23-17. Judicial review; appeal to supreme court of appeals; legal representation for racing commission.

**PART XI. CONSTRUCTION AND ESTABLISHMENT OF
HORSE RACE TRACKS.**

§19-23-18. Horse race track construction permits; application therefor.

§19-23-19. Determination by racing commission; tentative approval of application for construction permit; publication.

§19-23-20. Petition for local option election.

§19-23-21. Local option election procedure; form of ballots or ballot labels.

§19-23-22. Issuance or nonissuance of a construction permit; duration of a construction permit; transfer and assignment of a construction permit.

§19-23-23. Further elections restricted.

§19-23-24. Applicability of certain sections of article to horse race tracks already constructed and established.

PART XII. INJUNCTIVE RELIEF.

§19-23-25. Actions to enjoin violations.

PART XIII. OFFENSES AND PENALTIES.

§19-23-26. Offenses and penalties.

**PART XIV. REPEALER; EFFECT ON EXISTING RULES AND
REGULATIONS, LICENSES AND PERMITS.**

§19-23-27. Repealer.

§19-23-28. Effect on existing rules and regulations, licenses and permits.

PART XV. SEVERABILITY.

§19-23-29. Severability.

**PART I. LICENSE REQUIRED FOR HORSE RACING AND PARI-MUTUEL
WAGERING IN CONNECTION THEREWITH; PERMITS REQUIRED
FOR CERTAIN HORSE RACE TRACK POSITIONS.**

**§19-23-1. License required for horse racing and pari-mutuel
wagering in connection therewith.**

(a) No association shall hold or conduct any horse race meeting at which horse racing is permitted for any purse unless such association possesses a license therefor from the West Virginia racing commission and complies with the provisions of this article and all reasonable rules and regulations of such racing commission.

(b) Notwithstanding the provisions of subsection (a) of this section, the provisions of this article shall not be construed to prevent in any way the use without a license of any grounds, enclosure of race track owned and controlled by any association for any local, county or state fair, horse show or agriculture or livestock exposition, even though horse racing be there conducted, if the pari-mutuel system of wagering upon the results of such horse racing is neither permitted nor conducted with the knowledge or acquiescence of the association conducting such horse racing.

§19-23-2. Permits required for horse race track positions; residency requirements for employees of licensees.

(a) No person not required to be licensed under the provisions of section one of this article shall participate in or have anything to do with horse racing for a purse or a horse race meeting at any licensee's horse race track, place or enclosure, where the pari-mutuel system of wagering upon the results of such horse racing is permitted or conducted, as a horse owner, jockey, apprentice jockey, exercise boy, trainer, groom, plater, stable foreman, valet, veterinarian, agent, clerk of the scales, starter, assistant starter, timer, judge or pari-mutuel employee, or in any other capacity specified in reasonable rules and regulations of the racing commission unless such person possesses a permit therefor from the West Virginia racing commission and complies with the provisions of this article and all reasonable rules and regulations of such racing commission.

(b) At least eighty percent of the individuals employed by a licensee at any horse race meeting must be citizens and residents of this state and must have been such citizens and

residents for at least one year. For the purpose of this subsection, citizens and residents of this state shall be construed to mean individuals who maintain a permanent place of residence in this state, and have been bona fide residents and citizens of this state for a period of one year immediately prior to the filing of their applications for employment. The provisions of this subsection shall not apply to individuals engaged in the construction of a horse race track or in the equipping of same, nor to racing officials designated by the racing commission or racing officials designated by the executive officials of a licensee.

PART II. DEFINITIONS; WEST VIRGINIA RACING COMMISSION—
ORGANIZATION AND OPERATION.

§19-23-3. Definitions.

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

(1) "Horse racing" shall mean any type of horse racing, including, but not limited to, thoroughbred racing and harness racing;

(2) "Thoroughbred racing" shall mean flat or running type horse racing in which each horse participating therein is a thoroughbred and is mounted by a jockey;

(3) "Harness racing" shall mean horse racing in which the horses participating therein are harnessed to a sulky, carriage or other vehicle, and shall not include any form of horse racing in which the horses are mounted by jockeys;

(4) "Horse race meeting" shall mean the whole consecutive period of time, Sundays excluded, for which a license is required by the provisions of section one of this article;

(5) "Purse" shall mean any purse, stake or award for which a horse race is run;

(6) "Racing association" or "person" shall mean any individual, partnership, firm, association, corporation or other entity or organization of whatever character or description;

(7) "Applicant" shall mean any racing association making application for a license under the provisions of this article, or any person making application for a permit under the provisions of this article, or any person making application for a construction permit under the provisions of this article, as the case may be;

(8) "License" shall mean the license required by the provisions of section one of this article;

(9) "Permit" shall mean the permit required by the provisions of section two of this article;

(10) "Construction permit" shall mean the construction permit required by the provisions of section eighteen of this article;

(11) "Licensee" shall mean any racing association holding a license required by the provisions of section one of this article and issued under the provisions of this article;

(12) "Permit holder" shall mean any person holding a permit required by the provisions of section two of this article and issued under the provisions of this article;

(13) "Construction permit holder" shall mean any person holding a construction permit required by the provisions of section eighteen of this article and issued under the provisions of this article;

(14) "Hold or conduct" shall include "assist, aid or abet in holding or conducting";

(15) "Racing commission" shall mean the West Virginia racing commission;

(16) "Stewards" shall mean the steward or stewards representing the racing commission, the steward or stewards representing a licensee and any other steward or stewards, whose duty it shall be to supervise any horse race meeting, all as may be provided by reasonable rules and regulations of the racing commission, and such reasonable rules and regulations shall specify the number of stewards to be appointed, the method and manner of their appointment and their powers, authority and duties;

(17) "Pari-mutuel" means a mutuel or collective pool that can be divided among those who have contributed their wagers to one central agency, the odds to be reckoned in accordance to the collective amounts wagered upon each contestant running in a horse race upon which the pool is made, but the total to be divided among the first three contestants on the basis of the number of wagers on these;

(18) "Pool" shall mean a combination of interests in a joint wagering enterprise, or a stake in such enterprise;

(19) "Legitimate breakage" is the percentage left over in the division of a pool;

(20) "To the dime" shall mean that wagers shall be figured and paid to the dime; and

(21) "Code" shall mean the code of West Virginia, one thousand nine hundred thirty-one, as heretofore and hereafter amended.

§19-23-4. West Virginia racing commission continued; public corporation; vacancies in office; qualifications of members; compensation and expenses of members; organization and meetings of racing commission; transaction of business; annual report.

(a) The "West Virginia racing commission," heretofore created, shall continue in existence as a public corporation, and, as such, may contract and be contracted with, plead and be impleaded, sue and be sued and have and use a common seal.

(b) The racing commission shall consist of three members, not more than two of whom shall belong to the same political party, to be appointed by the governor by and with the advice and consent of the Senate. The term of office for the members of such racing commission shall be four years, and until their successors have been appointed and have qualified, and members of the racing commission may serve any number of successive terms. The members of the racing commission in office on the effective date of this article shall, unless removed by the governor after the effective date of this article, continue to serve until their terms expire and until their successors have been appointed and have qualified. Any vacancy in the office of a member of the racing commission shall be filled by appointment by the governor for the unexpired term of the member whose office shall be vacant. No individual shall be eligible for appointment to or to serve upon the racing commission:

(1) Unless he is an actual and bona fide resident of this state, shall have resided in this state for a period of at least

five years next preceding his appointment, shall be a qualified voter of this state and be not less than twenty-five years of age;

(2) Who directly or indirectly, or in any capacity, owns or has any interest, in any manner whatever, in any race track where horse race meetings may be held, including, but not limited to, an interest as owner, lessor, lessee, stockholder or employee;

(3) While serving as a member of the Legislature or as an elective officer of this state; or

(4) Who has been or shall be convicted of an offense which, under the law of this state or any other state or of the United States of America, constitutes a felony, or is a violation of article four, chapter sixty-one of this code.

(c) Each member of the racing commission shall receive a salary of five thousand dollars per annum to be paid in monthly installments and shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of his duties as a member of the racing commission.

(d) The racing commission shall have its principal office at the seat of government, and shall meet annually at its principal office in the month of January, and at such other times and places as shall be designated by its chairman. At such annual meeting the racing commission shall elect from its membership a chairman and such other officers as may be desired. Other meetings of the racing commission may be called by the chairman on such notice to the other members as may be prescribed by the racing commission.

(e) A majority of the members of the racing commission shall constitute a quorum for the transaction of its business or the exercise of any of its powers and authority. No individual not a bona fide member of the racing commission shall vote upon or participate in the deliberations of the racing commission on any matter which may come before it. All racing commission records, except as otherwise provided by law, shall be open to public inspection during regular office hours.

(f) As soon as possible after the close of each calendar year, the racing commission shall submit to the governor a

report of the transactions of the racing commission during the preceding calendar year.

**PART III. RACING SECRETARY AND OTHER PERSONNEL AND
EMPLOYEES OF RACING COMMISSION.**

§19-23-5. Racing secretary; stewards and employees; qualifications; compensation and expenses; payment of compensation and expenses generally.

(a) The racing commission shall appoint a racing secretary to represent the racing commission and such racing secretary shall possess such powers and authority and perform such duties as the racing commission may direct or prescribe. The racing secretary shall preserve at the racing commission's principal office all books, maps, records, documents and other papers of the racing commission. The racing secretary shall, in addition to all other duties imposed upon him by the racing commission, serve in a liaison capacity between licensees and the racing commission. The racing commission may also employ, direct and define the duties of an assistant racing secretary and such stenographers, clerks and other office personnel as it may deem necessary to carry out the duties imposed upon it under the provisions of this article.

(b) In addition to the employees referred to above, the racing commission shall employ, direct and define the duties of a chief clerk, director of security, director of audit, chief chemist, stewards to represent the racing commission, supervisors of the pari-mutuel wagering conducted under the provisions of this article, veterinarians, inspectors, accountants, guards and all other employees deemed by the racing commission to be essential in connection with any horse race meeting. The director of audit shall be a certified public accountant or experienced public accountant.

(c) No individual shall knowingly be employed or be continued in employment by the racing commission in any capacity whatever:

(1) Who directly or indirectly, or in any capacity, owns or has any interest, in any manner whatever, in any race track where horse race meetings may be held, including, but not limited to, an interest as owner, lessor, lessee, stockholder or employee;

(2) Who at the time is or has been within one year prior thereto a member of the Legislature or an elective officer of this state, unless he is experienced and qualified as a racing official; or

(3) Who has been or shall be convicted of an offense which, under the law of this state or any other state or of the United States of America, constitutes a felony, or is a violation of article four, chapter sixty-one of this code. Any steward employed by the racing commission or by a licensee shall be a person of integrity, and experienced and qualified for such position by the generally accepted practices and customs of horse racing in the United States.

(d) The racing secretary and all other employees of the racing commission shall serve at the will and pleasure of the racing commission. The racing secretary and the other employees referred to in this section as employees of the racing commission shall receive such compensation as may be fixed by the racing commission within the limit of available funds, and shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of their official duties.

(e) All compensation and reimbursement for expenses of the members of the racing commission, the racing secretary and all other employees of the racing commission shall be paid from the funds in the hands of the state treasurer collected under the provisions of this article and shall be itemized in the budget in the same manner as all other departments of state government, but no reimbursement for expenses incurred shall be paid unless an itemized account thereof, under oath, be first filed with the state auditor.

PART IV. POWERS AND AUTHORITY OF RACING COMMISSION.

§19-23-6. Powers and authority of racing commission.

(a) The racing commission shall have full jurisdiction over and shall supervise all horse race meetings and all persons involved in the holding or conducting of horse race meetings, and, in this regard, it shall have plenary power and authority:

(1) To investigate applicants and determine the eligibility of such applicants for a license or permit or construction permit under the provisions of this article;

(2) To fix, from time to time, the annual fee to be paid to the racing commission for any permit required under the provisions of section two of this article;

(3) To promulgate reasonable rules and regulations implementing and making effective the provisions of this article and the powers and authority conferred and the duties imposed upon the racing commission under the provisions of this article, including, but not limited to, reasonable rules and regulations under which all horse races and horse race meetings shall be held and conducted, all of which reasonable rules and regulations shall be promulgated in accordance with the provisions of article three, chapter twenty-nine-a of this code;

(4) To register colors and assumed names and to fix, from time to time, the annual fee to be paid to the racing commission for any such registration;

(5) To fix and regulate the minimum purse to be offered during any horse race meeting;

(6) To fix a minimum and a maximum number of horse races to be held on any respective racing day;

(7) To enter the office, horse race track, facilities and other places of business of any licensee to determine whether the provisions of this article and its reasonable rules and regulations are being complied with, and for this purpose, the racing commission, its racing secretary, representatives and employees may visit, investigate and have free access to any such office, horse race track, facilities and other places of business;

(8) To investigate alleged violations of the provisions of this article, its reasonable rules and regulations, orders and final decisions and to take appropriate disciplinary action against any licensee or permit holder or construction permit holder for the violation thereof or institute appropriate legal action for the enforcement thereof or take such disciplinary action and institute such legal action;

(9) By reasonable rules and regulations, to authorize stewards, starters and other racing officials to impose reasonable fines or other sanctions upon any person connected with or involved in any horse racing or any horse race meeting; and to authorize stewards to rule off the grounds of any horse race

track any tout, bookmaker or other undesirable individual deemed inimicable to the best interests of horse racing or the pari-mutuel system of wagering in connection therewith;

(10) To require at any time the removal of any racing official or racing employee of any licensee, for the violation of any provision of this article, any reasonable rule and regulation of the racing commission or for any fraudulent practice;

(11) To acquire, establish, maintain and operate, or to provide by contract for the maintenance and operation of, a testing laboratory and related facilities, for the purpose of conducting saliva, urine and other tests on the horse or horses run or to be run in any horse race meeting, and to purchase all equipment and supplies deemed necessary or desirable in connection with the acquisition, establishment, maintenance and operation of any such testing laboratory and related facilities and all such tests;

(12) To hold up, in any disputed horse race, the payment of any purse, pending a final determination of the results thereof;

(13) To require each licensee to file an annual balance sheet and profit and loss statement pertaining to such licensee's horse racing activities in this state, together with a list of each such licensee's stockholders or other persons having any beneficial interest in the horse racing activities of such licensee;

(14) To issue subpoenas for the attendance of witnesses and subpoenas duces tecum for the production of any books, records and other pertinent documents, and to administer oaths and affirmations to such witnesses, whenever, in the judgment of the racing commission, it is necessary to do so for the effective discharge of its duties under the provisions of this article;

(15) To keep accurate and complete records of its proceedings and to certify the same as may be appropriate; and

(16) To take such other action as may be reasonable or appropriate to effectuate the provisions of this article and its reasonable rules and regulations.

(b) The racing commission shall not interfere in the internal business or internal affairs of any licensee.

PART V. LICENSE AND PERMIT PROCEDURES.

§19-23-7. Application for license; time for filing; disclosure required; verification.

(a) Any racing association desiring to hold or conduct a horse race meeting, where the pari-mutuel system of wagering is permitted and conducted, during any calendar year, shall file with the racing commission an application for a license to hold or conduct such horse race meeting. A separate application shall be filed for each separate license sought for each horse race meeting which such applicant proposes to hold or conduct. The racing commission shall prescribe blank forms to be used in making such application. Such application shall be filed on or before a day to be fixed by the racing commission and shall disclose, but not be limited to, the following:

(1) If the applicant be an individual, the full name and address of the applicant;

(2) If the applicant be a partnership, firm or association, the full name and address of each partner or member thereof, the name of the partnership, firm or association and its post-office address;

(3) If the applicant be a corporation, its name, the state of its incorporation, its post-office address, the full name and address of each officer and director thereof, and if a foreign corporation, whether it is qualified to do business in this state;

(4) The dates such applicant intends to hold or conduct such horse race meeting (which shall be successive week days, excluding Sundays);

(5) The location of the horse race track, place or enclosure where such applicant proposes to hold or conduct such horse race meeting;

(6) Whether the applicant, any partner, member, officer or director has previously applied for a license under the provisions of this article or for a similar license in this or any other state, and if so, whether such license was issued or refused, and, if issued, whether it was ever suspended or revoked; and

(7) Such other information as the racing commission may reasonably require which may include information relating

to any criminal record of the applicant, if an individual, or of each partner or member, if a partnership, firm or association, or of each officer and director, if a corporation.

(b) Such application shall be verified by the oath or affirmation of the applicant for such license, if an individual, or if the applicant is a partnership, firm, association or corporation, by a partner, member or officer thereof, as the case may be. When required by the racing commission, an applicant for a license shall also furnish evidence satisfactory to the racing commission of such applicant's ability to pay all taxes due the state, purses, salaries of officials and other expenses incident to the horse race meeting for which a license is sought. In the event the applicant is not able to furnish such satisfactory evidence of such applicant's ability to pay such expenses and fees, the racing commission may require bond or other adequate security before the requested license is issued.

(c) Any person desiring to obtain a permit, as required by the provisions of section two of this article, shall make application therefor on a form prescribed by the racing commission. The application for any such permit shall be accompanied by the fee prescribed therefor by the racing commission. Each applicant for a permit shall set forth in the application such information as the racing commission shall reasonably require.

§19-23-8. Consideration of application; issuance of license or permit; contents of license or permit; denial of application; determination of racing dates; license not transferable or assignable; limitation on license; validity of permit; permit not transferable or assignable.

(a) The racing commission shall promptly consider any application for a license or permit, as the case may be. Based upon such application and all other information before it, the racing commission shall make and enter an order either approving or denying such application. The application shall be denied for any reason specified in subsection (b) of this section. If an application for a license is approved, the racing commission shall issue a license to conduct a horse race meet-

ing, and shall designate on the face of such license the kind or type of horse racing for which the same is issued, the racing association to which the same is issued, the dates upon which such horse race meeting is to be held or conducted (which shall be successive week days, excluding Sundays), the location of the horse race track, place or enclosure where such horse race meeting is to be held or conducted and such other information as the racing commission shall deem proper. If an application for a permit is approved, the racing commission shall issue a permit and shall designate on the face of such permit such information as the racing commission shall deem proper.

(b) The racing commission shall deny the application and refuse to issue the license or permit, as the case may be, which denial and refusal shall be final and conclusive unless a hearing is demanded in accordance with the provisions of section sixteen of this article, if the racing commission finds that the applicant (individually, if an individual, or the partners or members, if a partnership, firm or association, or the owners and directors, if a corporation):

(1) Has knowingly made false statement of a material fact in the application or has knowingly failed to disclose any information called for in the application;

(2) Is or has been guilty of any corrupt or fraudulent act, practice or conduct in connection with any horse race meeting in this or any other state;

(3) Has been convicted, within ten years prior to the date of such application, of an offense which under the law of this state, of any other state or of the United States of America, shall constitute a felony or a crime involving moral turpitude;

(4) Has failed to comply with the provisions of this article or any reasonable rules and regulations of the racing commission;

(5) Has had a license to hold or conduct a horse race meeting or a permit to participate therein denied for just cause, suspended or revoked in any other state;

(6) Has defaulted in the payment of any obligation or debt due to this state under the provisions of this article;

(7) Is, if a corporation, neither incorporated under the laws of this state nor qualified to do business within this state;

(8) In the case of an application for a license, has failed to furnish bond or other adequate security, if the same is required by the racing commission under the provisions of section seven of this article;

(9) In the case of an application for a permit, is unqualified to perform the duties required for the permit sought; or

(10) In the case of an application for a permit, is, for just cause, determined to be undesirable to perform the duties required of such applicant.

(c) In issuing licenses and fixing dates for horse race meetings at the various horse race tracks in this state, the racing commission shall consider the horse racing circuits with which the horse race tracks in this state are associated or contiguous to, and shall also consider dates which are calculated to increase the tax revenues accruing from horse racing.

(d) A license issued under the provisions of this article is neither transferable nor assignable to any other racing association and shall not permit the holding or conducting of a horse race meeting at any horse race track, place or enclosure not specified thereon. However, if the specified horse race track, place or enclosure becomes unsuitable for the horse race meeting because of flood, fire or other catastrophe, or cannot be used for any reason, the racing commission may, upon application, authorize the horse race meeting, or any remaining portion thereof, to be conducted at any other horse race track, place or enclosure available for that purpose, provided that the owner of such horse race track, place or enclosure willingly consents to the use thereof.

(e) No type of horse racing shall be conducted by a licensee at any horse race meeting other than that type for which a license for such horse race meeting was issued.

(f) Each permit issued under the provisions of this section shall be for the period ending December thirty-first of the year for which it was issued, and shall be valid at all horse race meetings during the period for which it was issued, unless it

be sooner suspended or revoked in accordance with the provisions of this article. A permit issued under the provisions of this article is neither transferable nor assignable to any other person.

**PART VI. PARI-MUTUEL SYSTEM OF WAGERING AUTHORIZED;
COMMISSIONS DEDUCTED FROM PARI-MUTUEL POOLS.**

**§19-23-9. Pari-mutuel system of wagering authorized; no other
wagering to be permitted; commissions of licensees
on pari-mutuel pools; auditing; minors.**

(a) The pari-mutuel system of wagering upon the results of any horse race at any horse race meeting conducted or held by any licensee is hereby authorized, if and only if such pari-mutuel wagering is conducted by such licensee within the confines of such licensee's horse race track, and the provisions of section one, article ten, chapter sixty-one of this code, relating to gaming, shall not apply to the pari-mutuel system of wagering in manner and form as provided for in this article at any horse race meeting within this state where horse racing shall be permitted for any purse by any licensee. A licensee shall permit or conduct only the pari-mutuel system of wagering within the confines of such licensee's horse race track at which any horse race meeting is conducted or held.

(b) A licensee is hereby expressly authorized to deduct a commission from the pari-mutuel pools, as follows:

(1) The commission deducted by any licensee from the pari-mutuel pools on thoroughbred racing shall not exceed sixteen percent of the total of such pari-mutuel pools for the day. Out of such commission, the licensee shall pay the pari-mutuel pools tax provided for in subsection (b), section ten of this article, and shall deposit one percent of such commission in a special fund to be established by the licensee and to be used for the augmentation of the regular purses offered by the licensee. The remainder of the commission shall be retained by the licensee.

(2) The commission deducted by any licensee from the pari-mutuel pools on harness racing shall not exceed seventeen percent of the total of such pari-mutuel pools for the day. Out of such commission, the licensee shall pay the pari-mutuel

pools tax provided for in subsection (c), section ten of this article. The remainder of the commission shall be retained by the licensee.

(c) In addition to any such commission, a licensee shall also be entitled to retain the legitimate breakage, which shall be made and calculated to the dime.

(d) The director of audit, and any other auditors employed by the racing commission who shall also be certified public accountants or experienced public accountants, shall have free access to the space or enclosure where the pari-mutuel system of wagering is conducted or calculated at any horse race meeting for the purpose of ascertaining whether or not the licensee is deducting and retaining only a commission as provided in this section and is otherwise complying with the provisions of this section. They shall also, for the same purposes only, have full and free access to all records and papers pertaining to such pari-mutuel system of wagering, and shall report to the racing commission in writing, under oath, whether or not the licensee has deducted and retained any commission in excess of that permitted under the provisions of this section or has otherwise failed to comply with the provisions of this section.

(e) No licensee shall permit or allow any individual under the age of twenty-one years to wager at any horse race track, knowing or having reason to believe that such individual is under the age of twenty-one years.

PART VII. TAXATION OF HORSE RACING AND PARI-MUTUEL WAGERING; DISPOSITION OF REVENUES.

§19-23-10. Daily license tax; pari-mutuel pools tax; how taxes paid.

(a) Any racing association conducting thoroughbred racing at any horse race track in this state shall pay each day upon which horse races are run a daily license tax of two hundred fifty dollars. Any racing association conducting harness racing at any horse race track in this state shall pay each day upon which horse races are run a daily license tax of one hundred fifty dollars. In the event thoroughbred racing and harness racing are conducted on the same day at the same

horse race track by the same racing association, only one daily license tax in the amount of two hundred fifty dollars shall be paid for that day. Any such daily license tax shall not apply to any local, county or state fair, horse show or agricultural or livestock exposition at which horse racing is conducted for not more than six days.

(b) Any racing association licensed by the racing commission to conduct thoroughbred racing and permitting and conducting pari-mutuel wagering under the provisions of this article shall, in addition to the aforementioned daily license tax, pay to the racing commission, from the commission deducted each day by such licensee from the pari-mutuel pools on thoroughbred racing, as a tax, five and three-fourths percent of the total contribution to all such pari-mutuel pools conducted or made at any and every thoroughbred race meeting of the licensee licensed under the provisions of this article: *Provided*, That any such racing association operating a horse race track in this state having an average daily pari-mutuel pool on horse racing of one hundred fifty thousand dollars or less, per day, for the race meetings, of the preceding calendar year, shall, in lieu of payment of the five and three-fourths percent pari-mutuel pool tax as aforesaid be permitted to conduct pari-mutuel wagering at such horse race track on the basis of a daily pari-mutuel pool tax fixed as follows: On the daily pari-mutuel pool not exceeding one hundred fifty thousand dollars the daily pari-mutuel pool tax shall be four thousand dollars plus five and three-fourths percent of the daily pari-mutuel pool, if any, in excess of one hundred fifty thousand dollars.

(c) Any racing association licensed by the racing commission to conduct harness racing and permitting and conducting pari-mutuel wagering under the provisions of this article shall, in addition to the aforementioned daily license tax, pay to the racing commission, from the commission deducted each day by the licensee from the pari-mutuel pools on harness racing, as a tax, three percent of the first one hundred thousand dollars wagered, or any part thereof; four percent of the next one hundred fifty thousand dollars; and five and three-fourths percent of all over that amount wagered

each day in all such pari-mutuel pools conducted or made at any and every harness race meeting of the licensee licensed under the provisions of this article.

(d) All daily license and pari-mutuel pools tax payments required under the provisions of this section shall be made to the racing commission or its agent after the last race of each and every day of each and every horse race meeting, and the pari-mutuel pools tax payments shall be made from all contributions to all pari-mutuel pools to each and every race of the day.

§19-23-11. Revenues to be paid into general revenue fund.

All revenues collected pursuant to the provisions of this article as license taxes or pari-mutuel pool taxes shall be paid by the racing commission to the state treasurer and be deposited by him to the credit of the general revenue fund of the state. Remittance of all such collected and accrued revenues shall be made by the racing commission to the state treasurer at least one time during each thirty-day period of the racing season, and a final remittance as to any particular horse race meeting shall be made within thirty days from and after the close of each such horse race meeting.

§19-23-12. License tax to be in lieu of all other license, etc., taxes; exception.

The license tax imposed in section ten of this article shall be in lieu of all other license, income, excise, special or franchise taxes of this state, and no county or municipality or other political subdivision of this state shall be empowered to levy or impose any license, income, pari-mutuel, excise, special or franchise tax on any racing association engaged in the business of conducting a horse race meeting at which horse races are run for purses under the jurisdiction of and being licensed by the racing commission, or on the operation or maintenance of the pari-mutuel system of wagering, or on the sale of any commodity during a horse race meeting at which horse races are run, or at any such horse race track: *Provided*, That the foregoing provisions of this section shall in no way affect, abridge or abolish the authority of a municipality to impose the license tax authorized by the provisions of section eight, article thirteen, chapter eight of this code.

**PART VIII. DISPOSITION OF FUNDS FOR PAYMENT OF OUTSTANDING
AND UNREDEEMABLE PARI-MUTUEL TICKETS;
IRREDEEMABLE TICKETS; AWARDS.**

**§19-23-13. Disposition of funds for payment of outstanding and
unredeemed pari-mutuel tickets; irredeemable
tickets; awards to resident owners, etc., of win-
ning horses.**

(a) All moneys held by any licensee for the payment of outstanding and unredeemed pari-mutuel tickets, if not claimed within ninety days after the close of the horse race meeting in connection with which the tickets were issued, shall be turned over by the licensee to the racing commission within fifteen days after the expiration of such ninety-day period, and the licensee shall give such information as the racing commission may require concerning such outstanding and unredeemed tickets. All such moneys shall be deposited by the racing commission in a banking institution of its choice in a special account to be known as "West Virginia Racing Commission Special Account—Unredeemed Pari-Mutuel Tickets." Notice of the amount, date and place of such deposit shall be given by the racing commission, in writing, to the state treasurer. The racing commission shall then cause to be published a notice to the holders of such outstanding and unredeemed pari-mutuel tickets, notifying them to present such tickets for payment at the principal office of the racing commission within ninety days from the date of the publication of such notice. Such notice shall be published in the week following the close of such horse race meeting as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county in which such horse race meeting was held.

(b) Any such pari-mutuel tickets that shall not be presented for payment within ninety days from the date of the publication of the notice shall thereafter be irredeemable, and the moneys theretofore held for the redemption of such pari-mutuel tickets shall become the property of the racing commission, and shall be expended as follows:

(1) To the owner of the winning horse in any horse race at a horse race meeting held or conducted by any licensee,

provided that the owner of such horse is at the time of such horse race a bona fide resident of this state, a sum equal to ten percent of the purse won by such horse;

(2) To the breeder (that is, the owner of the mare) of the winning horse in any horse race at a horse race meeting held or conducted by any licensee, provided that such breeder was at the time such winning horse was foaled a bona fide resident of this state, a sum equal to ten percent of the purse won by such horse; and

(3) To the owner of the stallion which sired the winning horse in any horse race at a horse race meeting held or conducted by any licensee, provided that the mare which foaled such winning horse was served by such stallion in this state, and the owner of such stallion was at the time of such service a bona fide resident of this state, a sum equal to ten percent of the purse won by such horse.

(c) One person may qualify for any one or all of the awards aforesaid.

(d) The cost of publication of the notice provided for in this section shall be paid from the funds in the hands of the state treasurer collected from the pari-mutuel pools tax provided for in section ten of this article, when not otherwise provided in the budget; but no such costs shall be paid unless an itemized account thereof, under oath, be first filed with the state auditor.

PART IX. DISPOSITION OF PERMIT FEES, REGISTRATION FEES AND FINES.

§19-23-14. Disposition of permit fees, registration fees and fines.

All permit fees, fees paid for the registration of colors or assumed names and fines imposed by the stewards, starters or other racing officials shall be paid into a relief fund and paid out on the order of the racing commission for hospitalization, medical care and funeral expenses occasioned by injuries or death resulting from an accident sustained by any permit holder while in the discharge of his duties under the jurisdiction of the racing commission. No payment shall be made, however, for any hospitalization, medical care or funeral expenses as to any permit holder who is covered under the

workmen's compensation fund of this state, or any insurance policy providing payments for hospitalization, medical care or funeral expenses. Any balance in said relief fund at any time in excess of five thousand dollars, less any relief obligations then outstanding, shall thereupon be transferred by the racing commission to the state treasurer for deposit to the credit of the general revenue fund of this state.

PART X. HEARING PROCEDURES; JUDICIAL REVIEW.

§19-23-15. Suspension or revocation of license or permit.

(a) The racing commission may conduct an investigation to determine whether any provisions of this article or any of its reasonable rules and regulations have been or are about to be violated by a licensee or permit holder. The racing commission may suspend or revoke a license or permit if the licensee or permit holder, as the case may be:

(1) Is convicted of an offense which under the law of this state, of any other state or of the United States of America, shall constitute a felony or a crime involving moral turpitude;

(2) Is, if a corporation, dissolved under the law of this state or ceases to be qualified to do business within this state; or

(3) Has a license or permit to which such licensee or permit holder is not lawfully entitled.

(b) The racing commission may also suspend or revoke a license or permit of a licensee or permit holder, as the case may be, if it finds the existence of any ground upon which the license or permit could have been refused, or any ground which would be cause for refusing a license or permit to such licensee or permit holder were such licensee or permit holder then applying for the same.

(c) A majority of the stewards at any horse race meeting may suspend or revoke a permit for any reason for which the racing commission may suspend or revoke a permit, as specified in subsections (a) and (b) of this section, or for any other reason authorized by reasonable rules and regulations promulgated by the racing commission.

(d) Whenever a licensee fails to keep the bond required, if any, under the provisions of section seven of this article in full force and effect, the license of such licensee shall auto-

matically be suspended unless and until a bond or other security, if required, is furnished to the racing commission, in which event the suspension shall be vacated.

(e) Any suspension of a license or permit shall continue for the period specified in the order of suspension, or until the cause therefor has been eliminated or corrected, as set forth in the order of suspension. Revocation of a license or permit shall not preclude application for a new license or permit, which application shall be processed in the same manner and the application approved or denied and the license or permit issued or refused on the same grounds as any other application for a license or permit is processed, considered and passed upon, except that any previous suspension and the revocation may be given such weight in deciding whether to approve or deny such application and issue or refuse such license or permit as is meet and proper under all of the circumstances.

§19-23-16. Procedures for hearing.

(a) Whenever the racing commission shall deny an application for a license or a permit or shall suspend or revoke a license or a permit, it shall make and enter an order to that effect and serve a copy thereof on the applicant, licensee or permit holder, as the case may be, in any manner in which a summons may be served in a civil action or by certified mail, return receipt requested. Such order shall state the grounds for the action taken, and, in the case of an order of suspension or revocation, shall state the effective date of such suspension or revocation.

(b) Whenever a majority of the stewards at any horse race meeting shall suspend or revoke a permit, such suspension or revocation shall be effective immediately. The stewards shall, as soon as thereafter practicable, make and enter an order to that effect and serve a copy thereof on the permit holder, in any manner in which a summons may be served in a civil action or by certified mail, return receipt requested. Such order shall state the grounds for the action taken.

(c) Any person adversely affected by any such order shall be entitled to a hearing thereon if, within twenty days after service of a copy thereof if served in any manner in which a summons may be served as aforesaid or within twenty days after receipt of a copy thereof if served by certified mail as

aforesaid, such person files with the racing commission a written demand for such hearing. A demand for hearing shall operate automatically to stay or suspend the execution of any order suspending or revoking a license, but a demand for hearing shall not operate to stay or suspend the execution of any order suspending or revoking a permit. The racing commission may require the person demanding such hearing to give reasonable security for the costs thereof and if such person does not substantially prevail at such hearing such costs shall be assessed against such person and may be collected by an action at law or other proper remedy.

(d) Upon receipt of a written demand for such hearing, the racing commission shall set a time and place therefor not less than ten and not more than thirty days thereafter. Any scheduled hearing may be continued by the racing commission upon its own motion or for good cause shown by the person demanding the hearing.

(e) All of the pertinent provisions of article five, chapter twenty-nine-a of this code shall apply to and govern the hearing and the administrative procedures in connection with and following such hearing, with like effect as if the provisions of said article five were set forth in this subsection.

(f) Any such hearing shall be conducted by a quorum of the racing commission. For the purpose of conducting any such hearing, any member of the racing commission shall have the power and authority to issue subpoenas and subpoenas duces tecum as provided for in section six of this article. Any such subpoenas and subpoenas duces tecum shall be issued and served within the time, for the fees and shall be enforced, as specified in section one, article five of said chapter twenty-nine-a, and all of the said section one provisions dealing with subpoenas and subpoenas duces tecum shall apply to subpoenas and subpoenas duces tecum issued for the purpose of a hearing hereunder.

(g) At any such hearing the person who demanded the same may represent such person's own interests or be represented by an attorney at law admitted to practice before any circuit court of this state. Upon request by the racing commission, it shall be represented at any such hearing by the attorney general or his assistants without additional com-

pensation. The racing commission, with the written approval of the attorney general, may employ special counsel to represent the racing commission at any such hearing.

(h) After any such hearing and consideration of all of the testimony, evidence and record in the case, the racing commission shall render its decision in writing. The written decision of the racing commission shall be accompanied by findings of fact and conclusions of law as specified in section three, article five, chapter twenty-nine-a of this code, and a copy of such decision and accompanying findings and conclusions shall be served by certified mail, return receipt requested, upon the person demanding such hearing, and his attorney of record, if any.

(i) The decision of the racing commission shall be final unless reversed, vacated or modified upon judicial review thereof in accordance with the provisions of section seventeen of this article.

§19-23-17. Judicial review; appeal to supreme court of appeals; legal representation for racing commission.

Any person adversely affected by a decision of the racing commission rendered after a hearing held in accordance with the provisions of section sixteen of this article shall be entitled to judicial review thereof. All of the pertinent provisions of section four, article five, chapter twenty-nine-a of this code shall apply to and govern such judicial review with like effect as if the provisions of said section four were set forth in this section, except that execution of a decision of suspension or revocation of a license shall be stayed or suspended pending a final judicial determination, and except that execution of a decision of suspension or revocation of a permit shall not be stayed or suspended pending a final judicial determination.

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

Legal counsel and services for the racing commission in all appeal proceedings in any circuit court and the supreme court of appeals shall be provided by the attorney general or his assistants and in any circuit court by the prosecuting attorney

of the county as well, all without additional compensation. The racing commission, with the written approval of the attorney general, may employ special counsel to represent the racing commission at any such appeal proceedings.

PART XI. CONSTRUCTION AND ESTABLISHMENT OF
HORSE RACE TRACKS.

§19-23-18. Horse race track construction permits; application therefor.

(a) No person shall construct and establish a horse race track where horse race meetings are to be held or conducted and the pari-mutuel system of wagering permitted or conducted without a construction permit issued by the racing commission in accordance with the provisions of this article.

(b) Any person desiring to obtain a construction permit shall file with the racing commission an application therefor. The racing commission shall prescribe blank forms to be used in making such application. Such application shall disclose, but not be limited to, the following:

(1) If the applicant be an individual, the full name and address of the applicant;

(2) If the applicant be a partnership, firm or association, the full name and address of each partner or member thereof, the name of the partnership, firm or association and its post-office address;

(3) If the applicant be a corporation, its name, the state of its incorporation, its post-office address, the full name and address of each officer and director thereof, and if a foreign corporation, whether it is qualified to do business in this state;

(4) Whether the applicant, any partner, member, officer or director has previously applied for a construction permit under the provisions of this article or for a similar construction permit in this or any other state, and if so, whether such construction permit was issued or refused;

(5) The name and address of any person who has agreed to lend the applicant money for use in connection with such proposed horse race track;

(6) The name and address of any other person who is financially interested in the proposed horse race track;

(7) The county where the proposed horse race track is to be constructed and established, and if such proposed horse race track is to be constructed and established across county lines, the identification of each such county;

(8) Plans showing, in such detail as the racing commission may require, the proposed horse race track and all buildings and improvements to be used in connection therewith; and

(9) Such other information as the racing commission may reasonably require which may include information relating to any criminal record of the applicant, if an individual, or of each partner or member, if a partnership, firm or association, or of each officer and director, if a corporation.

(c) Such application shall be verified by the oath or affirmation of the applicant for such construction permit, if an individual, or if the applicant is a partnership, firm, association or corporation, by a partner, member or officer thereof, as the case may be.

§19-23-19. Determination by racing commission; tentative approval of application for construction permit; publication.

(a) Upon the basis of the application and all other information before it, the racing commission shall make and enter an order granting tentative approval of the application if it finds:

(1) That the applicant intends to proceed in good faith to construct and establish a horse race track complying in all particulars with the law of this state, the provisions of this article and any reasonable rules and regulations of the racing commission;

(2) That the plans for such proposed horse race track are adequate and have been prepared with due regard to the safety of all persons who will use such horse race track;

(3) That the applicant is financially able to complete such horse race track in accordance with the plans submitted with such application; and

(4) That the construction and establishment of such proposed horse race track would be in the best interests of horse racing within this state.

(b) Otherwise, the racing commission shall deny the application and refuse to grant tentative approval thereof. The racing commission shall make and enter an order to that effect and all of the provisions of section sixteen pertaining to the denial of any application for a license and an order in connection therewith and the provisions of section seventeen pertaining to judicial review of a decision of the racing commission shall govern and control. The denial and refusal shall be final and conclusive unless a hearing thereon shall be demanded pursuant to the provisions of section sixteen of this article considered in *pari materia* with the preceding sentence of this subsection (b).

(c) If the racing commission grants tentative approval of such application, it shall prepare and publish a notice to the public that the racing commission has granted tentative approval of the application and that the racing commission will confirm such tentative approval and issue a construction permit to the applicant at the expiration of sixty days from the date of the first publication of such notice (which date shall be specified in said notice), unless within said time a petition for a local option election shall have been filed, in accordance with the provisions of this article, with the county court of the county in which any integral part of said horse race track is proposed to be constructed and established. Such notice shall be published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county in which any integral part of such proposed horse race track is to be constructed and is established.

§19-23-20. Petition for local option election.

A petition for a local option election on the question of the proposed construction and establishment of a horse race track must be signed by qualified voters residing within the county equal to at least fifteen percent of the qualified voters within said county at the last general election. Said petition may be in any number of counterparts, but must be filed with the county court prior to the expiration of the sixty-day period specified in the notice published by the racing commission in accordance with the provisions of section nineteen of this article. Said petition shall be sufficient if in substantially the following form:

"PETITION FOR LOCAL OPTION ELECTION CONCERNING THE PROPOSED CONSTRUCTION AND ESTABLISHMENT OF A HORSE RACE TRACK IN _____ COUNTY, WEST VIRGINIA.

"Each of the undersigned certifies that he or she is an individual residing in _____ County, West Virginia, and is a qualified voter in said county under the laws of this state, and that his or her name, address and the date of signing this petition are correctly set forth below.

"The undersigned petition the county court to call and hold a local option election as required by article twenty-three, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, upon the following question: 'Shall the West Virginia Racing Commission issue a construction permit authorizing the construction and establishment of a horse race track where horse race meetings may be held or conducted and the pari-mutuel system of wagering permitted and conducted in _____ County, West Virginia?

Name	Address	Date
_____	_____	_____
_____	_____	_____
_____	_____	_____

(Each individual signing must specify either his post-office address or his street name and number.)

§19-23-21. Local option election procedure; form of ballots or ballot labels.

(a) Upon the timely filing of a proper petition for a local option election in accordance with the provisions of section twenty of this article, the county court of the county in which all or any integral part of a proposed horse race track is to be constructed and established is hereby authorized to call a local option election for the purpose of determining the will of the qualified voters within said county as to the construction and establishment of all or any integral part of such horse race track within said county. Upon the timely filing of a proper petition as aforesaid, the county court shall enter an order calling for a local option election and providing that the same shall be held at the same time and as a part of the next primary or general election to be held in said county.

A copy of the order so entered by the county court shall be served upon the racing commission and the racing commission shall take no further action in connection with the issuance of such construction permit until said local option election shall be held. Said county court shall give notice of such local option election by publication of such notice as a Class II-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county. Such notice shall be so published within fourteen consecutive days next preceding the date of said election.

(b) The local option election ballots, or ballot labels where voting machines are used, shall have printed thereon substantially the following:

"Shall the West Virginia Racing Commission issue a construction permit authorizing the construction and establishment of a horse race track where horse race meetings may be held or conducted and the pari-mutuel system of wagering permitted and conducted?

☐ Yes

☐ No

(Place a cross mark in the square opposite your choice.)"

(c) Each individual qualified to vote in said county at said primary or general election shall likewise be qualified to vote at the local option election. The election officers appointed and qualified to serve as such at said primary or general election shall conduct said local option election in connection with and as a part of said primary or general election. The votes in said local option election shall be counted and returns made by the election officers and the results certified by the commissioners of election to said county court which shall canvass the ballots, all in accordance with the laws of this state relating to primary and general elections insofar as the same are applicable. The county court shall, without delay, canvass the votes cast at such local option election and certify the results thereof to the racing commission.

§19-23-22. Issuance or nonissuance of a construction permit; duration of a construction permit; transfer and assignment of a construction permit.

(a) The racing commission shall, after the certification of the results of such local option election, issue such construc-

tion permit if a majority of the legal votes cast at such election were in favor of the issuance of a construction permit. If a majority of the legal votes cast at such election were opposed to the issuance of a construction permit, the commission shall not issue a construction permit.

(b) A construction permit issued as aforesaid shall remain valid only for a three-month period, except that if the racing commission is satisfied that the construction permit holder has in good faith started and is continuing construction of the proposed horse race track, the racing commission may extend the construction permit for additional successive three-month periods, but in no event shall the aggregate time of such construction permit exceed a period of twenty-four months from the date of the issuance of the construction permit.

(c) No construction permit which may be or has been issued under the provisions of this article or the former provisions of this article shall be transferred or assigned in any manner whatever without the written consent of the racing commission.

§19-23-23. Further elections restricted.

When a local option election in accordance with the provisions of this article or the former provisions of this article shall have been held in a county, another such election shall not be held in said county for a period of five years, and within that time the racing commission shall not accept or act upon any application for any other construction permit within said county. In the event a horse race track shall be constructed in a county pursuant to a construction permit issued by the racing commission in accordance with the provisions of this article, no local option election shall thereafter be held as to any horse race track constructed and established pursuant to such construction permit.

§19-23-24. Applicability of certain sections of article to horse race tracks already constructed and established.

Nothing contained in sections eighteen through twenty-three of this article shall apply to any horse race track heretofore constructed and established in this state and at which horse race meetings have been held or conducted by the owners or operators thereof under and pursuant to licenses issued by

the racing commission in accordance with the provisions of this article or the former provisions of this article. The construction and establishment of any new or additional horse race track within a county in which a horse race track has heretofore been constructed and established and operated under licenses issued by the racing commission, whether by the persons owning and operating such existing horse race track or others, shall be subject to all of the provisions of this article.

PART XII. INJUNCTIVE RELIEF.

§19-23-25. Actions to enjoin violations.

Whenever it appears to the racing commission that any person has been or is violating or is about to violate any provision of this article, any reasonable rule and regulation promulgated hereunder or any order or final decision of the racing commission, the racing commission may apply in the name of the state to the circuit court of the county in which the violation or violations or any part thereof has occurred, is occurring or is about to occur, or the judge thereof in vacation, for an injunction against such person and any other persons who have been, are or are about to be, involved in any practices, acts or omissions, so in violation, enjoining such person or persons from any such violation or violations. Such application may be made and prosecuted to conclusion whether or not any such violation or violations have resulted or shall result in prosecution or conviction under the provisions of section twenty-six of this article.

Upon application by the racing commission, the circuit courts of this state may by mandatory or prohibitory injunction compel compliance with the provisions of this article, the reasonable rules and regulations promulgated hereunder and all orders and final decisions of the racing commission. The court may issue a temporary injunction in any case pending a decision on the merits of any application filed.

The judgment of the circuit court upon any application permitted by the provisions of this section shall be final unless reversed, vacated or modified on appeal to the supreme court of appeals. Any such appeal shall be sought in the manner and within the time provided by law for appeals from circuit courts in other civil actions.

The racing commission shall be represented in all such proceedings by the attorney general or his assistants and in such proceedings in the circuit court by the prosecuting attorneys of the several counties as well, all without additional compensation. The racing commission, with the written approval of the attorney general, may employ special counsel to represent the racing commission in any such proceedings.

PART XIII. OFFENSES AND PENALTIES

§19-23-26. Offenses and penalties.

(a) Any person holding or conducting, or assisting, aiding or abetting in the holding or conducting, of any horse race meeting at which horse racing and the pari-mutuel system of wagering on the same is permitted or conducted, without a license issued by the racing commission, which license remains unexpired, unsuspended and unrevoked, shall be guilty of a misdemeanor, and, upon conviction, shall be punished by a fine of not less than one thousand dollars for each day of such unauthorized horse race meeting, or by imprisonment in jail not exceeding one year, or by both such fine and imprisonment, in the discretion of the court: *Provided*, That no conviction shall be had or punishment imposed upon any licensee, whose license has been suspended or revoked, for holding or conducting a horse race meeting while execution of the order of suspension or revocation is stayed or suspended as provided in this article.

(b) Any person violating any provision of section four or section five of this article shall be guilty of a misdemeanor, and, upon conviction, shall be punished by a fine of not less than five hundred dollars nor more than one thousand dollars, or by imprisonment in jail for not less than six months nor more than one year, or by both such fine and imprisonment, in the discretion of the court. The venue of any such offense shall be in the county, or any one of the counties, wherein the person violating said section four or section five carries out any duties of, or performs any work for, the racing commission, which constitute the basis of the charge or complaint.

(c) Any person violating any provision of subsection (b) of section two of this article shall be guilty of a misdemeanor, than one hundred dollars nor more than five hundred dollars,

or by imprisonment in jail for not less than one month nor more than two months, or by both such fine and imprisonment, in the discretion of the court. The venue of any such offense shall be in the county, or any one of the counties, wherein the person violating said subsection (b) carries out any duties of, or performs any work for, the racing commission, which constitute the basis of the charge or complaint.

(d) False swearing before the racing commission on the part of any witness shall be deemed perjury and shall be punished as such.

PART XIV. REPEALER; EFFECT ON EXISTING RULES AND REGULATIONS, LICENSES AND PERMITS.

§19-23-27. Repealer.

All acts, whether general or local, public or private, inconsistent with the provisions of this article are hereby repealed to the extent of their inconsistency.

§19-23-28. Effect on existing rules and regulations, licenses and permits.

All rules and regulations promulgated by the racing commission and in effect on the effective date of this article shall remain in full force and effect until superseded, or except as amended or repealed, in accordance with the provisions of this article.

Any license or permit issued by the racing commission under the former provisions of article twenty-three of this chapter, which has not expired and which has not been suspended or revoked prior to the effective date of this article, shall be governed by the provisions of this article and shall remain valid until the expiration thereof, unless such license or permit is sooner suspended or revoked in accordance with the provisions of this article.

PART XV. SEVERABILITY.

§19-23-29. Severability.

If any provision of this article or the application thereof to any person or circumstance is held unconstitutional or invalid, such unconstitutionality or invalidity shall not affect other provisions or applications of the article, and to this end the provisions of this article are declared to be severable.

CHAPTER 5

(House Bill No. 19—By Mr. Speaker, Mr. Boiarsky, and Mr. Seibert)

[Passed July 25, 1969; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two, three, five, six and ten, article eighteen, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the West Virginia housing development fund, legislative findings and purposes, definitions, management and control of housing development fund, officers, personal liability of officers and directors, powers of housing development fund, and sale of bonds or notes.

Be it enacted by the Legislature of West Virginia:

That sections two, three, five, six and ten, article eighteen, 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 18. WEST VIRGINIA HOUSING DEVELOPMENT FUND.

§31-18-2. Legislative findings and purpose.

§31-18-3. Definitions.

§31-18-5. Management and control of housing development fund; officers; liability.

§31-18-6. Corporate powers.

§31-18-10. Sale of notes or bonds.

§31-18-2. Legislative findings and purpose.

(a) The Legislature hereby finds and declares that as a result of public actions involving highways, public facilities, flood control projects, and urban renewal activities, and as a result of the spread of slum conditions and blight to formerly sound urban and rural neighborhoods, there exists in the state of West Virginia a serious shortage of sanitary, decent and safe residential housing available at low prices or rentals to persons and families of low and moderate income. This shortage is severe in certain urban areas of the state, is especially critical in the rural areas of West Virginia, and is inimical to the health, welfare and prosperity of all residents of the state and to the sound growth of West Virginia communities.

(b) The Legislature hereby finds and declares further that private enterprise and investment have not been able to produce, without assistance, the needed construction of sanitary, decent and safe residential housing at low prices or rentals which persons and families of low and moderate income can afford, or to achieve the urgently needed rehabilitation of much of the present low and moderate income housing stock. It is imperative that the supply of residential housing for persons and families displaced by public actions or natural disaster be increased; and that private enterprise and investment be encouraged both to sponsor land development for residential housing for such persons and families and to sponsor, build and rehabilitate residential housing for such persons and families, to help prevent the recurrence of slum conditions and blight and assist in their permanent elimination throughout West Virginia.

(c) The Legislature hereby finds and declares further that its intention by enacting this legislation is to provide for the creation and establishment of the West Virginia housing development fund, the corporate purpose of which is to provide temporary financing for development costs, land development and residential housing construction to public and private sponsors of land development for residential housing or residential housing, new or rehabilitated, for sale or rental to persons and families of low and moderate income; further to provide technical, consultative and project assistance services to public and private sponsors of such land development or residential housing; further to increase the construction of low and moderate income housing through the purchase or investment in long-term federal mortgages or federally insured mortgages on housing for persons and families of low and moderate income constructed in this state thereby increasing the supply of long-term mortgage financing and freeing funds available therefor for use in short-term construction financing; and finally to assist in coordinating federal, state, regional and local public and private efforts and resources to otherwise increase the supply of such residential housing.

(d) The Legislature hereby finds and declares further that in accomplishing this purpose, the West Virginia housing development fund, created and established by this article, is acting in all respects for the benefit of the people of the state

of West Virginia to serve a public purpose in improving and otherwise promoting their health, welfare and prosperity, and that the West Virginia housing development fund, so created and established, is empowered, hereby, to act on behalf of the state of West Virginia and its people in serving this public purpose for the benefit of the general public.

§31-18-3. Definitions.

As used in this article, unless the context otherwise requires:

(1) "Development costs" means the costs approved by the housing development fund as appropriate expenditures which may be incurred by sponsors of land development for residential housing or residential housing, within this state, prior to commitment and initial advance of the proceeds of a federally insured construction loan, federally insured mortgage or federal mortgage or other public assistance programs, and for which temporary loans from the operating loan fund, if created, may be made by the housing development fund subject to the provisions of section nineteen of this article, including but not limited to:

(a) Payments for options to purchase properties on the proposed residential housing site, deposits on contracts of purchase, or, with prior approval of the housing development fund, payments for the purchase of such properties;

(b) Legal and organizational expenses, including payments of attorneys' fees, project manager and clerical staff salaries, office rent and other incidental expenses;

(c) Payment of fees for preliminary feasibility studies, advances for planning, engineering and architectural work;

(d) Expenses for tenant surveys and market analyses; and

(e) Necessary application and other fees;

(2) "Federally insured construction loan" means a construction loan for land development for residential housing or residential housing which is either secured by a federally insured mortgage or a federal mortgage, or which is insured by the United States or an instrumentality thereof, or a commitment by the United States or an instrumentality thereof to insure such a loan;

(3) "Federally insured mortgage" means a mortgage loan for land development for residential housing or residential

housing insured or guaranteed by the United States or an instrumentality thereof, or a commitment by the United States or an instrumentality thereof to insure such a mortgage;

(4) "Federal mortgage" means a mortgage loan for land development for residential housing or residential housing made by the United States or an instrumentality thereof, or a commitment by the United States or an instrumentality thereof to make such a mortgage loan;

(5) "Housing development fund" means the West Virginia housing development fund created and established by section four of this article;

(6) "Land development" means the process of acquiring land for residential housing construction, and of making, installing, or constructing nonresidential housing improvements, including waterlines and water supply installations, sewer lines and sewage disposal installations, steam, gas and electric lines and installations, roads, streets, curbs, gutters, sidewalks, whether on or off the site, which the housing development fund deems necessary or desirable to prepare such land for residential housing construction within this state;

(7) "Operating loan fund" means the operating loan fund which may be created and established by the housing development fund in accordance with section nineteen of this article;

(8) "Persons and families of low and moderate income" means persons and families, irrespective of race, creed, national origin or sex, determined by the housing development fund to require such assistance as is made available by this article on account of personal or family income not sufficient to afford sanitary, decent and safe housing, and to be eligible or potentially eligible to occupy residential housing constructed and financed, wholly or in part, with federally insured construction loans, federally insured mortgages, federal mortgages or with other public or private assistance, and in making such determination the fund shall take into account the following: (a) The amount of the total income of such persons and families available for housing needs, (b) the size of the family, (c) the cost and condition of housing facilities available, (d) the eligibility of such persons and families for federal housing assistance of any type predicated upon a low

or moderate income basis, and (e) the ability of such persons and families to compete successfully in the normal housing market and to pay the amounts at which private enterprise is providing sanitary, decent and safe housing;

(9) "Residential housing" means a specific work or improvement within this state undertaken primarily to provide dwelling accommodations, including the acquisition, construction or rehabilitation of land, buildings and improvements thereto, for residential housing, and such other nonhousing facilities as may be incidental or appurtenant thereto.

§31-18-5. Management and control of housing development fund; officers; liability.

(a) The management and control of the housing development fund shall be vested solely in the board of directors in accordance with the provisions of this article.

(b) The chairman shall be the chief executive officer of the housing development fund, and, in his absence, the vice chairman shall act as chief executive officer.

(c) The board of directors may appoint a chief administrative officer and may fix his title, duties and compensation.

(d) The board of directors of the housing development fund shall annually elect from its membership a treasurer, and shall annually elect a secretary, who need not be a member of the board, to keep a record of the proceedings of the housing development fund.

(e) The treasurer of the housing development fund shall be custodian of all funds of the housing development fund, and shall be bonded in such amount as the other members of the board of directors may designate.

(f) The directors and officers of the West Virginia housing development fund shall not be liable personally, either jointly or severally, for any debt or obligation created by the West Virginia housing development fund.

§31-18-6. Corporate powers.

The housing development fund is hereby granted, has and may exercise all powers necessary or appropriate to carry out and effectuate its corporate purpose, including but not limited to the following:

(1) To make or participate in the making of federally insured construction loans to sponsors of land development for residential housing for occupancy by persons or families of low and moderate income or residential housing for occupancy by persons or families of low and moderate income who are eligible or potentially eligible for federally insured mortgages or federal mortgages. Such loans shall be made only upon determination by the housing development fund that construction loans are not otherwise available, wholly or in part, from private lenders upon reasonably equivalent terms and conditions;

(2) To make temporary loans, with or without interest, but with such security for repayment as the housing development fund determines reasonably necessary and practicable, from the operating loan fund, if created, established, organized and operated in accordance with the provisions of section nineteen of this article, to defray development costs to sponsors of land development for residential housing for occupancy by persons and families of low and moderate income or residential housing construction for occupancy by persons and families of low and moderate income who are eligible or potentially eligible for federally insured construction loans, federally insured mortgages or federal mortgages;

(3) To accept appropriations, gifts, grants, bequests and devises, and to utilize or dispose of the same to carry out its corporate purpose;

(4) To make and execute contracts, releases, compromises, compositions and other instruments necessary or convenient for the exercise of its powers, or to carry out its corporate purpose;

(5) To collect reasonable fees and charges in connection with making and servicing its loans, notes, bonds, obligations, commitments and other evidences of indebtedness, and in connection with providing technical, consultative and project assistance services. Such fees and charges shall be limited to the amounts required to pay the costs of the housing development fund, including operating and administrative expenses, and reasonable allowances for losses which may be incurred;

(6) To invest any funds not required for immediate disbursement in obligations of the state of West Virginia or in

direct obligations of the United States government or in obligations the principal of which and interest on which are guaranteed by the state of West Virginia, or the United States government or any instrumentality thereof;

(7) To sue and be sued;

(8) To have a seal and alter the same at will;

(9) To make, and from time to time, amend and repeal by-laws, rules and regulations not inconsistent with the provisions of this article;

(10) To appoint such officers, employees and consultants as it deems advisable and to fix their compensation and prescribe their duties;

(11) To acquire, hold and dispose of personal property for its corporate purposes;

(12) To enter into agreements or other transactions with any federal or state agency, any person and any domestic or foreign partnership, corporation, association or organization;

(13) To acquire real property, or an interest therein, in its own name, by purchase or foreclosure, where such acquisition is necessary or appropriate to protect any loan in which the housing development fund has an interest and to sell, transfer and convey any such property to a buyer and, in the event such sale, transfer or conveyance cannot be effected with reasonable promptness or at a reasonable price, to lease such property to a tenant;

(14) To sell, at public or private sale, any mortgage or other negotiable instrument or obligation securing a construction, land development, mortgage or temporary loan;

(15) To procure insurance against any loss in connection with its property in such amounts, and from such insurers, as may be necessary or desirable;

(16) To consent, whenever it deems it necessary or desirable in the fulfillment of its corporate purpose, to the modification of the rate of interest, time of payment or any installment of principal or interest, or any other terms, of any mortgage loan, mortgage loan commitment, construction loan, temporary loan, contract or agreement of any kind to which the housing development fund is a party;

(17) To make and publish rules and regulations respecting its federally insured construction lending and temporary lending to defray development costs and any such other rules and regulations as are necessary to effectuate its corporate purpose;

(18) To borrow money to carry out and effectuate its corporate purpose and to issue its negotiable bonds or notes as evidence of any such borrowing in such principal amounts and upon such terms as shall be necessary to provide sufficient funds for achieving its corporate purpose, except that no negotiable bonds or notes shall be issued to mature more than ten years from date of issuance, and except that the amount borrowed and evidenced by the issuance of its negotiable bonds shall not exceed the amount reasonably estimated at the time of the issuance of such negotiable bonds to be required for the purpose of making federally insured construction loans for a period of two years;

(19) To issue renewal notes, to issue bonds to pay notes and, whenever it deems refunding expedient, to refund any bonds by the issuance of new bonds, whether the bonds to be refunded have or have not matured except that no such renewal notes or refunding bonds shall be issued to mature more than ten years from date of issuance;

(20) To apply the proceeds from the sale of renewal notes or refunding bonds to the purchase, redemption, or payment of the notes or bonds to be refunded;

(21) To provide technical services to assist in the planning, processing, design, construction or rehabilitation of residential housing for occupancy by persons and families of low and moderate income or land development for residential housing for occupancy by persons and families of low and moderate income;

(22) To provide consultative project assistance services for residential housing for occupancy by persons and families of low and moderate income and for land development for residential housing for occupancy by persons and families of low and moderate income, and for the residents thereof with respect to management, training and social services;

(23) To promote research and development in scientific

methods of constructing low cost residential housing of high durability; and

(24) To participate in the making of or to make loans to qualified federally approved mortgagees and in connection therewith to take as collateral security, invest in, purchase, acquire, sell or participate in the sale of, or take assignments of, notes and mortgages evidencing loans for the construction, rehabilitation, purchase, or refinancing of housing for persons and families of low and moderate income in this state: *Provided*, That the fund shall obtain such written assurances as shall be satisfactory to it that the proceeds of such loans will be used, as nearly as practicable, for investment in federally insured construction loans for low and moderate income housing in this state or that other moneys in an amount approximately equal to such proceeds shall be committed and used for such purpose.

§31-18-10. Sale of notes or bonds.

Any notes or bonds issued by the West Virginia housing development fund may be sold in such manner, either at public or private sale, and for such price, upon such terms and at such interest rates per annum, as the fund shall determine to be for the best interests of the fund and to be necessary to effectuate the purposes of this article.

CHAPTER 6

(Com. Sub. for Senate Bill No. 6—By Mr. Jackson, Mr. President,
and Mr. Carrigan)

[Passed July 25, 1969; in effect January 1, 1970. Approved by the Governor.]

AN ACT to amend article thirteen-a, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-five; and to amend and reenact section one, article two, chapter twenty-four of said code, relating to the public service commission of West Virginia;

extending its jurisdiction over public service districts generally; and specifically providing that a public service district may not borrow money or issue or contract to issue revenue bonds or exercise certain powers without the prior consent and approval of said public service commission.

Be it enacted by the Legislature of West Virginia:

That article thirteen-a, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section twenty-five; and that section one, article two, chapter twenty-four of said code be amended and reenacted, all to read as follows:

Chapter

16. Public Health.

24. Public Service Commission.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 13A. PUBLIC SERVICE DISTRICTS FOR WATER AND SEWERAGE SERVICES.

§16-13A-25. Consent and approval of public service commission required before borrowing money, issuing bonds, etc.

Notwithstanding any other provisions of this article to the contrary, a public service district shall not borrow money or issue or contract to issue revenue bonds or exercise any of the powers conferred by the provisions of sections thirteen, twenty or twenty-four of this article without the prior consent and approval of the public service commission. The commission may grant its consent and approval subject to such terms and conditions as may be necessary for the protection of the public interest, pursuant to the provisions of chapter twenty-four of this code, or may withhold such consent and approval for the protection of the public interest.

In the event of disapproval, the reasons therefor shall be assigned in writing by the commission. If written disapproval has not been given by the commission within sixty days after receipt of the application by the commission, it may be deemed by the applicant that approval has in fact been given.

CHAPTER 24. PUBLIC SERVICE COMMISSION.**ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.****§24-2-1. Jurisdiction of commission.**

The jurisdiction of the commission shall extend to all public utilities in this state, and shall include any utility engaged in any of the following public services:

Common carriage of passengers or goods, whether by railroad, street railroad, motor or otherwise, by express or otherwise, by land, water or air, whether wholly or partly by land, water or air; transportation of oil, gas or water by pipeline; transportation of coal and its derivatives and all mixtures and combinations thereof with other substances by pipeline; sleeping car or parlor car services; transmission of messages by telephone, telegraph or radio; generation and transmission of electrical energy by hydroelectric or other utilities for service to the public, whether directly or through a distributing utility; supplying water, gas or electricity, by municipalities or others; sewer systems servicing twenty-five or more persons or firms other than the owner of the sewer systems; any public service district created under the provisions of article thirteen-a, chapter sixteen of this code; toll bridges, wharves, ferries; and any other public service.

CHAPTER 7

(House Bill No. 20—By Mr. Speaker, Mr. Boiarsky, and Mr. Seibert)

[Passed July 25, 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 ten, relating to the creation of a special fund in the office of the state road commissioner for federal funds reserved in connection with the traffic operations program.

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 ten, to read as follows:

ARTICLE 3. STATE ROAD FUND.

§17-3-10. Special fund.

There is hereby created a special fund, to the credit of which shall be paid all federal funds allocated and distributed to the state of West Virginia in implementation of the provisions of Title 23, United States Code, Section 135, relating to a traffic operations program to increase capacity and safety, to be administered by the state road commissioner in the carrying out of that program. There shall also be paid to the credit of this special fund funds received from municipalities, which funds represent the municipalities' share of the cost of participating in the traffic operations program.

CHAPTER 8

(House Bill No. 12—By Mr. Speaker, Mr. Boiarsky, and Mr. Seibert)

[Passed July 25, 1969; in effect from passage. Approved by the Governor.]

AN ACT to repeal section one-b, article one-a, chapter twenty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section four, article twenty-four, chapter eighteen of said code, as amended, all relating to collection, disposition and use of additional registration fees at institutions of higher education, creation of special capital improvement funds, and the issuance of revenue bonds.

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 repealed; and that section four, article twenty-

four, chapter eighteen of said code, be amended and reenacted to read as follows:

ARTICLE 24. FEES AND OTHER MONEY COLLECTED AT STATE INSTITUTIONS OF HIGHER EDUCATION.

§18-24-4. Collection, disposition and use of additional registration fee; creation of special capital improvements fund; revenue bonds.

In addition to all other fees imposed by the West Virginia board of regents, there is hereby imposed and the board of regents is hereby directed to provide for the collection of an additional registration fee from all students in the amounts as hereinafter provided.

For full-time students at each state institution of higher education, the additional registration fee shall be fifty dollars per semester. The board of regents shall have authority to increase such additional registration fee at any institution of higher education for students who are nonresidents of this state. For all part-time students and for all summer school students, the board of regents shall impose and collect such fee in porportion to, but not exceeding, that paid by full-time students.

The fee imposed by this section shall be in addition to the maximum fees allowed to be collected under the provisions of section one of this article and shall not be limited thereby. Refunds of such fee may be made in the same manner as any other fee collected at state institutions of higher education.

There is hereby created in the state treasury a special capital improvements fund, to be expended by the board of regents for the benefit of West Virginia University and Potomac State College of West Virginia University, as provided in this section. On and after the first day of July, one thousand nine hundred sixty-three, there shall be paid into such special fund all proceeds of the additional registration fees collected from students at West Virginia University and at Potomac State College.

There is hereby created in the state treasury a second special capital improvements fund, to be expended by the board of regents for the benefit of all other state institutions of higher education, as provided in this section. On and after the first day of July, one thousand nine hundred sixty-three, there

shall be paid into such special fund all proceeds of the additional registration fees collected from students at such institutions.

The board of regents may make expenditures from such special capital improvements funds at the various state institutions of higher education to finance in whole or in part, together with any federal, state or other grants or contributions, any one or more of the following purposes: (1) The acquisition of land or any rights or interest therein, (2) the construction or acquisition of new buildings, (3) the renovation or construction of additions to existing buildings, (4) the acquisition of furnishings and equipment for any such buildings, and (5) the construction or acquisition of any other capital improvements or capital educational facilities at such state institutions of higher education, including any roads, utilities or other properties, real or personal, or for other purposes necessary, appurtenant or incidental to the construction, acquisition, financing and placing in operation of such buildings, capital improvements or capital educational facilities.

The board of regents, in its discretion, may use the moneys in such special capital improvements funds to finance the costs of the above purposes on a cash basis, or may from time to time issue revenue bonds of the state as provided in this section to finance all or part of such purposes and pledge all or any part of the moneys in such special funds for the payment of the principal of and interest on such revenue bonds, and for reserves therefor. Any pledge of such special funds for such revenue bonds shall be a prior and superior charge on such special funds over the use of any of the moneys in such funds to pay for the cost of any of such purposes on a cash basis: *Provided*, That any expenditures from such special funds, other than for the retirement of revenue bonds, may only be made by the board of regents to meet the cost of a predetermined capital improvements program for one or more of the state institutions of higher education, in such order of priority as shall have been agreed upon by the board of regents and presented to the governor for inclusion in the annual budget bill, and only with the approval of the Legislature as indicated by direct appropriation for the purpose.

Such revenue bonds may be authorized and issued from time to time by the board of regents to finance in whole or

in part the purposes provided in this section in an aggregate principal amount not exceeding the amount which the board of regents shall determine can be paid as to both principal and interest and reasonable margins for a reserve therefor from the moneys in such special funds.

The issuance of such revenue bonds shall be authorized by a resolution adopted by the board of regents, and such revenue bonds shall bear such date or dates, mature at such time or times not exceeding forty years from their respective dates; be in such form either coupon or registered, with such exchangeability and interchangeability privileges; be payable in such medium of payment and at such place or places, within or without the state; be subject to such terms of prior redemption at such prices not exceeding one hundred five per centum of the principal amount thereof; and shall have such other terms and provisions as the board of regents shall determine. Such revenue bonds shall be signed by the governor and by the president of the board of regents authorizing the issuance thereof, under the great seal of the state, attested by the secretary of state, and the coupons attached thereto shall bear the facsimile signature of the president of the board of regents. Such revenue bonds shall be sold in such manner as the board of regents may determine to be for the best interests of the state.

The board of regents may enter into trust agreements with banks or trust companies, within or without the state, and in such trust agreements or the resolutions authorizing the issuance of such bonds may enter into valid and legally binding covenants with the holders of such revenue bonds as to the custody, safeguarding and disposition of the proceeds of such revenue bonds, the moneys in such special funds, sinking funds, reserve funds, or any other moneys or funds; as to the rank and priority, if any, of different issues of revenue bonds by the board of regents under the provisions of this section; as to the maintenance or revision of the amounts of such additional registration fees, and the terms and conditions, if any, under which such additional registration fees may be reduced; and as to any other matters or provisions which are deemed necessary and advisable by the board of regents in the best interests of the state and to enhance the marketability of such revenue bonds.

After the issuance of any of such revenue bonds, the additional registration fees at the state institutions of higher education shall not be reduced as long as any of such revenue bonds are outstanding and unpaid except under such terms, provisions and conditions as shall be contained in the resolution, trust agreement or other proceedings under which such revenue bonds were issued.

Such revenue bonds shall be and constitute negotiable instruments under the law merchant and the negotiable instruments law of the state; shall, together with the interest thereon, be exempt from all taxation by the state of West Virginia, or by any county, school district, municipality or political subdivision thereof; and such revenue bonds shall not be deemed to be obligations or debts of the state, and the credit or taxing power of the state shall not be pledged therefor, but such revenue bonds shall be payable only from the revenue pledged therefor as provided in this section.

CHAPTER 9

(Senate Bill No. 1—By Mr. Jackson, Mr. President, and Mr. Carrigan)

[Passed July 25, 1969; In effect from passage. Approved by the Governor.]

AN ACT to amend article thirteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section three-c, and to amend and reenact section four of said article thirteen; to amend said chapter eleven by adding thereto a new article, designated article thirteen-c; and to amend and reenact section eight, article twenty-one, and section nine, article twenty-four, of said chapter eleven, all relating to taxation; providing a business and occupation tax credit for industrial expansion; defining eligible persons, amount and allowance of credit; defining qualified investment for industrial expansion; providing for forfeiture of unused tax credits and providing that the business and occupation tax credit allowed under the per-

sonal income tax and corporation net income tax shall not be reduced by the tax credit for industrial expansion.

Be it enacted by the Legislature of West Virginia:

That article thirteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section three-c, and that section four of said article thirteen be amended and reenacted; that said chapter eleven be amended by adding thereto a new article, designated article thirteen-c; and that section eight, article twenty-one, and section nine, article twenty-four, of said chapter eleven be amended and reenacted, all to read as follows:

Article

13. **Business and Occupation Tax.**

13C. **Business and Occupation Tax Credit for Industrial Expansion.**

21. **Personal Income Tax.**

24. **Corporation Net Income Tax**

ARTICLE 13. BUSINESS AND OCCUPATION TAX.

§11-13-3c. Tax credit for industrial expansion.

§11-13-4. Computation of tax; payment.

§11-13-3c. Tax credit for industrial expansion.

(1) There shall be allowed as a credit against tax imposed by this article the amount determined under article thirteen-c of this chapter relating to tax credit for industrial expansion.

(2) The tax commissioner shall prescribe such regulations as may be necessary to carry out the purposes of this section and article thirteen-c of this chapter.

§11-13-4. Computation of tax; payment.

The taxes levied hereunder shall be due and payable in quarterly installments on or before the expiration of one month from the end of the quarter in which they accrue. The taxpayer shall, within one month from the expiration of each quarter, make out an estimate of the tax for which he is liable for such quarter, sign the same, and mail the same together with a remittance, in the form required by section eleven of this article, of the amount of tax to the office of the tax commissioner. In estimating the amount of tax due for each quarter, the taxpayer may deduct one fourth of the tax credit for industrial expansion allowable for the taxable year and one fourth of the total exemption allowed for the year. When

the total tax for which any person is liable under this article does not exceed the sum of one hundred dollars in any year, the taxpayer may pay the same quarterly as aforesaid or, with the consent in writing of the tax commissioner, at the end of the month next following the close of the tax year.

Any other provision of this section notwithstanding, the tax commissioner, if he deems it necessary to insure payment of the tax, may require the return and payment under this section for periods of shorter duration than quarter-year periods.

ARTICLE 13C. BUSINESS AND OCCUPATION TAX CREDIT FOR INDUSTRIAL EXPANSION.

§11-13C-1. Legislative findings.

§11-13C-2. Definitions, meaning of terms.

§11-13C-3. Eligible persons; amount and allowance of credit.

§11-13C-4. Qualified investment for industrial expansion.

§11-13C-5. Forfeiture of unused tax credits.

§11-13C-1. Legislative findings.

In order to encourage the location of new industry within this state and in order to encourage the expansion of existing industry within this state and thereby increase employment, there is hereby provided a business and occupation tax credit for industrial expansion.

§11-13C-2. Definitions, meaning of terms.

(a) Any term used in this article shall have the same meaning as when used in comparable context in article thirteen of this chapter, unless a different meaning is clearly required by the context or by definition in this article.

(b) The term "industrial taxpayer" when used in this article shall mean any person liable for tax under article thirteen of this chapter exercising any of the following privileges:

(1) Any privilege taxable under section two-b of article thirteen of this chapter.

(2) Any privilege taxable under section two-h of article thirteen of this chapter: *Provided*, That such privilege is manufacturing for another, which privilege would be taxable under section two-b of article thirteen of this chapter if title to the raw materials involved in the manufacturing process were vested in the taxpayer exercising the privilege taxable under section two-h of article thirteen of this chapter.

§11-13C-3. Eligible persons; amount and allowance of credit.

(a) There shall be allowed to industrial taxpayers as defined in section two of this article, a credit against business and occupation tax imposed by article thirteen of this chapter. The amount of credit shall be equal to ten percent of the cost of qualified investment made for industrial expansion as defined in section four of this article and shall be applied over a ten-year period to reduce the business and occupation tax imposed under article thirteen of this chapter at the rate of one tenth of the amount of such credit per taxable year, commencing with the taxable year that such qualified investment is first placed in service or use.

(b) Notwithstanding any provision herein to the contrary, the annual credit allowance shall not reduce the business and occupation tax imposed by article thirteen of this chapter below fifty percent of the amount which would be imposed for such taxable year in the absence of this credit against tax computed before application of the annual exemption allowed by section three of said article thirteen. No carryover shall be allowed for the amount of any unused portion of any annual credit allowance, nor shall any credit be allowed against any tax liability for any year prior to the effective date of this article, by reason of an assessment issuing within any period after the effective date of this article, which assessment is, in whole or in part, for any period prior to the effective date of this article.

§11-13C-4. Qualified investment for industrial expansion.

(a) The term "qualified investment" means with respect to any taxable year, the aggregate of the applicable percentage of the cost of each property purchased for the purpose of industrial expansion as defined in subsection (b) of this section in West Virginia, which is placed in service or use in this state by an industrial taxpayer during such taxable year, determined under the following table:

If useful life is—	The applicable percentage is:
4 years or more but less than 6 years	33-1/3
6 years or more but less than 8 years	66-2/3
8 years or more	100

For purposes of this subsection, the useful life of any property shall be determined as of the time such property is placed in service or use in this state by the taxpayer.

(b) The term "property purchased for industrial expansion" means real property and improvements thereto and tangible personal property but only if such property is constructed or purchased for use as a component part of a new or expanded business of an industrial taxpayer as defined in section two of this article, which property is located within West Virginia. Such term includes only tangible personal property with respect to which depreciation, or amortization in lieu of depreciation, is allowable in determining the personal income tax or corporation net income tax under articles twenty-one and twenty-four of this chapter and has a useful life (determined as of the time such property is placed in service or use) of four years or more. The term "property purchased for industrial expansion" does not include replacement property, motor vehicles licensed by the department of motor vehicles, airplanes, off-premises transportation equipment or property which is used outside this state, nor does the term include property purchased prior to the effective date of this article, nor property the construction, reconstruction or erection of which has begun (or contract therefor let) prior to the effective date of this article, nor does the term include property which is acquired incident to the purchase of the stock or assets of an industrial taxpayer as defined in section two of this article which property had been used by the seller in such business in this state, or which property had been previously designated "property purchased for industrial expansion" and so used to qualify for the tax credit provided by this article.

(c) The term "cost" shall not include the value of any property given in trade or exchange for such new property purchased for industrial expansion.

(d) Property acquired by lease for a term of ten years or longer if used as a component part of a new or expanded business of an industrial taxpayer as defined in section two of this article shall be considered "property purchased for industrial expansion" and the applicable percentage of the cost of such property shall be one hundred percent of the rent reserved for the primary term of the lease not to exceed twenty

years. Lease renewals, subleases, or assignments shall not be considered "property purchased for industrial expansion."

(e) The cost of property purchased for multiple business use including use as a component part of a new or expanded business of an industrial taxpayer together with some other business or occupation not qualifying under section three of this article, shall be apportioned between such businesses and occupations and the proportion allocated to businesses of industrial taxpayers shall be considered as "qualified investment" subject to the conditions and limitations of subsections (a) and (b) of this section.

§11-13C-5. Forfeiture of unused tax credits.

If, during any taxable year, property with respect to which a tax credit has been allowed is disposed of or ceases to be used in a business of an industrial taxpayer in this state, or if the industrial taxpayer ceases operation of such business before expiration of the useful life as set forth under section four of this article in computing the credit allowable under section three of this article, then the unused portion of such credit shall be forfeited for the taxable year in which such event occurs and all ensuing taxable years. Property shall not be treated as disposed of with respect to the industrial taxpayer or his successor by reason of a mere change in the form of conducting the trade or business so long as the property is retained in such business and the taxpayer or his successor retains a substantial interest therein, and such taxpayer or his successor continues to qualify under section three of this article.

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-8. Credit against tax.

(a) *Business and occupation tax credit.*—A credit shall be allowed against the tax imposed by section three of this article equal to the amount of the liability of the taxpayer for the taxable year for any tax imposed under article thirteen of chapter eleven of this code: *Provided*, That the amount of such business and occupation tax credit shall not exceed the portion of the tax imposed by this article which is attributable to the West Virginia taxable income derived by the taxpayer for the taxable year from the business or occupation with

respect to which said tax under article thirteen was imposed. In case the West Virginia taxable income of a taxpayer includes income from a partnership, estate, trust or a corporation electing to be taxed under subchapter S of the Internal Revenue Code of 1954, as amended, a part of any tax liability of the partnership, estate, trust or corporation under said article thirteen shall be allowed to the taxpayer, in computing the credit provided for by this section, in an amount proportionate to the income of such partnership, estate, trust or corporation, which is included in the taxpayer's West Virginia taxable income.

For purposes of this section, the tax imposed under article thirteen of chapter eleven of this code shall be the amount of the liability of the taxpayer for such tax under said article thirteen computed without reduction for the tax credit for industrial expansion allowed for such year by the provisions of article thirteen, chapter eleven of this code.

(b) *Carrier income tax credit.*—A credit shall be allowed against the tax imposed by section three of this article equal to the amount of the liability of the taxpayer for the taxable year for any tax imposed on the taxpayer under article twelve-a, chapter eleven of this code: *Provided*, That the amount of such credit shall not exceed the portion of the tax imposed by this article which is attributable to the West Virginia taxable income derived by the taxpayer for the taxable year from the activities with respect of which said income tax under article twelve-a was imposed. In case the West Virginia taxable income of a taxpayer includes income from a partnership, estate, trust or a corporation electing to be taxed under subchapter S of the Internal Revenue Code of 1954, as amended, a part of any tax liability of the partnership, estate, trust, or corporation under said article twelve-a shall be allowed to the taxpayer, in computing the credit provided for by this section in an amount proportionate to the income of such partnership, estate, trust or corporation which is included in the taxpayer's West Virginia taxable income.

(c) *Cross reference.*—For credit in respect of:

- (1) Taxes withheld on wages, see section seventy-three,
- (2) Taxes imposed on a resident by other states, see section twenty,

(3) Taxes imposed on a nonresident by the state of his residence, see section forty.

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-9. Credits against tax.

(a) *Credit for taxes imposed under article thirteen, chapter eleven of this code.*

A credit shall be allowed against the tax imposed by this article equal to the amount of the liability of the taxpayer for the taxable year for any tax imposed under article thirteen, chapter eleven of this code: *Provided*, That the amount of such business and occupation tax credit shall not exceed the portion of the tax imposed by this article which is attributable to the West Virginia taxable income derived by the taxpayer for the taxable year from the business or occupation with respect to which said tax under article thirteen was imposed and shall not in any event exceed the tax imposed by this article for such taxable year: *Provided further*, That no such credit shall be allowed for any tax imposed under article thirteen with respect to any period prior to the first day of July, one thousand nine hundred sixty-seven.

✓ For purposes of this section, the tax imposed under article thirteen of chapter eleven of this code shall be the amount of the liability of the taxpayer for such tax under said article thirteen computed without reduction for the tax credit for industrial expansion allowed for such year.

(b) *Credit for taxes imposed under article twelve-a, chapter eleven of this code.*

A credit shall be allowed against the tax imposed by this article equal to the amount of the liability of the taxpayer for the taxable year for any tax imposed on the taxpayer under article twelve-a, chapter eleven of this code: *Provided*, That the amount of such credit shall not exceed the portion of the tax imposed by this article which is attributable to the West Virginia taxable income derived by the taxpayer for the taxable year from any source with respect to which said tax under article twelve-a was imposed and shall not in any event exceed the tax imposed by this article for such taxable year: *Provided further*, That no such credit shall be allowed for any

tax imposed under article twelve-a with respect to any period prior to the first day of July, one thousand nine hundred sixty-seven.

CHAPTER 10

(House Bill No. 13—By Mr. Sommerville)

[Passed July 23, 1969; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section six-(fifty-one), article seven, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the appointment and compensation of the stenographer to the prosecuting attorney of Webster county.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7. SALARIES; DEPUTIES AND ASSISTANTS AND THEIR SALARIES.

§7-7-6(51). Stenographer for prosecuting attorney of Webster county; salary.

For the county of Webster, one stenographer, three thousand eight hundred dollars.

RESOLUTIONS

HOUSE CONCURRENT RESOLUTION NO. 1

(By MR. SPEAKER, MR. BOIARSKY, and MR. SEIBERT)

[Adopted July 21, 1969]

Honoring the flight of Apollo 11, Man on the Moon.

WHEREAS, On July 17, 1969, at 9:32 A.M., a three-man space team, Astronauts Neil A. Armstrong, Edwin E. Aldrin, Jr., and Michael Collins, in the spacecraft Columbia began man's greatest adventure when it departed from earth toward its destination, the Moon; and

WHEREAS, In this, one of the most significant space exploration events in the history of the United States of America, one of mankind's greatest achievements was realized on Sunday, July 20, when Astronauts Armstrong and Aldrin stepped from their lunar landing craft (Eagle) onto the surface of the Moon, while Astronaut Collins remained in Moon orbit aboard the command module awaiting the other two Astronauts' return; and

WHEREAS, The landing of the first men upon the surface of the Moon fulfills a commitment accepted by thousands of dedicated, resourceful men and women and the entire team of courageous astronauts; and

WHEREAS, The lunar landing represents the first physical step of man's exploration of space and brings us closer to achieving even greater scientific and technological breakthroughs for the benefit of all the peoples of the world; and

WHEREAS, We have had the opportunity to witness and feel a part of an historical event that will forever be recorded in man's record of achievement and advancement; and

WHEREAS, The thoughts and prayers of the people all over the world accompanied the three Astronauts in their exploration through the void of space in fulfillment of this age-old dream of reaching another celestial body; and

WHEREAS, The accomplishments of the Apollo 11 Astronauts hopefully will hasten the day when the world's population will become a single community dedicated to peace and mutual understanding and respect; and

WHEREAS, Arch A. Moore, Jr., Governor of the State of West Virginia, in keeping with a national proclamation by President Richard M. Nixon, proclaimed the day of July 21, 1969, as a DAY OF LUNAR-SPACE ACHIEVEMENT in West Virginia; therefore, be it

Resolved by the Legislature of West Virginia:

That the members of the West Virginia Legislature, in extraordinary session assembled, and with a deep feeling of gratitude and pride, salute the accomplishments of our three fellow Americans, and our Nation's advancement in space, fully realizing that every West Virginian has had the unique opportunity of witnessing an event that will be printed in the pages of history forever.



HOUSE CONCURRENT RESOLUTION NO. 4

(Originating in the House Committee on the Judiciary)

[Adopted July 25, 1969]

Directing the Joint Committee on Government and Finance to make a study of the means and methods for preventing and eliminating derelict and abandoned motor vehicles on, near and within sight of the public highways of this State.

WHEREAS, There exists numerous abandoned and derelict vehicles on public and private property within this State and within view of the public highways thereof which constitute a nuisance and which adversely affect the natural beauty of the State and the general welfare of its citizens; therefore, be it

Resolved by the Legislature of West Virginia:

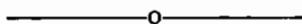
That the Joint Committee on Government and Finance is hereby directed to review, examine and study the problem of abandoned and derelict motor vehicles on, near and within sight of the public highways of this State and the most feasible, practical and economical means of preventing and eliminating them, taking into account the promotion of the natural beauty

of the State and the rights of the owners of such vehicles and the holders of liens thereon; and, be it

Further Resolved, That the study include consideration of the necessity of statutory change; and, be it

Further Resolved, That the Committee report to the regular session of the Legislature, one thousand nine hundred seventy, 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 draft proposed legislation be paid from legislative appropriations to the Joint Committee on Government and Finance.



HOUSE CONCURRENT RESOLUTION NO. 6

(By MR. SPEAKER, MR. BOIARSKY and MR. WATSON)

[Adopted July 25, 1969]

Directing the Joint Committee on Government and Finance to make a study of the employment practices of the State of West Virginia, its agencies, bureaus, departments and offices and the means, desirability and feasibility of broadening and implementing the civil service system of the State.

WHEREAS, Numerous employees of the State of West Virginia, its agencies, bureaus, departments and offices are not covered by the classified service under the Civil Service Law, although the provisions thereof permit the Governor by executive order to so include such employees with the consent of the Commission and the appointed authorities; and

WHEREAS, Other employees of the State may not be included under classified service by certain provisions of law proposed to be amended at this extraordinary session of the Legislature; and

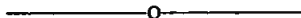
WHEREAS, An orderly and fair system of employment on the basis of merit and ability of such employees is deemed essential for the efficient administration of state government; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance be and hereby is directed to review, examine and study the subject of classified service in this State and the number, type and classification of employees of the State of West Virginia, its agencies, bureaus, departments and offices which should be placed under classified service by law and whether amendment of the Civil Service System of this State is necessary to improve, foster and promote the efficient and orderly operation of the state government; and, be it .

Further Resolved, That the Committee submit its report to the regular session of the Legislature, one thousand nine hundred seventy on its findings, conclusions and recommendations, together with drafts of any proposed legislation to carry its recommendations into effect; and, be it

Further Resolved, That the expenses necessary to conduct the study, 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. 1

(By MR. GAINER and MR. MCKOWN)

[Adopted July 25, 1969]

Creating a special interim legislative committee to make a study into the need and desirability of creating an elementary and secondary public school building authority of West Virginia and to determine if legislation is needed in order to aid in providing modern and efficient school buildings and appurtenant facilities.

WHEREAS, Section 5, Article XII, of the Constitution of West Virginia specifies that the Legislature shall provide for the support of free schools; and

WHEREAS, The judicial interpretation of this constitutional provision makes it obligatory upon the Legislature to provide for the support of free schools; and

WHEREAS, Proposed legislation has been introduced in this session of the Legislature providing for the creation of an ele-

mentary and secondary public school building authority of West Virginia and providing supplemental support to the counties for the acquisition of school buildings and appurtenant facilities; and

WHEREAS, It appears that although such proposed legislation has considerable merit, there is a need for further study with respect to the questions presented by such proposed legislation; therefore, be it

Resolved by the Legislature of West Virginia:

That a special interim legislative committee, 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 from 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, is hereby created to conduct a comprehensive study into the need and desirability of creating an elementary and secondary public school building authority of West Virginia and to determine if legislation is needed in order to aid in providing modern and efficient school buildings and appurtenant facilities; and, be it

Resolved further, That a final report containing the conclusions and recommendations of the special interim 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 necessary to conduct such study and to prepare any such drafts of legislation 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 special interim committee.

LEGISLATURE OF WEST VIRGINIA

ACTS OF 1970

FIRST EXTRAORDINARY SESSION

(June 16-June 19, 1970)

CHAPTER 1

(Com. Sub. for Senate Bill No. 27—By Mr. Carrigan)

[Passed June 19, 1970; in effect from passage. Approved by the Governor.]

AN ACT transferring amounts between items of the total appropriations for certain state spending units as appropriated by chapter six, acts of the Legislature, regular session, one thousand nine hundred sixty-nine, known as the Budget Bill, and the act making supplementary appropriations, by chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred sixty-nine.

WHEREAS, Certain spending units have indicated a need to transfer specific amounts between items of appropriation heretofore made by the Legislature for such spending units; and

WHEREAS, Such transfers are necessary in order to protect or to increase the efficiency of the service by each of such spending units; therefore,

Be it enacted by the Legislature of West Virginia:

That items of the total appropriations of Account No. 180, Account No. 240, Account No. 320, Account No. 670, Account No. 671, Account No. 837, and Account No. 900, chapter six, acts

of the Legislature, regular session, one thousand nine hundred sixty-nine, and Account No. 405, chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred sixty-nine, be transferred so as to read as follows:

TITLE 2. APPROPRIATIONS.

§1. Appropriations from general revenue.

EDUCATIONAL

Marshall university—Acct. No. 320

EXECUTIVE

FISCAL

State tax department—Acct. No. 180

LEGAL

Attorney general—Acct. No. 240

HEALTH AND WELFARE

Department of welfare—Acct. No. 405

§2. Appropriations from other funds.

PAYABLE FROM SPECIAL REVENUE FUND

West Virginia alcohol beverage control—Acct. No. 837

PAYABLE FROM STATE ROAD FUND

Department of motor vehicles—Acct. No. 671

State road commission—Acct. No. 670

PAYABLE FROM WORKMEN'S COMPENSATION FUND

Workmen's compensation commissioner—Acct. No. 900

12—State Tax Department

Acct. No. 180

1 Personal Services	\$	2,415,847.00
2 Current Expenses		661,465.00

17—Attorney General

Acct. No. 240

2 Other Personal Services	\$	407,360.00
3 Current Expenses		58,750.00

35—Marshall University

Acct. No. 320

1 Personal Services	\$	6,425,239.00
2 Current Expenses		475,550.00
3 Repairs and Alterations		239,550.00
5 Flood Wall Assessment		2,850.00

121—*State Road Commission*

Acct. No. 670

TO BE PAID FROM STATE ROAD FUND

1	Federal-Aid Construction—Interstate	
2	Program	\$ 103,279,000.00
3	Federal-Aid Construction—ABC Program	31,000,000.00
4	Appalachian Program	75,000,000.00
6	Special Maintenance and State Construction	
7	—Expressway, Trunkline and Feeder	14,000,000.00
8	Special Maintenance and State Construc-	
9	tion—State Local Service	12,000,000.00
10	Routine Maintenance—Expressway, Trunk-	
11	line and Feeder	11,000,000.00
12	Routine Maintenance—State Local Service	12,000,000.00
13	Emergency Operations—Snow and Ice Con-	
14	trol—Flood and Slides	10,000,000.00
17	General Operations	21,000,000.00
20	Debt Service	15,130,000.00

122—*Department of Motor Vehicles*

Acct. No. 671

TO BE PAID FROM STATE ROAD FUND

1	Personal Services	\$ 943,949.00
4	Purchase of License Plates	410,021.00

144—*West Virginia Alcohol Beverage Control*

Acct. No. 837

TO BE PAID FROM SPECIAL REVENUE FUND

2	Other Personal Services	\$ 4,002,000.00
3	Current Expenses	981,300.00
7	Public Employees Retirement Matching	
8	Fund	228,000.00

149—*Workmen's Compensation Commissioner*

Acct. No. 900

TO BE PAID FROM WORKMEN'S COMPENSATION FUND

1	Personal Services	\$ 953,031.00
2	Current Expenses	349,019.00

5 Public Employees Retirement Matching	
6 Fund	65,100.00

60—*Department of Welfare*

Acct. No. 405

1 Personal Services	\$ 4,292,380.00
2 Current Expenses	1,450,000.00
4 Public Assistance Grants (Classified Aid)....	11,400,000.00
10 Social Security Matching Fund	276,700.00

The foregoing constitute transfers of amounts from one item of appropriation to another item of appropriation within the total appropriation of each designated spending unit; the amounts as itemized for expenditure during the fiscal year one thousand nine hundred seventy shall be available for expenditure upon the effective date of this act.

CHAPTER 2

(House Bill No. 2—By Mr. Speaker, Mr. Boiarsky, and Mr. Watson)

[Passed June 18, 1970; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirteen, article thirteen-a, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to revenue bonds issued by public service districts.

Be it enacted by the Legislature of West Virginia:

That section thirteen, article thirteen-a, 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 13A. PUBLIC SERVICE DISTRICTS FOR WATER AND SEWERAGE SERVICES.

§16-13A-13. Revenue bonds.

- 1 For constructing or acquiring any public service
- 2 properties for the authorized purposes of the district,

3 or necessary or incidental thereto, and for constructing
4 improvements and extensions thereto, and also for reim-
5 bursing or paying the costs and expenses of creating
6 the district, the board of any such district is hereby
7 authorized to borrow money from time to time and in
8 evidence thereof issue the bonds of such district, pay-
9 able solely from the revenues derived from the operation
10 of the public service properties under control of the
11 district. Such bonds may be issued in one or more series,
12 may bear such date or dates, may mature at such time
13 or times not exceeding forty years from their respec-
14 tive dates, may bear interest at such rate or rates not
15 exceeding eight percent per annum payable semiannually,
16 may be in such form, may carry such registration priv-
17 ileges, may be executed in such manner, may be pay-
18 able at such place or places, may be subject to such
19 terms of redemption with or without premium, may be
20 declared or become due before maturity date thereof,
21 may be authenticated in any manner, and upon com-
22 pliance with such conditions, and may contain such
23 terms and covenants as may be provided by resolution
24 or resolutions of the board. Notwithstanding the form
25 or tenor thereof, and in the absence of any express
26 recital on the face thereof, that the bond is nonnegoti-
27 able, all such bonds shall be, and shall be treated as,
28 negotiable instruments for all purposes. Bonds bearing
29 the signatures of officers in office on the date of the
30 signing thereof shall be valid and binding for all pur-
31 poses notwithstanding that before the delivery thereof
32 any or all of the persons whose signatures appear thereon
33 shall have ceased to be such officers. Notwithstanding
34 the requirements or provisions of any other law, any
35 such bonds may be negotiated or sold in such manner
36 and at such time or times as is found by the board to
37 be most advantageous, and all such bonds may be sold
38 at such price that the interest cost of the proceeds there-
39 from does not exceed eight percent per annum, based on
40 the average maturity of such bonds and computed accord-
41 ing to standard tables of bond values. Any resolution or
42 resolutions providing for the issuance of such bonds may
43 contain such covenants and restrictions upon the issu-

44 ance of additional bonds thereafter as may be deemed
45 necessary or advisable for the assurance of the payment
46 of the bonds thereby authorized.

CHAPTER 3

(House Bill No. 3—By Mr. Speaker, Mr. Boiarsky, and Mr. Watson)

[Passed June 18, 1970; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty, article fifteen, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to authorization, interest rate, life, form, denomination, sale, redemption and medium of payment of bonds issued by a housing authority; validity of signatures of commissioners or officers on such bonds, and presumptions in legal actions involving validity or enforceability of bonds of an authority.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 15. STATE HOUSING LAW.

§16-15-20. Bonds authorized by resolution; interest rate and life; forms; denominations; redemption; how payable; sale; signatures of commissioners or officers ceasing to be such before delivery; presumptions in suit, etc., involving validity.

1 Bonds of an authority shall be authorized by its reso-
2 lution and may be issued in one or more series and shall
3 bear such date or dates, mature at such time or times,
4 bear interest at such rate or rates, not exceeding seven
5 percent per annum, be in such denomination or denomi-
6 nations, be in such form, either coupon or registered,
7 carry such conversion or registration privileges, have

8 such rank or priority, be executed in such manner, be
9 payable in such medium of payment, at such place or
10 places, and be subject to such terms of redemption (with
11 or without premium) as such resolution, its trust inden-
12 ture or mortgage may provide.

13 The bonds shall be sold at not less than par at public
14 sale held after notice published as a Class I legal adver-
15 tisement 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 the city or county, as
18 the case may be. The notice shall be published at least
19 five days prior to such sale. The notice shall also be
20 published in a financial newspaper published in the city
21 of New York, New York: *Provided, however,* That such
22 bonds may be sold to the federal government at private
23 sale at not less than par and, in the event less than all
24 of the bonds authorized in connection with any project or
25 projects are sold to the federal government, the balance
26 of such bonds may be sold at private sale at not less
27 than par at an interest cost to the authority of not to
28 exceed the interest cost to the authority of the portion of
29 the bonds sold to the federal government.

30 In case any of the commissioners or officers of the
31 authority whose signatures appear on any bonds or cou-
32 pons shall cease to be such commissioners or officers be-
33 fore the delivery of such bonds, such signatures shall,
34 nevertheless, be valid and sufficient for all purposes,
35 the same as if they had remained in office until such
36 delivery. Any provisions of any law to the contrary not-
37 withstanding, any bonds issued pursuant to this article
38 shall be negotiable.

39 In any suit, action or proceedings involving the validity
40 or enforceability of any bond of an authority or
41 the security therefor, any such bond reciting in substance
42 that it has been issued by the authority to aid in financing
43 a housing project to provide dwelling accommodations
44 for persons of low income shall be conclusively deemed
45 to have been issued for a housing project of such char-
46 acter, and said project shall be conclusively deemed to
47 have been planned, located and constructed in accordance
48 with the purposes and provisions of this article.

CHAPTER 4

(House Bill No. 4—By Mr. Speaker, Mr. Boiarsky, and Mr. Watson)

[Passed June 18, 1970; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section ten, article eighteen, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to revenue bonds issued by urban renewal authorities and the interest rates on such bonds.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 18. SLUM CLEARANCE.

§16-18-10. Bonds.

1 (a) An authority shall have power to issue bonds
2 from time to time in its discretion for any of its cor-
3 porate purposes including the payment of principal
4 and interest upon any advances for surveys and plans
5 for redevelopment projects. An authority shall also
6 have power to issue refunding bonds for the purpose
7 of paying or retiring or in exchange for bonds pre-
8 viously issued by it. An authority may issue such
9 types of bonds as it may determine, includ-
10 ing (without limiting the generality of the fore-
11 going) bonds on which the principal and interest are
12 payable:

13 (1) Exclusively from the income, proceeds and reve-
14 nues of the redevelopment project financed with the pro-
15 ceeds of such bonds; or

16 (2) Exclusively from the income, proceeds and reve-
17 nues of any of its redevelopment projects whether or
18 not they are financed in whole or in part with the pro-
19 ceeds of such bonds: *Provided*, That any such bonds
20 may be additionally secured by a pledge of any loan,
21 grant or contributions, or parts thereof, from the federal

22 government or other sources, or a mortgage of any re-
23 development project or projects of the authority.

24 (b) Neither the commissioners of an authority nor
25 any person executing the bonds shall be liable person-
26 ally on the bonds by reason of the issuance thereof. The
27 bonds and other obligations of the authority (and such
28 bonds and obligations shall so state on their face) shall
29 not be a debt of the municipality, the county or the
30 state and neither the municipality, the county nor the
31 state shall be liable thereon, nor in any event shall such
32 bonds or obligations be payable out of any funds or prop-
33 erties other than those of said authority acquired for
34 the purposes of this article. The bonds shall not consti-
35 tute an indebtedness within the meaning of any consti-
36 tutional or statutory debt limitation or restriction. Bonds
37 of an authority are declared to be issued for an essential
38 public and governmental purpose and to be public instru-
39 mentalities and, together with interest thereon and in-
40 come therefrom, shall be exempt from all taxes. Such
41 bonds need not be offered by the authority to the state
42 sinking fund commission at any time and an authority
43 shall not be required to turn over any surplus or sinking
44 funds to the state sinking fund commission.

45 (c) Bonds of an authority shall be authorized by its
46 resolution and may be issued in one or more series and
47 shall bear such date or dates, be payable upon demand
48 or mature at such time or times, bear interest at such
49 rate or rates, not exceeding seven per centum per annum,
50 be in such denomination or denominations, be in such
51 form either coupon or registered, carry such conversion
52 or registration privileges, have such rank or priority,
53 be executed in such manner, be payable in such medium
54 of payment, at such place or places, and be subject to
55 such terms of redemption (with or without premium) as
56 such resolution, its trust indenture or mortgage may pro-
57 vide.

58 (d) The bonds shall be sold at not less than par at
59 public sale held after notice published as a Class I legal
60 advertisement in compliance with the provisions of ar-
61 ticle three, chapter fifty-nine of this code, and the publi-
62 cation area for such publication shall be the area of

63 operation. Such publication shall be made at least ten
64 days prior to such sale. The notice may be published in
65 such other medium of publication as the authority may
66 determine: *Provided*, That such bonds may be sold to the
67 federal government at private sale at not less than par,
68 and, in the event less than all of the bonds authorized in
69 connection with any project or projects are sold to the
70 federal government, the balance of such bonds may be
71 sold at private sale at not less than par at an interest
72 cost to the authority of not to exceed the interest cost
73 to the authority of the portion of the bonds sold to the
74 federal government.

75 (e) In case any of the commissioners or officers of
76 the authority whose signatures appear on any bonds or
77 coupons shall cease to be such commissioners or officers
78 before the delivery of such bonds, such signatures shall,
79 nevertheless, be valid and sufficient for all purposes, the
80 same as if such commissioners or officers had remained
81 in office until such delivery. Any provision of any law
82 to the contrary notwithstanding, any bonds issued pur-
83 suant to this article shall be fully negotiable.

84 (f) In any suit, action or proceedings involving the
85 validity or enforceability of any bond of an authority
86 or the security therefor, any such bond reciting in sub-
87 stance that it has been issued by the authority to aid in
88 financing a redevelopment project, as herein defined, shall
89 be conclusively deemed to have been issued for such
90 purpose and such project shall be conclusively deemed
91 to have been planned, located and carried out in accord-
92 ance with the purposes and provisions of this article.

CHAPTER 5

(House Bill No. 8—By Mr. Seibert and Mr. Watson)

[Passed June 19, 1970; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section nineteen, article seven-
teen, chapter seventeen of the code of West Virginia, one

thousand nine hundred thirty-one, as amended, relating generally to the issuance of revenue bonds to pay the cost of toll bridges, including the interest rate on such bonds.

Be it enacted by the Legislature of West Virginia:

That section nineteen, article seventeen, 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 17. TOLL BRIDGES.

§17-17-19. Bridge revenue bonds generally.

1 The West Virginia commissioner of highways may pay
2 the cost as defined hereinabove of any one or more such
3 bridges by the issuance of bridge revenue bonds of the
4 state, by a resolution of the commissioner which shall
5 recite an estimate by the commissioner of such cost, the
6 principal and interest of which bonds shall be payable
7 solely from the special fund herein provided for such
8 payment. The commissioner, after any such issue of
9 bonds or simultaneously therewith, may issue further
10 issues of bonds to pay the cost of any other one or more
11 of such bridges, in the manner and subject to all of the
12 provisions herein contained as to the bonds first men-
13 tioned in this section. All such bonds shall have and
14 are hereby declared to have all the qualities of nego-
15 tiable instruments under the Uniform Commercial Code
16 of this state. Such bonds shall bear interest at not more
17 than seven percent per annum, payable semiannually,
18 and shall mature in not more than forty years from
19 their date or dates and may be made redeemable at
20 the option of the state, to be exercised by the commis-
21 sioner, at such price and under such terms and conditions
22 as the commissioner may fix prior to issuance of such
23 bonds. The commissioner shall determine the form of
24 such bonds, including coupons to be attached thereto
25 to evidence the right of interest payments, which bonds
26 shall be signed by the governor and the commissioner,
27 under the great seal of the state, attested by the secre-
28 tary of state, and the coupons attached thereto shall
29 bear the facsimile signature of the commissioner. In

30 case any of the officers whose signatures appear on the
31 bonds or coupons shall cease to be such officers before
32 the delivery of such bonds, such signatures shall never-
33 theless be valid and sufficient for all purposes the same
34 as if they had remained in office until such delivery.
35 The commissioner shall fix the denominations of such
36 bonds, the principal and interest of which shall be pay-
37 able at the office of the treasurer of the state of West
38 Virginia, at the capitol of said state, or, at the option
39 of the holder, at some bank or trust company in the
40 city of New York to be named in the bonds, either in
41 lawful money or in gold coin of the United States,
42 of or equal to the then current standard of weight and
43 fineness, as may be determined by the commissioner.
44 Such bonds shall be exempt from taxation by the state
45 of West Virginia or any county or municipality therein.
46 The commissioner may provide for the registration of
47 such bonds in the name of the owner as to principal
48 alone and as to both principal and interest under such
49 terms and conditions as the commissioner may deter-
50 mine, and shall sell such bonds in such manner as he
51 may determine to be for the best interest of the state,
52 taking into consideration the financial responsibility of
53 the purchaser and the terms and conditions of the pur-
54 chase and especially the availability of the proceeds
55 of the bonds when required for payment of the cost
56 of the bridges, such sale to be made at a price not lower
57 than a price which, when computed upon standard
58 tables of bond values, will show a net return of not
59 more than eight percent per annum to the purchaser
60 upon the amount paid therefor.

61 The proceeds of such bonds shall be used solely for
62 the payment of the cost of the bridges, and shall be
63 checked out by the commissioner and under such further
64 restrictions, if any, as the commissioner may provide.
65 If the proceeds of such bonds, by error or calculation
66 or otherwise, shall be less than the cost of the bridge
67 or bridges, additional bonds may in like manner be
68 issued to provide the amount of such deficit, and, unless
69 otherwise provided in the trust agreement hereinafter
70 mentioned, shall be deemed to be of the same issue

71 and shall be entitled to payment from the same fund,
72 without preference or priority of the bonds first issued
73 for the same bridge or bridges. If the proceeds of bonds
74 issued for any bridge or bridges shall exceed the cost
75 thereof, the surplus shall be paid into the fund here-
76 inafter provided for payment of the principal and in-
77 terest of such bonds. Such fund may be used for the
78 purchase of any of the outstanding bonds payable from
79 such fund at the market price, but at not exceeding
80 the price, if any, at which such bonds shall in the same
81 year be redeemable, and all bonds redeemed or pur-
82 chased shall forthwith be canceled and shall not again
83 be issued.

84 Prior to the preparation of definitive bonds, the com-
85 missioner may under like restrictions issue temporary
86 bonds with or without coupons, exchangeable for
87 definitive bonds upon the issuance of the latter. Such
88 revenue bonds may be issued without any other pro-
89 ceedings or the happening of any other conditions or
90 things than those proceedings, conditions and things
91 which are specified and required by this article or by
92 the constitution of the state.

CHAPTER 6

(Senate Bill No. 5—By Mr. Carrigan)

[Passed June 18, 1970; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article ten, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, prohibiting the keeping or exhibiting of gaming tables or banks, any slot machine, multiple coin console machine, multiple coin console slot machine or device in the nature of a slot machine or any other gaming table or device; providing for the complete destruction of any of the same following seizure thereof;

providing certain exceptions; and providing criminal penalties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10. CRIMES AGAINST PUBLIC POLICY.

§61-10-1. Keeping or exhibiting gaming table, machine, or device; penalty; seizure of table, machine or device; forfeiture of money used in such gaming.

1 Any person who shall keep or exhibit a gaming table,
2 commonly called A. B. C. or E. O. table, or faro bank, or
3 keno table, or any slot machine, multiple coin console ma-
4 chine, multiple coin console slot machine or device in the
5 nature of a slot machine, or any other gaming table or de-
6 vice of like kind, under any denomination, or which has no
7 name, whether the game, table, bank, machine or device be
8 played with cards, dice or otherwise, or shall be a partner,
9 or concerned in interest, in keeping or exhibiting such
10 table, bank, machine or gaming device of any character,
11 shall be guilty of a misdemeanor, and, upon conviction,
12 shall be confined in jail not less than two nor more than
13 twelve months and be fined not less than one hundred
14 nor more than one thousand dollars. Any such table,
15 faro bank, machine or gaming device, and all money
16 staked or exhibited to allure persons to bet at such table,
17 or upon such gaming device, may be seized by order of
18 a court, or under the warrant of a justice, and the money
19 so seized shall be forfeited to the county and paid into
20 the treasury of the county in which such seizure is made,
21 and the table, faro bank, machine or gaming device shall
22 be completely destroyed: *Provided, however,* That the
23 provisions of this section shall not extend to coin-oper-
24 ated nonpayout machines with free play feature or to
25 automatic weighing, measuring, musical and vending
26 machines which are so constructed as to give a certain
27 uniform and fair return in value or services for each
28 coin deposited therein and in which there is no element
29 of chance.

CHAPTER 7

(House Bill No. 7—By Mr. Speaker, Mr. Boiarsky, and Mr. Seibert)

[Passed June 19, 1970; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article five-c, and section one, article five-d, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said chapter sixteen by adding thereto a new article, designated article five-e, all relating to the regulation and licensing of nursing homes and personal care facilities by the West Virginia nursing home licensing board in order to comply with federal law so the state may receive federal moneys for its citizens pursuant to federal programs for nursing and related care; distinguishing personal care facilities from nursing homes; defining nursing homes, personal care facilities and other terms; relating to types of services offered by nursing homes and personal care facilities; requiring a nursing home administrator for the operation of a nursing home; relating to certain exclusions from the definition of nursing homes and other terms; incorporating in said article five-e all of the provisions of article five-c concerning the powers, duties and rights vested in the West Virginia nursing home licensing board and all of the administrative and enforcement provisions, judicial review provisions and confidentiality provisions; relating to licensing fees; prescribing certain unlawful acts and imposing criminal penalties; authorizing injunctive relief; providing for the treatment of licenses heretofore issued for personal care homes and personal care facilities as licenses for personal care facilities under said article five-e; repealing certain inconsistent provisions and providing a severability clause.

Be it enacted by the Legislature of West Virginia:

That section two, article five-c, and section one, article five-d, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended

and reenacted; and that said chapter sixteen be further amended by adding thereto a new article, designated article five-e, all to read as follows:

Article

- 5C. Nursing Homes.
- 5D. Nursing Home Administrators.
- 5E. Personal Care Facilities.

ARTICLE 5C. NURSING HOMES.

§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, accommo-
6 dation, board, care or treatment of not less than twenty-
7 four hours in any week in which an accommodation
8 of three or more beds is maintained, furnished or
9 offered for patients or individuals, who are unable suffi-
10 ciently or properly to care for themselves, and for which
11 reception, accommodation, board, care or treatment a
12 charge is made: *Provided*, That the reception, accom-
13 modation, board, care or treatment in a household or
14 family, for compensation, of a person or persons related
15 by blood or marriage to the head of such household
16 or family, or to his or her spouse or family, within
17 the degree of consanguinity of first cousins, shall not
18 be deemed to be a nursing home. A "nursing home"
19 is a home for chronic or convalescent patients who, on
20 admission, are not as a rule, acutely ill and who do not
21 usually require special facilities, such as an operating
22 room, X-ray facilities, laboratory facilities and obstet-
23 rical facilities. A "nursing home" provides care for
24 persons who have remedial ailments or other ailments,
25 for which medical and nursing care are indicated; who,
26 however, are not sick enough to require general hospital
27 care. Nursing care is their primary need, but they will
28 require continuing medical supervision. Professional
29 nursing skills must be offered. All nursing homes shall
30 be operated by a nursing home administrator, licensed,
31 pursuant to article five-d of this chapter. The term
32 "nursing home" shall not include institutions licensed

33 as hospitals or institutions operated for the treatment
34 and care of alcoholic patients, boarding homes for chil-
35 dren, day nurseries, child-care institutions, children's
36 homes and child-placing agencies, as defined under
37 the laws of this state, nor hotels or offices of physi-
38 cians.

39 (b) The term "person" means any individual, firm,
40 partnership, corporation, company, association or joint-
41 stock association and the legal successor thereof.

42 (c) The term "board" shall mean the West Virginia
43 nursing home licensing board as herein created.

44 (d) The term "aged" relates to any individual who
45 has attained the age of sixty-five years.

ARTICLE 5D. NURSING HOME ADMINISTRATORS.

§16-5D-1. Definitions.

1 As used in this article, unless a different meaning
2 appears 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.

6 (2) The term "nursing home administrator" means
7 an individual responsible for planning, organizing, di-
8 recting and controlling a nursing home, or who in fact
9 performs such functions, whether or not such individual
10 has an ownership interest in the nursing home and
11 whether or not such functions are shared with one or
12 more other persons.

13 (3) The word "board" shall mean the West Virginia
14 nursing home licensing board created by section three,
15 article five-c of this chapter.

16 (4) The word "person" or "applicant" shall mean
17 an individual.

18 (5) The word "council" shall mean the state nursing
19 home advisory council created by section eleven of this
20 article.

ARTICLE 5E. PERSONAL CARE FACILITIES.

§16-5E-1. Definitions.

§16-5E-2. Administration of article.

§16-5E-3. Licensing of personal care facilities.

§16-5E-4. License fee; amount; disposition.

§16-5E-5. Unlawful acts; penalty.

§16-5E-6. Injunctions.

§16-5E-7. License in force upon effective date of article.

§16-5E-8. Repeal of conflicting laws; severability of article.

§16-5E-1. Definitions.

1 As used in this article, unless a different meaning
2 appears from the context:

3 (a) The term "personal care facility" shall include,
4 but not be limited to, homes for the aged, convalescent
5 homes and other facilities not offering medical and
6 nursing care on a full-time basis. A "personal care
7 facility," as distinguished from a "nursing home" is a
8 place for the care of aged or infirm persons whose prin-
9 cipal need is a home with such sheltered and custodial
10 care as their age or infirmities require. In such homes,
11 medical care is only occasional or incidental, such as
12 may be required in the home of any individual or
13 family for persons who are aged or infirm. The resident
14 of such homes will not, as a rule, have remedial ail-
15 ments or other ailments for which continuing skilled
16 planned medical and nursing care is indicated. The term
17 "personal care facility" shall not include boarding homes
18 or hotels.

19 (b) The term "person" means any individual, firm,
20 partnership, corporation, company, association or joint-
21 stock association and the legal successor thereof.

22 (c) The term "board" shall mean the West Virginia
23 nursing home licensing board as created by section three,
24 article five-c of this chapter.

§16-5E-2. Administration of article.

1 The administration of this article shall be vested in
2 the West Virginia nursing home licensing board created
3 in section three, article five-c of this chapter, and in
4 the administration of this article, such board shall have
5 all the powers, duties and rights vested in it under said
6 article five-c with respect to nursing homes.

§16-5E-3. Licensing of personal care facilities.

1 All facilities coming within the definition of the term
2 "personal care facility" in which an accommodation of
3 four or more beds is maintained, furnished or offered

4 for patients or individuals for board and personal care
5 of not less than twenty-four hours in any week, shall
6 be licensed as a personal care facility and not as a
7 nursing home, and shall be subject to the rules and
8 regulations adopted by said board under the provisions
9 of this article and under the provisions of article five-c
10 of this chapter. All of the provisions of said article
11 five-c relating to the suspension or revocation of license,
12 notice, hearing, judicial review, appeal and the con-
13 fidentiality of certain information shall be as fully
14 applicable to personal care facilities under the provi-
15 sions of this article and to the administration of the
16 provisions of this article as if said provisions of said
17 article five-c were set forth in extenso herein.

§16-5E-4. License fees; amount; disposition.

1 An application fee in the amount of ten dollars for
2 an original personal care facility license shall be paid
3 at the time application is made for such license. The
4 license fee for renewal of license shall be two dollars
5 per bed. The bed capacity for the holder of each license
6 shall be determined by the board. All such license fees
7 shall be due and payable to the board on or before
8 June thirtieth of each year. Such fee and application
9 shall be submitted to the secretary of the board who
10 shall retain both the application and fee pending final
11 action on the application. Thereafter, upon order of the
12 auditor of the state, all such fees shall be transmitted to
13 the state treasurer to be deposited to the credit of the
14 general revenue fund: *Provided*, That the authorized
15 expenses of the board are to be paid out of such fees.

§16-5E-5. Unlawful acts; penalty.

1 It shall be unlawful for any person to conduct, main-
2 tain or operate, or permit to be conducted, maintained
3 or operated, or to participate in the conduct, maintenance
4 or operation of a personal care facility in this state, un-
5 less and until a license therefor is first issued in accord-
6 ance with this article, which license remains unexpired,
7 unsuspended and unrevoked.

8 Any person violating the provisions of this section
9 shall be guilty of a misdemeanor, and, upon conviction

10 thereof, shall be fined not more than one hundred dol-
11 lars for the first offense, and not less than fifty nor more
12 than one hundred dollars for each subsequent offense.
13 Each day a violation continues after conviction shall be
14 considered a separate offense.

§16-5E-6. Injunctions.

1 If any person conducts, manages or operates a personal
2 care facility without first having obtained a license there-
3 for, which license remains unexpired, unsuspended and
4 unrevoked, the circuit court, or the judge thereof in vaca-
5 tion, of the county in which such conduct, management
6 or operation occurred, shall upon proper application by the
7 board in the name of the state, and after ten days' writ-
8 ten notice thereof to such person, issue an injunction
9 prohibiting such person from managing or operating such
10 personal care facility until he has fully complied with the
11 provisions of this article. The remedy provided in this
12 section shall be in addition to all other penalties and
13 remedies provided by law.

§16-5E-7. License in force upon effective date of article.

1 All personal care facilities heretofore licensed as per-
2 sonal care homes under the provisions of article five-c
3 of this chapter, which licenses are still in force upon the
4 taking effect of this article, shall continue in full force
5 and effect during the period for which they were originally
6 issued but shall be treated as a personal care facility
7 license.

8 Furthermore, all personal care facilities heretofore
9 licensed as nursing homes under the provisions of article
10 five-c of this chapter, which licenses are still in force
11 upon the taking effect of this article, shall continue in
12 full force and effect during the period for which they
13 were originally issued but shall be treated as a personal
14 care facility license.

§16-5E-8. Repeal of conflicting laws; severability of article.

1 The provisions of all acts or parts of acts, or of this
2 code, which are inconsistent with the provisions of this
3 article are hereby repealed to the extent of such incon-
4 sistency. The provisions of this article are severable and

- 5 if any shall be held unconstitutional or invalid, such de-
6 termination shall not affect or impair any of the remaining
7 provisions thereof.

CHAPTER 8

(House Bill No. 21—By Mr. Mulneix)

[Passed June 19, 1970; in effect July 1, 1970. Approved by the Governor.]

AN ACT to amend and reenact section six-(twenty-one), article seven, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the salary of the stenographer to the prosecuting attorney of Lewis county.

Be it enacted by the Legislature of West Virginia:

That section six-(twenty-one), 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(21). Assistant and stenographer for prosecuting attorney of Lewis county.

- 1 For the county of Lewis, one assistant attorney, not
2 more than one thousand eight hundred dollars; one ste-
3 nographer, not less than two thousand nor more than
4 four thousand dollars.

CHAPTER 9

(House Bill No. 10—By Mr. Speaker, Mr. Boiarsky, and Mr. Seibert)

[Passed June 19, 1970; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section nineteen, article fourteen, 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 a new section, designated section three-a, all relating to the effect of rate changes in the gasoline tax on gasoline on hand or in inventory; and providing for payment of additional gasoline tax or refund of gasoline tax.

Be it enacted by the Legislature of West Virginia:

That section nineteen, article fourteen, chapter eleven 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 three-a, all to read as follows:

ARTICLE 14. GASOLINE TAX.

§11-14-3a. Effect of rate changes; gasoline on hand or in inventory.

§11-14-19. Refund for gasoline exported, lost or from change of rate.

§11-14-3a. Effect of rate changes; gasoline on hand or in inventory.

1 It is hereby declared to be the intent of the Legis-
2 lature that one rate of excise tax be applicable to all
3 quantities of gasoline in this state on and after the effec-
4 tive date of any change of rate, whether increasing or
5 decreasing such rate, under the provisions of this article.
6 Any gasoline, on hand or in inventory, on the effective
7 date of any rate change is hereby deemed to have been
8 purchased or received on such date.

9 Every distributor, retail dealer or importer subject to
10 the taxes imposed under the provisions of this article,
11 who, on the effective date of any rate change, has on
12 hand or in inventory any gasoline, upon which tax or
13 any portion thereof has been previously paid and ac-
14 crued, shall take a physical inventory and shall file a
15 report thereof with the tax commissioner, in the form
16 as prescribed by the tax commissioner, within thirty days
17 thereafter, and shall pay to the tax commissioner at the
18 time of filing such report, any additional tax due under
19 an increased rate and shall be entitled to refund of tax,
20 under any decrease of rate, as provided in section nine-
21 teen of this article.

§11-14-19. Refund for gasoline exported, lost or from change of rate.

1 Any distributor who shall export gasoline from West
2 Virginia to any other state or nation, may be refunded
3 a sum equal to the amount of such excise tax paid on
4 such gallonage upon application made on proper forms
5 to the tax commissioner within thirty days after the
6 close of the month in which such gasoline was exported.
7 Any distributor who shall in the conduct of his wholesale
8 gasoline business, sustain losses of gasoline by reason
9 of shrinkage or evaporation, which gasoline shall have
10 been included in the measure by which the excise tax
11 imposed by this article is determined, shall be refunded
12 a sum equal to the amount of such excise tax on the
13 gallonage lost, not to exceed one and one half of one
14 percent of the gallonage handled during that month
15 which has been previously included in the measure by
16 which the excise tax imposed by this article is deter-
17 mined: *Provided*, That the tax commissioner shall cause
18 refund to be made under authority of this section when
19 application for refund, as herein provided, is filed with
20 the tax commissioner within thirty days following the
21 close of the month during which the gasoline was ex-
22 ported or lost, on forms prescribed by the tax commis-
23 sioner, of the quantity of and full details concerning
24 such gasoline exported or lost: *Provided, however*, That
25 the tax commissioner may cause refund to be made on
26 gasoline exported to another state or nation when such
27 gasoline has been included in the measure of tax, and
28 the tax has been erroneously paid to the state of West
29 Virginia, when an application for refund of the excise
30 tax is made within thirty days following the discovery
31 of such erroneous payment and not more than two years
32 after the date of such erroneous payment.

33 Every distributor shall be entitled to a refund from
34 the state of West Virginia of the amount of gasoline tax
35 paid by him, on any gasoline lost or destroyed, while he
36 shall be the owner thereof, through fire, lightning, break-
37 age or flood: *Provided further*, That such distributor
38 shall notify the tax commissioner in writing of such
39 loss or destruction, and the quantity of gasoline lost or

40 destroyed, within ten days after the date of discovery
41 of such loss or destruction: *And provided further*, That
42 within thirty days after the discovery of such loss or de-
43 struction, such distributor shall file with the tax com-
44 missioner an affidavit sworn to by him, setting forth in
45 full the circumstances and quantity of the loss or de-
46 struction, and such other information with respect thereto
47 as the tax commissioner may require.

48 Every distributor, retail dealer or importer shall be en-
49 titled to a refund from the state of West Virginia of the
50 amount resulting from a change of rate decreasing the
51 tax under the provisions of this article on gasoline on
52 hand and in inventory on the effective date of such rate
53 change, which gasoline shall have previously been in-
54 cluded in the measure by which the excise tax imposed
55 by this article is determined and previously paid by him:
56 *Provided*, That such distributor, retail dealer or importer
57 shall take a physical inventory, on the effective date of
58 such rate change and file a report with the tax commis-
59 sioner, in the form prescribed by the tax commissioner,
60 within thirty days after the effective date of the rate
61 change.

CHAPTER 10

(House Bill No. 1—By Mr. Speaker, Mr. Boiarsky,
and Mr. McManus)

[Passed June 18, 1970; in effect July 1, 1970. Became a law without the
approval of the Governor.]

AN ACT to amend and reenact sections four-a, four-b, four-c
and seventy-four, article twenty-one, 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 a new section, designated section four-d,
relating to the rates of the personal income tax, the effect
of rate changes, and employers' returns and payment of
withheld taxes.

Be it enacted by the Legislature of West Virginia:

That sections four-a, four-b, four-c and seventy-four, article twenty-one, chapter eleven 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 four-d, all to read as follows:

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-4a. Rate of tax—Taxable years beginning on or after January 1, 1963, and before January 1, 1970.

§11-21-4b. Same—Taxable years beginning on or after January 1, 1970, and before January 1, 1971.

§11-21-4c. Same—Taxable years beginning on or after January 1, 1971.

§11-21-4d. Effect of rate changes during a taxable year.

§11-21-74. Employer's return and payment of withheld taxes.

§11-21-4a. Rate of tax—Taxable years beginning on or after January 1, 1963, and before January 1, 1970.

- 1 (a) *Rate of Tax on Individuals, Heads of Households,*
- 2 *Estates and Trusts.*—The tax imposed by section three of
- 3 this article on the West Virginia taxable income of every
- 4 individual, every individual who is a head of a house-
- 5 hold in the determination of his federal income tax for
- 6 the taxable year, and every estate and trust shall be
- 7 determined in accordance with the following table:

8	If the West Virginia taxable	
9	income is:	The tax is:
10	Not over \$2,000	1.2% of the taxable income
11	Over \$2,000 but not over \$4,000.....	\$24.00, plus 1.3% of excess over \$2,000
12	Over \$4,000 but not over \$6,000.....	\$50.00, plus 1.6% of excess over \$4,000
13	Over \$6,000 but not over \$8,000.....	\$82.00, plus 1.8% of excess over \$6,000
14	Over \$8,000 but not over \$10,000.....	\$118.00, plus 2.0% of excess over \$8,000
15	Over \$10,000 but not over \$12,000.....	\$158.00, plus 2.3% of excess over \$10,000
16	Over \$12,000 but not over \$14,000.....	\$204.00, plus 2.6% of excess over \$12,000
17	Over \$14,000 but not over \$16,000.....	\$256.00, plus 2.8% of excess over \$14,000
18	Over \$16,000 but not over \$18,000.....	\$312.00, plus 3.0% of excess over \$16,000
19	Over \$18,000 but not over \$20,000.....	\$372.00, plus 3.1% of excess over \$18,000
20	Over \$20,000 but not over \$22,000.....	\$434.00, plus 3.4% of excess over \$20,000
21	Over \$22,000 but not over \$26,000.....	\$502.00, plus 3.5% of excess over \$22,000
22	Over \$26,000 but not over \$32,000.....	\$642.00, plus 3.7% of excess over \$26,000
23	Over \$32,000 but not over \$38,000.....	\$864.00, plus 3.9% of excess over \$32,000
24	Over \$38,000 but not over \$44,000.....	\$1,098.00, plus 4.1% of excess over \$38,000
25	Over \$44,000 but not over \$50,000.....	\$1,344.00, plus 4.3% of excess over \$44,000
26	Over \$50,000 but not over \$60,000.....	\$1,602.00, plus 4.5% of excess over \$50,000
27	Over \$60,000 but not over \$70,000.....	\$2,052.00, plus 4.7% of excess over \$60,000
28	Over \$70,000 but not over \$80,000.....	\$2,522.00, plus 4.9% of excess over \$70,000
29	Over \$80,000 but not over \$90,000.....	\$3,012.00, plus 5.0% of excess over \$80,000
30	Over \$90,000 but not over \$100,000.....	\$3,512.00, plus 5.2% of excess over \$90,000
31	Over \$100,000 but not over \$150,000.....	\$4,032.00, plus 5.3% of excess over \$100,000
32	Over \$150,000 but not over \$200,000.....	\$6,682.00, plus 5.4% of excess over \$150,000
33	Over \$200,000	\$9,382.00, plus 5.5% of excess over \$200,000

34 (b) *Rate of Tax in Case of Joint Return or Return*
35 *of Surviving Spouse.*—In the case of a joint return of
36 a husband and wife and the return of an individual
37 who is entitled to file his federal income tax return for
38 the taxable year as a surviving spouse, the tax imposed
39 by section three of this article on the West Virginia
40 taxable income shall be determined in accordance with
41 the following table:

42 If the West Virginia taxable
43 income is:

The tax is:

44 Not over \$4,000.....	1.2% of the taxable income
45 Over \$4,000 but not over \$8,000.....	\$48.00, plus 1.3% of excess over \$4,000
46 Over \$8,000 but not over \$12,000.....	\$100.00, plus 1.6% of excess over \$8,000
47 Over \$12,000 but not over \$16,000.....	\$164.00, plus 1.8% of excess over \$12,000
48 Over \$16,000 but not over \$20,000.....	\$236.00, plus 2.0% of excess over \$16,000
49 Over \$20,000 but not over \$24,000.....	\$316.00, plus 2.3% of excess over \$20,000
50 Over \$24,000 but not over \$28,000.....	\$408.00, plus 2.6% of excess over \$24,000
51 Over \$28,000 but not over \$32,000.....	\$512.00, plus 2.8% of excess over \$28,000
52 Over \$32,000 but not over \$36,000.....	\$624.00, plus 3.0% of excess over \$32,000
53 Over \$36,000 but not over \$40,000.....	\$744.00, plus 3.1% of excess over \$36,000
54 Over \$40,000 but not over \$44,000.....	\$868.00, plus 3.4% of excess over \$40,000
55 Over \$44,000 but not over \$52,000.....	\$1,004.00, plus 3.5% of excess over \$44,000
56 Over \$52,000 but not over \$64,000.....	\$1,284.00, plus 3.7% of excess over \$52,000
57 Over \$64,000 but not over \$76,000.....	\$1,728.00, plus 3.9% of excess over \$64,000
58 Over \$76,000 but not over \$88,000.....	\$2,196.00, plus 4.1% of excess over \$76,000
59 Over \$88,000 but not over \$100,000.....	\$2,688.00, plus 4.3% of excess over \$88,000
60 Over \$100,000 but not over \$120,000.....	\$3,204.00, plus 4.5% of excess over \$100,000
61 Over \$120,000 but not over \$140,000.....	\$4,104.00, plus 4.7% of excess over \$120,000
62 Over \$140,000 but not over \$160,000.....	\$5,044.00, plus 4.9% of excess over \$140,000
63 Over \$160,000 but not over \$180,000.....	\$6,024.00, plus 5.0% of excess over \$160,000
64 Over \$180,000 but not over \$200,000.....	\$7,024.00, plus 5.2% of excess over \$180,000
65 Over \$200,000 but not over \$300,000.....	\$8,064.00, plus 5.3% of excess over \$200,000
66 Over \$300,000 but not over \$400,000.....	\$13,364.00, plus 5.4% of excess over \$300,000
67 Over \$400,000.....	\$18,764.00, plus 5.5% of excess over \$400,000

68 (c) *Applicability of This Section.*—The provisions of
69 this section shall be applicable in determining the rate
70 of tax imposed by this article for all taxable years or
71 portions thereof beginning on or after the first day of
72 January, one thousand nine hundred sixty-three, and
73 before the first day of January, one thousand nine hun-
74 dred seventy.

**§11-21-4b. Same—Taxable years beginning on or after
January 1, 1970, and before January 1, 1971.**

1 (a) *Rate of Tax on Individuals, Heads of Households,*
2 *Estates and Trusts.*—The tax imposed by section three
3 of this article on the West Virginia taxable income of
4 every individual, every individual who is a head of a
5 household in the determination of his federal income tax
6 for the taxable year, and every estate and trust shall
7 be determined in accordance with the following table:

8 If the West Virginia taxable

9 income is:

The tax is:

10 Not over \$2,000.....	1.65% of the taxable income
11 Over \$2,000 but not over \$4,000.....	\$33.00, plus 1.8% of excess over \$2,000
12 Over \$4,000 but not over \$6,000.....	\$69.00, plus 2.2% of excess over \$4,000
13 Over \$6,000 but not over \$8,000.....	\$113.00, plus 2.5% of excess over \$6,000
14 Over \$8,000 but not over \$10,000.....	\$163.00, plus 2.8% of excess over \$8,000
15 Over \$10,000 but not over \$12,000.....	\$219.00, plus 3.2% of excess over \$10,000
16 Over \$12,000 but not over \$14,000.....	\$283.00, plus 3.6% of excess over \$12,000
17 Over \$14,000 but not over \$16,000.....	\$355.00, plus 3.9% of excess over \$14,000
18 Over \$16,000 but not over \$18,000.....	\$433.00, plus 4.1% of excess over \$16,000
19 Over \$18,000 but not over \$20,000.....	\$515.00, plus 4.3% of excess over \$18,000
20 Over \$20,000 but not over \$22,000.....	\$601.00, plus 4.7% of excess over \$20,000
21 Over \$22,000 but not over \$26,000.....	\$695.00, plus 4.8% of excess over \$22,000
22 Over \$26,000 but not over \$32,000.....	\$887.00, plus 5.1% of excess over \$26,000
23 Over \$32,000 but not over \$38,000.....	\$1,193.00, plus 5.4% of excess over \$32,000
24 Over \$38,000 but not over \$44,000.....	\$1,517.00, plus 5.6% of excess over \$38,000
25 Over \$44,000 but not over \$50,000.....	\$1,853.00, plus 5.9% of excess over \$44,000
26 Over \$50,000 but not over \$60,000.....	\$2,207.00, plus 6.2% of excess over \$50,000
27 Over \$60,000 but not over \$70,000.....	\$2,827.00, plus 6.5% of excess over \$60,000
28 Over \$70,000 but not over \$80,000.....	\$3,477.00, plus 6.7% of excess over \$70,000
29 Over \$80,000 but not over \$90,000.....	\$4,147.00, plus 6.9% of excess over \$80,000
30 Over \$90,000 but not over \$100,000.....	\$4,837.00, plus 7.2% of excess over \$90,000
31 Over \$100,000 but not over \$150,000.....	\$5,557.00, plus 7.3% of excess over \$100,000
32 Over \$150,000 but not over \$200,000.....	\$9,207.00, plus 7.4% of excess over \$150,000
33 Over \$200,000.....	\$12,907.00, plus 7.6% of excess over \$200,000

34 (b) *Rate of Tax in Case of Joint Return or Return of*
35 *Surviving Spouse.*—In the case of a joint return of a
36 husband and wife and the return of an individual who
37 is entitled to file his federal income tax return for the
38 taxable year as a surviving spouse, the tax imposed by
39 section three of this article on the West Virginia taxable
40 income shall be determined in accordance with the fol-
41 lowing table:

42	If the West Virginia taxable	
43	income is:	The tax is:
44	Not over \$4,000	1.65% of the taxable income
45	Over \$4,000 but not over \$8,000	\$66.00, plus 1.8% of excess over \$4,000
46	Over \$8,000 but not over \$12,000	\$138.00, plus 2.2% of excess over \$8,000
47	Over \$12,000 but not over \$16,000	\$226.00, plus 2.5% of excess over \$12,000
48	Over \$16,000 but not over \$20,000	\$326.00, plus 2.8% of excess over \$16,000
49	Over \$20,000 but not over \$24,000	\$438.00, plus 3.2% of excess over \$20,000
50	Over \$24,000 but not over \$28,000	\$566.00, plus 3.6% of excess over \$24,000
51	Over \$28,000 but not over \$32,000	\$710.00, plus 3.9% of excess over \$28,000
52	Over \$32,000 but not over \$36,000	\$866.00, plus 4.1% of excess over \$32,000
53	Over \$36,000 but not over \$40,000	\$1,030.00, plus 4.3% of excess over \$36,000
54	Over \$40,000 but not over \$44,000	\$1,202.00, plus 4.7% of excess over \$40,000
55	Over \$44,000 but not over \$52,000	\$1,390.00, plus 4.8% of excess over \$44,000
56	Over \$52,000 but not over \$64,000	\$1,774.00, plus 5.1% of excess over \$52,000
57	Over \$64,000 but not over \$76,000	\$2,386.00, plus 5.4% of excess over \$64,000
58	Over \$76,000 but not over \$88,000	\$3,034.00, plus 5.6% of excess over \$76,000
59	Over \$88,000 but not over \$100,000	\$3,706.00, plus 5.9% of excess over \$88,000
60	Over \$100,000 but not over \$120,000	\$4,414.00, plus 6.2% of excess over \$100,000
61	Over \$120,000 but not over \$140,000	\$5,654.00, plus 6.5% of excess over \$120,000
62	Over \$140,000 but not over \$160,000	\$6,954.00, plus 6.7% of excess over \$140,000
63	Over \$160,000 but not over \$180,000	\$8,294.00, plus 6.9% of excess over \$160,000
64	Over \$180,000 but not over \$200,000	\$9,674.00, plus 7.2% of excess over \$180,000
65	Over \$200,000 but not over \$300,000	\$11,114.00, plus 7.3% of excess over \$200,000
66	Over \$300,000 but not over \$400,000	\$18,414.00, plus 7.4% of excess over \$300,000
67	Over \$400,000	\$25,814.00, plus 7.6% of excess over \$400,000

68 (c) *Applicability of This Section.*—The provisions of
69 this section shall be applicable in determining the rate
70 of tax imposed by this article for all taxable years or
71 portions thereof beginning on or after the first day of
72 January, one thousand nine hundred seventy, and be-
73 fore the first day of January, one thousand nine hundred
74 seventy-one.

**§11-21-4c. Same—Taxable years beginning on or after
January 1, 1971.**

1 (a) *Rate of Tax on Individuals, Heads of Households,*
2 *Estates and Trusts.*—The tax imposed by section three of
3 this article on the West Virginia taxable income of every
4 individual, every individual who is a head of a household
5 in the determination of his federal income tax for the
6 taxable year, and every estate and trust shall be deter-
7 mined in accordance with the following table:

8 If the West Virginia taxable

9 income is:

The tax is:

10	Not over \$2,000.....	2.1% of the taxable income
11	Over \$2,000 but not over \$4,000.....	\$42.00, plus 2.3% of excess over \$2,000
12	Over \$4,000 but not over \$6,000.....	\$88.00, plus 2.8% of excess over \$4,000
13	Over \$6,000 but not over \$8,000.....	\$144.00, plus 3.2% of excess over \$6,000
14	Over \$8,000 but not over \$10,000.....	\$208.00, plus 3.5% of excess over \$8,000
15	Over \$10,000 but not over \$12,000.....	\$278.00, plus 4.0% of excess over \$10,000
16	Over \$12,000 but not over \$14,000.....	\$358.00, plus 4.6% of excess over \$12,000
17	Over \$14,000 but not over \$16,000.....	\$450.00, plus 4.9% of excess over \$14,000
18	Over \$16,000 but not over \$18,000.....	\$548.00, plus 5.3% of excess over \$16,000
19	Over \$18,000 but not over \$20,000.....	\$654.00, plus 5.4% of excess over \$18,000
20	Over \$20,000 but not over \$22,000.....	\$762.00, plus 6.0% of excess over \$20,000
21	Over \$22,000 but not over \$26,000.....	\$882.00, plus 6.1% of excess over \$22,000
22	Over \$26,000 but not over \$32,000.....	\$1,126.00, plus 6.5% of excess over \$26,000
23	Over \$32,000 but not over \$38,000.....	\$1,516.00, plus 6.8% of excess over \$32,000
24	Over \$38,000 but not over \$44,000.....	\$1,924.00, plus 7.2% of excess over \$38,000
25	Over \$44,000 but not over \$50,000.....	\$2,356.00, plus 7.5% of excess over \$44,000
26	Over \$50,000 but not over \$60,000.....	\$2,806.00, plus 7.9% of excess over \$50,000
27	Over \$60,000 but not over \$70,000.....	\$3,596.00, plus 8.2% of excess over \$60,000
28	Over \$70,000 but not over \$80,000.....	\$4,416.00, plus 8.6% of excess over \$70,000
29	Over \$80,000 but not over \$90,000.....	\$5,276.00, plus 8.8% of excess over \$80,000
30	Over \$90,000 but not over \$100,000.....	\$6,156.00, plus 9.1% of excess over \$90,000
31	Over \$100,000 but not over \$150,000.....	\$7,066.00, plus 9.3% of excess over \$100,000
32	Over \$150,000 but not over \$200,000.....	\$11,716.00, plus 9.5% of excess over \$150,000
33	Over \$200,000	\$16,466.00, plus 9.6% of excess over \$200,000

34 (b) *Rate of Tax in Case of Joint Return or Return of*
35 *Surviving Spouse.*—In the case of a joint return of a
36 husband and wife and the return of an individual who is
37 entitled to file his federal income tax return for the
38 taxable year as a surviving spouse, the tax imposed by
39 section three of this article on the West Virginia taxable
40 income shall be determined in accordance with the fol-
41 lowing table:

42 If the West Virginia taxable

43 income is:

The tax is:

44 Not over \$4,000.....	2.1% of the taxable income
45 Over \$4,000 but not over \$8,000.....	\$84.00, plus 2.3% of excess over \$4,000
46 Over \$8,000 but not over \$12,000.....	\$176.00, plus 2.8% of excess over \$8,000
47 Over \$12,000 but not over \$16,000.....	\$288.00, plus 3.2% of excess over \$12,000
48 Over \$16,000 but not over \$20,000.....	\$416.00, plus 3.5% of excess over \$16,000
49 Over \$20,000 but not over \$24,000.....	\$556.00, plus 4.0% of excess over \$20,000
50 Over \$24,000 but not over \$28,000.....	\$716.00, plus 4.6% of excess over \$24,000
51 Over \$28,000 but not over \$32,000.....	\$900.00, plus 4.9% of excess over \$28,000
52 Over \$32,000 but not over \$36,000.....	\$1,096.00, plus 5.3% of excess over \$32,000
53 Over \$36,000 but not over \$40,000.....	\$1,308.00, plus 5.4% of excess over \$36,000
54 Over \$40,000 but not over \$44,000.....	\$1,524.00, plus 6.0% of excess over \$40,000
55 Over \$44,000 but not over \$52,000.....	\$1,764.00, plus 6.1% of excess over \$44,000
56 Over \$52,000 but not over \$64,000.....	\$2,252.00, plus 6.5% of excess over \$52,000
57 Over \$64,000 but not over \$76,000.....	\$3,032.00, plus 6.8% of excess over \$64,000
58 Over \$76,000 but not over \$88,000.....	\$3,848.00, plus 7.2% of excess over \$76,000
59 Over \$88,000 but not over \$100,000.....	\$4,712.00, plus 7.5% of excess over \$88,000
60 Over \$100,000 but not over \$120,000.....	\$5,612.00, plus 7.9% of excess over \$100,000
61 Over \$120,000 but not over \$140,000.....	\$7,192.00, plus 8.2% of excess over \$120,000
62 Over \$140,000 but not over \$160,000.....	\$8,832.00, plus 8.6% of excess over \$140,000
63 Over \$160,000 but not over \$180,000.....	\$10,552.00, plus 8.8% of excess over \$160,000
64 Over \$180,000 but not over \$200,000.....	\$12,312.00, plus 9.1% of excess over \$180,000
65 Over \$200,000 but not over \$300,000.....	\$14,132.00, plus 9.3% of excess over \$200,000
66 Over \$300,000 but not over \$400,000.....	\$23,432.00, plus 9.5% of excess over \$300,000
67 Over \$400,000.....	\$32,932.00, plus 9.6% of excess over \$400,000

68 (c) *Applicability of This Section.*—The provisions of
69 this section shall be applicable in determining the rate
70 of tax imposed by this article for all taxable years or
71 portions thereof beginning on or after the first day of
72 January, one thousand nine hundred seventy-one.

§11-21-4d. Effect of rate changes during a taxable year.

1 (a) If any rate of tax imposed by this article changes
2 to become effective after the thirty-first day of December,
3 one thousand nine hundred sixty-two, and if the taxable
4 year includes the effective date of the change of rate
5 (unless that date is the first day of the taxable year),
6 then: (1) Tentative taxes shall be computed by applying
7 the rate for the period before the effective date of the
8 change of rate, and the rate for the period on and
9 after such date, to the taxable income for the entire
10 taxable year; and (2) the tax for such taxable year
11 shall be the sum of that proportion of each tentative
12 tax which the number of days in each period bears to
13 the number of days in the entire taxable year.

14 (b) For purposes of subsection (a)—

15 (1) if the rate changes for taxable years “be-
16 ginning after” or “ending after” a certain date, the follow-
17 ing day shall be considered the effective date of the
18 change; and

19 (2) if a rate changes for taxable years “be-
20 ginning on or after” a certain date, that date shall be
21 considered the effective date of the change of rate.

§11-21-74. Employer's return and payment of withheld taxes.

1 (a) *General.*—Every employer required to deduct and
2 withhold tax under this article shall, for each calendar
3 quarter, on or before the last day of the month following
4 the close of such calendar quarter, file a withholding
5 return as prescribed by the tax commissioner and pay
6 over to the tax commissioner the taxes so required to
7 be deducted and withheld; but the tax commissioner may,
8 by regulation, provide that every such employer shall
9 on or before the fifteenth day of each month pay over
10 to the tax commissioner, or a depository designated by
11 the tax commissioner, the taxes so required to be de-

12 ducted and withheld if such taxes aggregate one hundred
13 dollars or more for the preceding calendar month. Where
14 the aggregate amount so deducted and withheld by any
15 employer is less than twenty-five dollars in a calendar
16 quarter and the aggregate for the calendar year can
17 reasonably be expected to be less than one hundred
18 dollars, the tax commissioner may by regulation permit
19 an employer to file an annual return. The tax commis-
20 sioner may, if he believes such action necessary for the
21 protection of the revenues, require any employer to
22 make such return and pay to him the tax deducted and
23 withheld at any time, or from time to time.

24 (b) *Monthly Returns and Payments of Withheld Tax*
25 *for April, May and June, 1971.*—Notwithstanding the
26 provisions of subsection (a), in the case of each of the
27 months of April, May and June, one thousand nine hun-
28 dred seventy-one, every employer required to deduct
29 and withhold tax under this article, except any employer
30 with respect to whom the tax commissioner may have
31 by regulation provided otherwise in accordance with the
32 provisions of subsection (a), shall, for the months of
33 April and May, one thousand nine hundred seventy-one,
34 file a withholding return for each of such months as
35 prescribed by the tax commissioner and pay over to the
36 tax commissioner the taxes so required to be deducted
37 and withheld for each of such months by the twentieth
38 day of June, one thousand nine hundred seventy-one,
39 and shall file a withholding return for the month of
40 June, one thousand nine hundred and seventy-one, and
41 pay over to the tax commissioner the taxes so required
42 to be deducted and withheld for such month by the
43 thirty-first day of July, one thousand nine hundred
44 seventy-one.

45 (c) *Deposit In Trust for Tax Commissioner.*—When-
46 ever any employer fails to collect, truthfully account for,
47 pay over the tax, or make returns of the tax as required
48 in this section, the tax commissioner may serve a notice
49 requiring such employer to collect the taxes which be-
50 come collectible after service of such notice, to deposit
51 such taxes in a bank approved by the tax commissioner,
52 in a separate account, in trust for and payable to the

53 tax commissioner, and to keep the amount of such tax
54 in such account until payment over to the tax commis-
55 sioner. Such notice shall remain in effect until a notice
56 of cancellation is served by the tax commissioner.

RESOLUTIONS

HOUSE CONCURRENT RESOLUTION NO. 4 (By Mr. Speaker, Mr. Boiarsky, and Mr. Watson)

[Adopted June 19, 1970]

Directing the Joint Committee on Government and Finance to study the proposal for a central mental health complex for the State of West Virginia.

WHEREAS, A coordinated mental health and rehabilitation program is vital to the welfare of the citizens of West Virginia; and

WHEREAS, The Legislature recognizes the need for a careful survey of the advisability of establishing a central state mental health complex; 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 the concepts of mental health treatment with a view toward establishment of a central state mental health complex and to determine the role present mental health facilities and programs would play should such a complex be constructed; and, be it

Further Resolved, That the Joint Committee report to the regular session of the Legislature, 1971, on its findings, conclusions and recommendations, together with any proposed legislation the Committee may recommend; and, be it

Further Resolved, That the expenses necessary to conduct such a study be paid from legislative appropriations to the Joint Committee on Government and Finance.

HOUSE CONCURRENT RESOLUTION NO. 5 (By Mr. Speaker, Mr. Boiarsky, and Mr. Lohr)

[Adopted June 19, 1970]

Directing the Joint Committee on Government and Finance to study the State Teachers Retirement System and the annuities provided for thereunder.

WHEREAS, There have been enacted recent increases in benefits to be paid under the State Teachers Retirement System; and

WHEREAS, There are different benefits provided for annuitants based on their dates of retirement, which differences may contain inequities that can and should be corrected; and

WHEREAS, Any changes in the benefits under the State Teachers Retirement System must be made with care because of the effect these changes can have on the actuarial soundness of the funds involved; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance make a study of the State Teachers Retirement System and the various annuities provided for thereunder; 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, 1971; and, be it

Further Resolved, That the expenses necessary to conduct such a study shall be paid from legislative appropriations to the Joint Committee on Government and Finance.

HOUSE CONCURRENT RESOLUTION NO. 6

(By Mr. Speaker, Mr. Boiarsky, and Mr. Watson)

[Adopted June 19, 1970]

Directing the Joint Committee on Government and Finance to make a study of the desirability and possible effect of a homestead exemption amendment to the Constitution of the State of West Virginia.

WHEREAS, The property tax on an individual's homestead is not based on nor does it reflect his ability to pay; and

WHEREAS, Payment of tax on homesteads most adversely affects those with limited fixed incomes, especially the elderly; and

WHEREAS, A loss of part of their tax base could have a detrimental effect on local governmental units, which loss should

be identified clearly before preparing and submitting any such constitutional amendment to a vote of our citizens; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance be and hereby is directed to examine and study the subject of a homestead exemption amendment to the Constitution of the State of West Virginia, its desirability, possible form and the effect thereof; and, be it

Further Resolved, That the Joint Committee submit its report to the regular session of the Legislature, 1971, with its findings, conclusions and recommendations, together with drafts of any proposed legislation to carry its recommendations into effect; and, be it

Further Resolved, That the expenses necessary to conduct such study, to prepare a report and to draft proposed legislation be paid from legislative appropriations to the Joint Committee on Government and Finance.

HOUSE CONCURRENT RESOLUTION NO. 8

(By Mr. Huffman and Mr. Fantasia)

[Adopted June 19, 1970]

Urging the Department of Welfare to continue present levels of welfare programs, to keep the Legislature fully informed and to report to the Legislature its recommendations for improvements in various welfare programs.

WHEREAS, The Legislature desires to record its intention that the level of these programs not be decreased between now and the next regular session of the Legislature in January 1971, at which regular session the Legislature can consider any necessary appropriation of funds to maintain and to improve present welfare program levels; therefore, be it

Resolved by the Legislature of West Virginia:

That the Department of Welfare be urged to continue present levels of welfare programs between now and the next regular

session of the Legislature, that the Department keep the Legislature fully informed of fiscal matters related thereto and that the Department report to the Legislature at the beginning of its regular session in 1971 the Department's recommendations regarding any legislative action or appropriation of funds that might be required to maintain the programs administered by the Department, as well as its recommendations for improvements in various welfare programs; and, be it

Further Resolved, That the Department of Welfare is hereby advised of the intention of the Legislature to provide all reasonable and necessary funds for continuing the operation of the program of the Department of Welfare without any reduction of the level of benefits and that the Legislature stands ready at all times to review and consider the requirements of the Department of Welfare in order that the benefits to welfare recipients will not have to be decreased; and, be it

Further Resolved, That the Commissioner of the Department of Welfare be requested to report monthly to the Legislative Auditor in regard to the level of benefits being paid to welfare recipients and in regard to the amount of funds available for such purposes.

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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