ACTS
OF THE
LEGISLATURE
OF
WEST VIRGINIA

Regular Session, 1971
First Extraordinary Session, 1971
Second Extraordinary Session, 1970
FOREWORD

This volume contains the Acts of the West Virginia Legislature of the 1971 Regular Session, the First Extraordinary Session of 1971 and the Second Extraordinary Session of 1970, and resolutions of general interest adopted by the Legislature during these sessions.

The first regular session of the 60th Legislature convened January 13, 1971, and expired for general purposes at midnight March 13; however, by proclamation of the Governor, the session was extended for the purpose of completing work on the annual Budget Bill; and final adjournment came on March 16.

During the session a total of 1202 bills was introduced in the two Houses—721 House Bills and 481 Senate Bills. The Legislature passed 191 bills—121 House Bills and 70 Senate Bills. The Governor approved 182 enactments, vetoed nine and let one become law without approval. One bill vetoed by the Governor, H. B. 944 (State Building Revenue Bonds), was reconsidered, amended and repassed, and approved by the Governor. This procedure was made possible by a new provision of the Constitution ratified in 1970. The Governor permitted S. B. 214 (Acquisition of space within the Capitol Building for use of the Legislature) to become law without his approval.

Bills vetoed by the Governor and not reconsidered were as follows: H. B. 630 (Sale of milk and milk products), H. B. 678 (Licensing private clubs in parks, etc., to sell alcoholic liquors), H. B. 702 (Creating State Department of Program Development and Management), H. B. 985 (Acquisition of waterworks systems by municipalities), H. B. 990 (Registration and licensing of motorboats), H. B. 1085 (Antitrust litigation), H. B. 1199 (Salary of judge of Criminal Court of Marion County) and S. B. 144 (Public Employees Insurance Act).

There were 111 concurrent resolutions introduced during the session—68 House Concurrent and 43 Senate Concurrent—of which 20 House and 14 Senate were adopted. Eighteen
House Joint and 13 Senate Joint Resolutions were introduced, all proposing amendments to the State Constitution. Only one Joint Resolution was adopted—S. J. R. 3, proposing an amendment to Section 2, Article IV, prescribing procedure for making amendments to the Constitution. The House had 43 House Resolutions, of which 38 were adopted; and the Senate had 19 Senate Resolutions, of which 16 were adopted.

The Senate failed to pass 70 House Bills passed by the House, and 28 Senate Bills passed by that body, failed of passage by the House.

First Extraordinary Session, 1971

This session was convened by the Legislature on April 27, 1971, and adjourned sine die on April 30, 1971. The proclamation of the Governor included fourteen items of business for consideration by the Legislature, embracing a number of supplementary appropriations for various spending units of the State.

During the session a total of 53 bills was introduced in the two Houses—31 House Bills and 22 Senate Bills. Fifteen House Bills and four Senate Bills were passed. The Governor approved all bills passed.

There were one House Joint, three House Concurrent and nine House Resolutions offered during the session. The House Joint (ratifying the proposed amendment to the Constitution of the United States extending the right to vote of citizens eighteen years of age or older), and six House Resolutions were adopted. No House Concurrent Resolution was adopted. The Senate had one Joint and seven Senate Resolutions introduced. All of the Senate Resolutions were adopted.

Second Extraordinary Session, 1970

This session of the Legislature was convened by the Governor on July 28, 1970. The Legislature adjourned July 29 until August 18, reassembled pursuant to the adjournment and adjourned sine die on August 22.

The proclamation of the Governor convening the session contained two items of business for consideration of the Legis-
lature: (1) Legislation relating to the crimes of bribery and conspiracy, etc., and (2) supplementary appropriations and raising revenue for such appropriations.

During the session there was a total of 28 bills introduced in the two Houses—17 House Bills and 11 Senate Bills. Two House Bills, dealing with bribery, and one Senate Bill, transferring items in the appropriation for the office of the Alcohol Beverage Control Commissioner, were passed.

There were one House Joint, 10 House Concurrent and 8 House Resolutions offered during the session, of which 2 House Concurrent and 7 House Resolutions were adopted. The Senate had 4 Senate Concurrent and 6 Senate Resolutions, of which 1 Concurrent and all Senate Resolutions were adopted.

C. A. Blankenship, Clerk
House of Delegates
# TABLE OF CONTENTS

## ACTS AND RESOLUTIONS

### Regular Session, 1971

### GENERAL LAWS

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>ACKNOWLEDGMENTS</strong></td>
<td></td>
</tr>
<tr>
<td>1. Uniform Recognition of Acknowledgments Act</td>
<td>1</td>
</tr>
<tr>
<td><strong>AGRICULTURE</strong></td>
<td></td>
</tr>
<tr>
<td>3. Inspection of Animals, Meat and Meat Products</td>
<td>8</td>
</tr>
<tr>
<td>4. General Stock Law</td>
<td>29</td>
</tr>
<tr>
<td>5. Recovery of Damages for Livestock or Poultry Killed or Injured by Dogs, and When Such Dog Shall Be Killed</td>
<td>30</td>
</tr>
<tr>
<td><strong>APPROPRIATIONS</strong></td>
<td></td>
</tr>
<tr>
<td>6 General Appropriations (Budget Bill)</td>
<td>34</td>
</tr>
<tr>
<td>7. Transfer of Amounts Between Items of Certain Appropriations</td>
<td>101</td>
</tr>
<tr>
<td><strong>BEER</strong></td>
<td></td>
</tr>
<tr>
<td>8. Unlawful Acts of Licensees and Hours During Which Beer May Be Dispensed</td>
<td>102</td>
</tr>
<tr>
<td>9. Franchise Agreements Between Brewers and Distributors of Nonintoxicating Beer</td>
<td>106</td>
</tr>
<tr>
<td><strong>BOARD OF INVESTMENTS</strong></td>
<td></td>
</tr>
<tr>
<td>10. Classes of Securities in Which Public Funds May Be Invested</td>
<td>109</td>
</tr>
<tr>
<td>11. Purchase, Sale or Exchange of Securities and Restrictions on Investments</td>
<td>112</td>
</tr>
<tr>
<td><strong>CHILD WELFARE</strong></td>
<td></td>
</tr>
<tr>
<td>12. Prosecuting Attorney in Counties Having Population in Excess of 200,000 (Kanawha County) to Represent Petitioners in Juvenile Proceedings</td>
<td>113</td>
</tr>
</tbody>
</table>
TABLE OF CONTENTS

CLAIMS AGAINST THE STATE

13. Compensation and Expenses of Judges of the Court of Claims .......................................................... 114
14. Finding and Declaring Certain Claims Against the State to Be Moral Obligations and Directing Payment Thereof .......................................................... 115
15. Payment of Certain Claims Against the Department of Mental Health and the Board of Regents, and Authorizing Legal Proceedings in Connection with Claims Against Spending Units Which Have Overspent Appropriations .................................................. 117

CONGRESSIONAL DISTRICTS

16. Arranging the Counties of the State into Congressional Districts ................................................................ 121

CONSTITUTION, STATE

17. Submitting to the Voters an Amendment to the State Constitution Designated "Constitutional Improvement Amendment" ................................................................................................................. 122

CORPORATIONS

18. Consolidation or Merger of Corporations ................................................................................................ 127
19. Rights and Powers of Building and Loan Associations .............................................................................. 133
20. Limitation on Powers of Industrial Loan Companies .................................................................................. 137
21. Supervision by and Reports to Commissioner of Banking by Credit Unions and Examination of Financial Institutions by Commissioner .......................................................................................................................... 139
22. Powers of the West Virginia Industrial Development Authority Including Granting of Loans to Industrial Development Agencies .................................................................................................................. 143

COUNTY COURTS AND COUNTY OFFICERS

23. Compensation of Elected County Officials, Their Assistants, Deputies and Employees .......................................................... 160
24. Additional Compensation for Assessors ........................................................................................................ 180
25. Permitting Counties in Excess of One Hundred Thousand Population to Close Courthouse on Saturdays .............................................................................................................................. 187
26. Duties of Prosecuting Attorney on Election Days .......................................................................................... 189
27. Offering Rewards by Prosecuting Attorney for Apprehension of Persons Charged with Crime; Detection of Crime and Appointment of Investigators of Crime .......................................................................................................................... 191
28. Compensation of Stenographer to Prosecuting Attorney of Mingo County ......................................................... 192
29. Civil Service for Deputy Sheriffs .................................................................................................................. 193

COURTS AND THEIR OFFICERS

30. Creating Two Replica Judicial Circuits ......................................................................................................... 216
31. Salaries of Judges of Circuit Courts .............................................................................................................. 218
32. Allowances to Circuit Judges for Stationery, Postage and Stenographic Help .................................................. 219
33. Appointment, Qualifications and Salary of Law Assistant to Judge of Thirteenth Judicial Circuit .......................................................... 220
34. Jurisdiction of Domestic Relations Court of Cabell County and Salaries of Probation Officers .......................................................... 221
35. Jurisdiction of Juvenile Court of Kanawha County and Salary of Judge .......................................................................................................................... 225
36. Intermediate Court of McDowell County ...................................................................................................... 227
TABLE OF CONTENTS

Chapter | Page
---|---
37. Jurisdiction of the Intermediate Court of Mercer County and Salary of Judge | 236
38. Salary of the Judge of the Intermediate Court of Ohio County | 238
39. Jurisdiction of the Intermediate Court of Wood County and Salary of Judge | 239

CRIMES AND THEIR PUNISHMENT
40. Illegal Purchase and Transportation of Copper Wire, Mercury, Lead, etc., by Junk Dealers | 243
41. Willful Disruption of Governmental Processes | 245
42. Purchase, Sale, Transportation and Receipt of Firearms | 247
43. Molesting Children and Penalties Therefor | 249
44. Debt-Pooling Offenses and Penalties | 249
45. Conspiracy to Defraud the State, a Board of Education, County or Municipality | 249

CRIMINAL PROCEDURE
46. Appointment and Remuneration of Counsel Appointed to Assist an Accused in Criminal Cases | 250
47. Payment of Jail Fees Incurred by Escapees from Forestry Camps and Industrial Schools for Boys and Girls | 252
48. Enactment of Agreement on Detainers Compact | 253

DEPARTMENT OF FINANCE AND ADMINISTRATION
49. Appointment and Compensation of Commissioner of Finance and Administration and Divisions of the Department | 263
50. Estimates of Revenue and Reports on Revenue Collections by Commissioner | 264
51. Leasing of Grounds, Building and Office Space | 265
52. Powers and Duties of Division of Information System Services | 266

DOMESTIC RELATIONS
53. Persons Authorized to Celebrate Marriages and Records Required to be Kept | 267

DRUGS
54. Uniform Controlled Substances Act | 269

ELECTIONS
55. Defining a Minor as a Person Who Has Not Become Eighteen Years of Age for the Purpose of Voting | 309
56. Implementing Federal Voting Rights Act Amendments of 1970 | 312
57. Election of Members of Political Party Executive Committees | 314
58. Voting Booths for Casting Absentee Ballots and Prohibition Against Display of Campaign Material in Area Thereof | 316

EMINENT DOMAIN
59. Right of Entity Having Power of Eminent Domain to Cross or Alter Property or Works Belonging to Another Entity With Such Power | 318
# Table of Contents

## Estates and Trusts

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>60. Reference of Estates of Decedents to Commissioner of Accounts</td>
<td>319</td>
</tr>
<tr>
<td>61. Accounting by Personal Representative for Money Not Disposable at Time of Settlement</td>
<td>321</td>
</tr>
<tr>
<td>62. Securities in Which Fiduciaries and Insurers May Invest Trust Funds</td>
<td>322</td>
</tr>
<tr>
<td>63. Disbursements and Expenditures by Guardians from Income and Corpus of Estates of Infant Wards</td>
<td>327</td>
</tr>
<tr>
<td>64. Appointment of Limited and Standby Guardians for Mentally Retarded Persons</td>
<td>329</td>
</tr>
</tbody>
</table>

## Estates in Property

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>65. Release or Disclaimers of General Power of Appointment</td>
<td>332</td>
</tr>
<tr>
<td>66. Gifts to Minors</td>
<td>334</td>
</tr>
</tbody>
</table>

## Habeas Corpus

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>67. Post-conviction Review by Writ of Habeas Corpus</td>
<td>345</td>
</tr>
</tbody>
</table>

## Health

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>68. Organization and Jurisdiction of County, Municipal and Combined Local Boards of Health</td>
<td>347</td>
</tr>
<tr>
<td>69. Compulsory Immunization of School Children</td>
<td>352</td>
</tr>
<tr>
<td>70. Compulsory Testing of School Children and School Personnel for Tuberculosis</td>
<td>354</td>
</tr>
<tr>
<td>71. Examination and Treatment of Minors Infected With a Venereal Disease</td>
<td>355</td>
</tr>
<tr>
<td>72. Powers of Public Service Districts for Water and Sewerage Services and Appointment, Qualifications and Removal of Members of Public Board</td>
<td>356</td>
</tr>
<tr>
<td>73. Air Pollution Control</td>
<td>360</td>
</tr>
<tr>
<td>74. Blood Donations by Minors</td>
<td>370</td>
</tr>
<tr>
<td>75. Procuring, Furnishing, Donating, Processing, Distributing or Using Human Blood, Organs and Tissue</td>
<td>370</td>
</tr>
<tr>
<td>76. Board of Directors of Health Care Corporations, Contracts to Be Furnished Subscribers and Payment for Subscribers by Others</td>
<td>371</td>
</tr>
</tbody>
</table>

## Human Rights Commission

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>77. Human Rights Commission</td>
<td>373</td>
</tr>
</tbody>
</table>

## Juries

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>78. Selecting and Summoning Grand Jurors</td>
<td>391</td>
</tr>
<tr>
<td>79. Grand Juries Which May Sit for as Long as One Year</td>
<td>393</td>
</tr>
</tbody>
</table>

## Justices and Constables

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>80. Repealing Statute Providing for Service of Notice of Suit in Justice of the Peace Court on President or Cashier of a Branch Bank</td>
<td>394</td>
</tr>
<tr>
<td>81. Offenses Within Jurisdiction of Justices of the Peace and Penalties Which May Be Imposed</td>
<td>395</td>
</tr>
</tbody>
</table>

## Labor

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>82. Labor-management Relations Act for the Private Sector</td>
<td>397</td>
</tr>
<tr>
<td>83. Minimum Wages and Maximum Hours for Certain Employees</td>
<td>418</td>
</tr>
</tbody>
</table>
# Table of Contents

## Legal Holidays

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>84. Days to Be Observed as Legal Holidays</td>
<td>425</td>
</tr>
</tbody>
</table>

## Legislature

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>85. Acquisition of Space Within the Capitol Building for the Legislature</td>
<td>426</td>
</tr>
<tr>
<td>86. Compensation and Expenses of Members of the Legislature</td>
<td>430</td>
</tr>
<tr>
<td>87. Purchasing Practices and Procedures Commission</td>
<td>435</td>
</tr>
</tbody>
</table>

## Mental Health

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>88. Powers and Duties of the Division on Alcoholism and Drug Abuse of the Department of Mental Health</td>
<td>439</td>
</tr>
</tbody>
</table>

## Mines and Mining

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>89. Coal Mine Health and Safety</td>
<td>442</td>
</tr>
<tr>
<td>90. Examination and Certification of Coal Miners</td>
<td>565</td>
</tr>
</tbody>
</table>

## Motor Vehicles

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>91. Application for Certificate of Title for Motor Vehicle, and Tax for Privilege of Certification of Such Title</td>
<td>566</td>
</tr>
<tr>
<td>92. Information Concerning Liens and Encumbrances to Be Placed on Motor Vehicle Title Certificate</td>
<td>569</td>
</tr>
<tr>
<td>93. Special Vehicle Plates for Manufacturers and Transporters</td>
<td>571</td>
</tr>
<tr>
<td>94. Operation of Emergency Vehicles and Requirements as to Warning Lights</td>
<td>579</td>
</tr>
<tr>
<td>95. Safety Equipment and Requirements for Motorcyclists and Motorcycles</td>
<td>582</td>
</tr>
<tr>
<td>96. Permits for Operation of Vehicles Exceeding Prescribed Size and Weight</td>
<td>586</td>
</tr>
<tr>
<td>97. Proof of Financial Responsibility Following an Automobile Accident</td>
<td>588</td>
</tr>
</tbody>
</table>

## Municipalities

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>98. Taxation of Purchasers and Consumers of Public Utility Services</td>
<td>589</td>
</tr>
<tr>
<td>99. Special Charges for Municipal Services and Motor Vehicle Parking Facilities</td>
<td>591</td>
</tr>
<tr>
<td>100. Special Parking Lot or Parking Building Police Officers</td>
<td>601</td>
</tr>
<tr>
<td>101. Dissolution of Voluntary Fire Companies</td>
<td>603</td>
</tr>
<tr>
<td>102. Hours of Duty for Members of Paid Fire Department</td>
<td>603</td>
</tr>
<tr>
<td>103. Publication of Abstract of Municipal Public Works Ordinance</td>
<td>604</td>
</tr>
<tr>
<td>104. Disability, Retirement and Death Benefits for Firemen and Policemen</td>
<td>608</td>
</tr>
<tr>
<td>105. Adopting Federal Standards for Factory-built Housing</td>
<td>620</td>
</tr>
<tr>
<td>106. Urban Mass Transportation Authorities</td>
<td>621</td>
</tr>
<tr>
<td>107. Appropriations by Counties and Municipalities for Museums and Cultural Centers</td>
<td>628</td>
</tr>
</tbody>
</table>

## Natural Resources

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>108. Unlawful Methods of Hunting and Fishing, and Protection of Certain Species of Hawks</td>
<td>631</td>
</tr>
<tr>
<td>109. Importation and Liberation of Wildlife</td>
<td>636</td>
</tr>
<tr>
<td>110. Hunting and Fishing Licenses and Fees Therefor</td>
<td>637</td>
</tr>
<tr>
<td>111. Appeal Hearings Before Water Resources Board</td>
<td>640</td>
</tr>
<tr>
<td>112. Surface Mining and Land Reclamation</td>
<td>644</td>
</tr>
<tr>
<td>Chapter</td>
<td>Title</td>
</tr>
<tr>
<td>---------</td>
<td>----------------------------------------------------------------------</td>
</tr>
<tr>
<td>113.</td>
<td>Appointment and Training of Conservation Officers</td>
</tr>
<tr>
<td>114.</td>
<td>Powers and Duties of Conservation Officers</td>
</tr>
<tr>
<td>115.</td>
<td>Penalties for Violations of Natural Resources Law Where No Specific Penalty Is Provided</td>
</tr>
<tr>
<td>116.</td>
<td>State Authorized to Receive or Purchase the James Rumsey Park in Shepherdstown for Use of the Department of Natural Resources</td>
</tr>
<tr>
<td>117.</td>
<td>Service of Notice on Nonresidents by Publication</td>
</tr>
<tr>
<td>118.</td>
<td>Appointment of Conservators of the Peace</td>
</tr>
<tr>
<td>119.</td>
<td>Appointment, Terms, Qualifications and Salaries of Certain Appointive State Officers</td>
</tr>
<tr>
<td>120.</td>
<td>Creation, Dissolution, Powers and Authority of Park and Recreation Boards</td>
</tr>
<tr>
<td>121.</td>
<td>Qualifications and Certification of Assistants to Physicians and Podiatrists</td>
</tr>
<tr>
<td>122.</td>
<td>Licensing of Physicians and Surgeons</td>
</tr>
<tr>
<td>123.</td>
<td>Licensure of Persons Who are Not Citizens of the United States to Practice Registered Professional Nursing</td>
</tr>
<tr>
<td>124.</td>
<td>Expiration and Renewal of Forester's License and Fee Therefor</td>
</tr>
<tr>
<td>125.</td>
<td>Qualifications and Licensing of Landscape Architects</td>
</tr>
<tr>
<td>126.</td>
<td>Defining Industrial Pollution Under the Industrial Development Bond Act</td>
</tr>
<tr>
<td>127.</td>
<td>Fixing Average Annual Salary of Members of the Legislature for Retirement Purposes</td>
</tr>
<tr>
<td>128.</td>
<td>Commitment of Youthful Male Offenders and Transfer of Such Offenders From One Facility to Another</td>
</tr>
<tr>
<td>129.</td>
<td>Organization of the Department of Public Safety and Salaries of Members</td>
</tr>
<tr>
<td>130.</td>
<td>Criminal Identification Bureau of the Department of Public Safety</td>
</tr>
<tr>
<td>131.</td>
<td>Appointment, Qualifications, Compensation and Duties of Members of the Public Service Commission</td>
</tr>
<tr>
<td>132.</td>
<td>Appointment, Duties and Compensation of Secretary and Other Employees of the Public Service Commission</td>
</tr>
</tbody>
</table>
## Table of Contents

### Public Service Commission—(Continued)

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>133. Regulation and Registration of Vehicles Engaged as Interstate for Hire Carriers</td>
<td>752</td>
</tr>
<tr>
<td>134. Assessment Against Carriers for Expenses for Administering Motor Carrier Law and Compensation of Commissioners Therefor</td>
<td>758</td>
</tr>
<tr>
<td>135. Collection of Special License Fees from Pipeline Companies for Payment of Salaries and Expenses of Commission</td>
<td>761</td>
</tr>
</tbody>
</table>

### Real Property

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>136. Summary Proceedings for Sale, Lease or Mortgage of Estate of Minors, Insane Persons or Convicts</td>
<td>762</td>
</tr>
</tbody>
</table>

### Regulation of Trade

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>137. Requiring Use of Safety Glazing Materials in Hazardous Locations</td>
<td>764</td>
</tr>
<tr>
<td>138. Prohibiting Pyramid Promotional Schemes</td>
<td>766</td>
</tr>
</tbody>
</table>

### Roads and Highways

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>139. Terms and Conditions of Bonds of Highway Contractors</td>
<td>768</td>
</tr>
<tr>
<td>140. Issuance and Sale of $90 Million of Road Bonds Under Authority of Roads Development Amendment of 1968</td>
<td>770</td>
</tr>
<tr>
<td>141. Issuance and Sale of $20 Million of Road Bonds Under Authority of Better Roads Amendments of 1964</td>
<td>779</td>
</tr>
</tbody>
</table>

### Schools and Educational Institutions

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>142. Payment of Recruitment, Moving and Other Expenses of Employees of the West Virginia Board of Regents</td>
<td>787</td>
</tr>
<tr>
<td>143. Composition of the State Board of Education and Appointment, Qualifications, Terms of Office and Compensation of Members Thereof</td>
<td>789</td>
</tr>
<tr>
<td>144. Permits for Operation of Correspondence, Business, Occupational and Trade Schools</td>
<td>791</td>
</tr>
<tr>
<td>145. Powers of County Boards of Education Including Employment of Legal Counsel</td>
<td>795</td>
</tr>
<tr>
<td>146. School Terms and Ages of Persons to Whom Schools Are Open</td>
<td>799</td>
</tr>
<tr>
<td>147. Transfer of Students Between School Districts</td>
<td>800</td>
</tr>
<tr>
<td>148. Establishment of Early Childhood Education Programs by County Boards of Education</td>
<td>801</td>
</tr>
<tr>
<td>149. Defining the Term Refund Interest and Other Terms Under the Teachers Retirement System</td>
<td>804</td>
</tr>
<tr>
<td>150. Options of Certain Members of the Teachers Retirement System to Elect Between That System and Other Retirement Plans</td>
<td>807</td>
</tr>
<tr>
<td>151. Computation of Benefits Under the Teachers Retirement System</td>
<td>811</td>
</tr>
<tr>
<td>152. Loans to Members of the Teachers Retirement System from the Teachers Accumulation Fund</td>
<td>815</td>
</tr>
<tr>
<td>153. Financial Support of Public Schools and Salaries of Teachers and Auxiliary Service Personnel</td>
<td>817</td>
</tr>
<tr>
<td>154. Establishment of Staff Development Programs by the State Board of Vocational Rehabilitation</td>
<td>832</td>
</tr>
<tr>
<td>155. Members of the Education Commission of the States</td>
<td>834</td>
</tr>
<tr>
<td>156. Operation of Food Services in Public Office Buildings by the West Virginia Society for the Blind and Severely Disabled</td>
<td>835</td>
</tr>
<tr>
<td>157. Security Officers for West Virginia University</td>
<td>839</td>
</tr>
</tbody>
</table>
### SCHOOLS AND EDUCATIONAL INSTITUTIONS—(Continued)

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>158.</td>
<td>Establishment of Minimum Salary Scale for Employees of the West Virginia Schools for the Deaf and Blind</td>
</tr>
<tr>
<td>159.</td>
<td>Special Programs and Teaching Services for Exceptional Children</td>
</tr>
<tr>
<td>160.</td>
<td>Scholarship Awards Under the State Scholarship Program</td>
</tr>
<tr>
<td>161.</td>
<td>Creating a Special Capital Improvement Fund for Institutions of Higher Education</td>
</tr>
<tr>
<td>162.</td>
<td>Definitions Applicable to the West Virginia Board of Regents</td>
</tr>
<tr>
<td>163.</td>
<td>Abolishing the State Commission on Higher Education and Transferring its Powers and Duties to the Board of Regents</td>
</tr>
<tr>
<td>164.</td>
<td>Accreditation of Institutions of Higher Education</td>
</tr>
<tr>
<td>165.</td>
<td>Branch Colleges and Off-Campus Locations of State Universities and Colleges and Establishment of Community Colleges</td>
</tr>
</tbody>
</table>

### SECURITIES

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>166.</td>
<td>Transactions Not Included Under Law Regulating and Supervising the Sale of Securities</td>
</tr>
</tbody>
</table>

### STATE BUILDING COMMISSION

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>167.</td>
<td>Funding State Building Revenue Bonds</td>
</tr>
</tbody>
</table>

### TAXATION

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>168.</td>
<td>Amending and Repealing Provisions of the Code Relative to Imposition and Collection of Capitation Taxes Made Necessary by Ratification of the Capitation Tax Repeal Amendment to the Constitution</td>
</tr>
<tr>
<td>169.</td>
<td>Tax on Income of Certain Carriers, and Business and Occupation Tax on Certain Businesses and Activities</td>
</tr>
<tr>
<td>170.</td>
<td>Meaning of Terms Applicable to Personal Income Tax and Corporation Net Income Tax</td>
</tr>
<tr>
<td>171.</td>
<td>Employers Return and Payment of Personal Income Tax Withheld</td>
</tr>
<tr>
<td>172.</td>
<td>Compensation of Deputy Commissioners of Forfeited and Delinquent Lands, Redemption of Forfeited and Delinquent Lands by Former Owner and Deed to Purchaser of Such Lands</td>
</tr>
</tbody>
</table>

### TRUSTS

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>173.</td>
<td>Distribution of Income by Trust Deemed a Private Foundation and Prohibited Acts of Split-interest Trusts</td>
</tr>
</tbody>
</table>

### UNEMPLOYMENT COMPENSATION

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>174.</td>
<td>Employment Security and Unemployment Compensation</td>
</tr>
</tbody>
</table>

### UNIFORM COMMERCIAL CODE

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>175.</td>
<td>Secured Transactions and Effective Period of Financial Statement Filings Under the Uniform Commercial Code</td>
</tr>
</tbody>
</table>

### WORKMEN'S COMPENSATION

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>176.</td>
<td>Salary of Workmen's Compensation Commissioner and the Payment of Salaries and Expenses of the Workmen's Compensation Fund</td>
</tr>
<tr>
<td>177.</td>
<td>Workmen's Compensation Benefits and Creation of Disabled Workmen's Relief Fund</td>
</tr>
</tbody>
</table>
# Table of Contents

**LOCAL OR SPECIAL LAWS**

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>178. Contribution of Budgeted Funds by the County Court of Berkeley County</td>
<td>1001</td>
</tr>
<tr>
<td>179. Foster Homes Division of the Cabell County Youth Center</td>
<td>1002</td>
</tr>
<tr>
<td>180. Authorizing the Board of Education of Jefferson County to Sell Certain Real Estate to the United States Department of Interior</td>
<td>1004</td>
</tr>
<tr>
<td>181. Raleigh County Airport Authority</td>
<td>1005</td>
</tr>
<tr>
<td>182. Bond Election by the City of Ripley to Provide Funds for a County Library and a Community Swimming Pool</td>
<td>1007</td>
</tr>
<tr>
<td>183. County Court of Summers County Authorized to Expend Funds for County Centennial Celebration</td>
<td>1008</td>
</tr>
</tbody>
</table>

**RESOLUTIONS**

<table>
<thead>
<tr>
<th>Number</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>2. Adopting Joint Rules of the Senate and House of Delegates</td>
<td>1009</td>
</tr>
<tr>
<td>3. Requesting the Congress of the United States to Adopt Legislation Providing for Reimbursing Counties for Revenue Lost Due to Federal Land Acquisition</td>
<td>1011</td>
</tr>
<tr>
<td>8. Interim Legislative Study of Feasibility of Consolidating Agencies of State Government Having Authority Regarding Environmental Matters</td>
<td>1011</td>
</tr>
<tr>
<td>9. Memorializing the Congress to Call a Convention to Propose a Constitutional Amendment Providing for Sharing Federal Income Tax Revenue with States and Political Subdivisions</td>
<td>1012</td>
</tr>
<tr>
<td>10. Directing the Board of Banking and Financial Institutions to Make a Study Concerning Banking and Financial Institutions Generally</td>
<td>1014</td>
</tr>
<tr>
<td>16. Directing the Board of Regents to Formulate Plan for Establishment of Community Colleges</td>
<td>1015</td>
</tr>
<tr>
<td>19. Study by Joint Committee on Government and Finance to Identify Conflicts Between Rules of Civil Procedure and Statutory Provisions Concerning Civil Pleading and Practice</td>
<td>1017</td>
</tr>
<tr>
<td>22. Requesting the National Rail Passenger Corporation to Establish Route Between Norfolk, Virginia, and Cincinnati, Ohio, with Stops in West Virginia</td>
<td>1018</td>
</tr>
<tr>
<td>39. Interim Legislative Study into Area of Conservation and Prevention of Waste of Oil and Gas</td>
<td>1019</td>
</tr>
<tr>
<td>55. Legislative Study of Feasibility of Permitting Consolidation of County and Municipal Governments</td>
<td>1020</td>
</tr>
<tr>
<td>64. Study of Feasibility of Granting Adult Status to Eighteen-Year-Olds by Joint Committee on Government and Finance</td>
<td>1021</td>
</tr>
</tbody>
</table>

**SENATE CONCURRENT**

<table>
<thead>
<tr>
<th>Number</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>4. Creating Special Interim Forest Management Review Commission</td>
<td>1022</td>
</tr>
<tr>
<td>8. Study of Laws Relating to Regulation and Control of Land Use in Areas Adjoining State Parks, Forests and Recreational Facilities</td>
<td>1025</td>
</tr>
<tr>
<td>13. Study of Feasibility of the State Acquiring and Operating a Scenic Railroad to Be Known as the Webster-Randolph Scenic Railroad</td>
<td>1026</td>
</tr>
<tr>
<td>Number</td>
<td>Description</td>
</tr>
<tr>
<td>--------</td>
<td>--------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>22.</td>
<td>Continuing Certain Legislative Studies Heretofore Authorized</td>
</tr>
<tr>
<td>24.</td>
<td>Expressing Concern and Sympathy to Families of Prisoners of War in Southeast Asia</td>
</tr>
<tr>
<td>32.</td>
<td>Legislative Study of Need for Regulating Timber Management Practices on Privately-Owned Lands</td>
</tr>
<tr>
<td>33.</td>
<td>Legislative Study of Departments of Health and Mental Health and the Office of Commissioner of Public Institutions</td>
</tr>
<tr>
<td>37.</td>
<td>Legislative Study of Surface Mining</td>
</tr>
<tr>
<td>39.</td>
<td>Directing Joint Committee on Government and Finance to Continue Study of the Budget Process</td>
</tr>
<tr>
<td>40.</td>
<td>Legislative Study of Needs of Health, Humane, Penal and Correctional Institutions</td>
</tr>
<tr>
<td></td>
<td><strong>SENATE JOINT</strong></td>
</tr>
<tr>
<td>3.</td>
<td>Proposing an amendment to the State Constitution amending Section 2, Article XIV thereof, prescribing how amendments are made to the Constitution</td>
</tr>
</tbody>
</table>
# Table of Contents

## First Extraordinary Session, 1971

### Appropriations

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Supplementary Appropriation for the Department of Agriculture</td>
<td>1043</td>
</tr>
<tr>
<td>2. Supplementary Appropriation for the Department of Finance and Administration</td>
<td>1045</td>
</tr>
<tr>
<td>3. Supplementary Appropriation for the Department of Mental Health</td>
<td>1046</td>
</tr>
<tr>
<td>4. Supplementary Appropriation for the Department of Natural Resources</td>
<td>1048</td>
</tr>
<tr>
<td>5. Supplementary Appropriation for Early Childhood Education Demonstration Centers</td>
<td>1049</td>
</tr>
<tr>
<td>6. Supplementary Appropriations for Joint Expenses of the Legislature</td>
<td>1050</td>
</tr>
<tr>
<td>7. Supplementary Appropriation for the Office of Attorney General</td>
<td>1052</td>
</tr>
<tr>
<td>8. Supplementary Appropriation for the Office of State Auditor</td>
<td>1054</td>
</tr>
<tr>
<td>9. Supplementary Appropriation for Officers and Employees of the Senate</td>
<td>1055</td>
</tr>
<tr>
<td>10. Supplementary Appropriation for the State Tax Department</td>
<td>1057</td>
</tr>
<tr>
<td>11. Supplementary Appropriation for the West Virginia Board of Regents</td>
<td>1058</td>
</tr>
<tr>
<td>12. Transfer of Amounts Between Items of the Total Appropriations for Certain State Spending Units</td>
<td>1060</td>
</tr>
</tbody>
</table>

### County Officers

13. Minimum and Maximum Compensation Limits of Elected County Officials | 1061 |

### Insurance

14. Public Employees Insurance Act | 1062 |

### Roads and Highways

15. Issuance and Sale of $90 Million of Road Bonds Under Authority of the Roads Development Amendment of 1968 | 1074 |
17. Relocation Assistance to and Replacement Housing Costs for Persons Dislocated by Highway Construction | 1091 |
18. Transfer of Funds for Construction of Bridge at Hinton, West Virginia | 1094 |

### Schools

19. Transfer of West Virginia University High School Property to the Board of Education of the County of Monongalia | 1095 |

### Resolution

### House Joint

1. Ratifying the Proposed Amendment to the Constitution of the United States Extending the Right to Vote to Citizens Eighteen Years of Age or Older | 1097 |
# Second Extraordinary Session, 1970

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Transferring Items in Appropriation for Office of Alcohol Beverage Control Commissioner</td>
<td>1099</td>
</tr>
<tr>
<td>2.</td>
<td>Application of Bribery Statute to Illegal Acts in Connection with State Purchases</td>
<td>1100</td>
</tr>
</tbody>
</table>
MEMBERS OF THE SENATE

REGULAR SESSION, 1971

OFFICERS

President—E. Hans McCourt, Webster Springs
President Pro Tempore—C. H. McKown, Wayne
Clerk—J. Howard Myers, Martinsburg
Sergeant at Arms—John E. Howell, Charleston
Doorkeeper—J. Brent Monroe, Summersville

<table>
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<tr>
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<tbody>
<tr>
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<td>Hurricane</td>
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<td>Brad Sayre (R)</td>
<td>Gay</td>
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<td>C. H. McKown (D)</td>
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<td></td>
<td>Lafe P. Ward (D)</td>
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<td>W. Bernard Smith (D)</td>
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</tr>
<tr>
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</tr>
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<td>Mario J. Palumbo (D)</td>
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</tr>
<tr>
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<td>John T. Poffenbarger (R)</td>
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<td>Tracy Hylton (D)</td>
<td>Mullens</td>
</tr>
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<td>Tenth</td>
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</tr>
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<td>J. C. Dillon, Jr. (D)</td>
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</tr>
<tr>
<td>Eleventh</td>
<td>Robert K. Holliday (D)</td>
<td>Oak Hill</td>
</tr>
<tr>
<td></td>
<td>Ralph D. Williams (D)</td>
<td>Rainelle</td>
</tr>
<tr>
<td>Twelfth</td>
<td>Carl E. Gainer (D)</td>
<td>Richwood</td>
</tr>
<tr>
<td></td>
<td>E. Hans McCourt (D)</td>
<td>Webster Springs</td>
</tr>
<tr>
<td>Thirteenth</td>
<td>W. Walter Neeley (D)</td>
<td>Clarksburg</td>
</tr>
<tr>
<td></td>
<td>Wm. R. Sharpe, Jr. (D)</td>
<td>Weston</td>
</tr>
<tr>
<td>Fourteenth</td>
<td>O. G. Hedrick (D)</td>
<td>Fairmont</td>
</tr>
<tr>
<td></td>
<td>Wm. A. Moreland (D)</td>
<td>Morgantown</td>
</tr>
<tr>
<td>Fifteenth</td>
<td>C. N. Harman (R)</td>
<td>Grafton</td>
</tr>
<tr>
<td></td>
<td>Dallas Wolfe (R)</td>
<td>Rowlesburg</td>
</tr>
<tr>
<td>Sixteenth</td>
<td>Louise Leonard (R)</td>
<td>Harpers Ferry</td>
</tr>
<tr>
<td></td>
<td>John I. Rogers (R)</td>
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</tr>
<tr>
<td>Seventeenth</td>
<td>W. T. Brotherton, Jr. (D)</td>
<td>Charleston</td>
</tr>
</tbody>
</table>

*Senators elected in 1968. All others elected in 1970.
(D) Democrat ———— 23
(R) Republican ———— 11

Total ———— 34

[xix]
MEMBERS OF THE HOUSE OF DELEGATES

First Extraordinary Session, 1971

OFFICERS

Speaker—Lewis N. McManus, Beckley
Clerk—C. A. Blankenship, Pineville
Sergeant at Arms—Oce W. Smith, Jr., Fairmont
Doorkeeper—Dannie Wingo, Yukon

<table>
<thead>
<tr>
<th>County or District</th>
<th>Name</th>
<th>Address</th>
</tr>
</thead>
<tbody>
<tr>
<td>Barbour</td>
<td>Kenneth Auvil (D)</td>
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<td>Mason</td>
<td>Eugene Ball (D)</td>
<td>Point Pleasant</td>
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</table>

1Elected Speaker March 13, 1971, to fill the vacancy resulting from the death of Speaker Ivor F. Bolarsky.
2Appointed January 11, 1971, to fill the vacancy caused by the death of Michael R. Prestera, a Delegate-elect.
3Appointed by the Governor April 13, 1971, to fill the vacancy caused by the death of her husband, the Honorable Ivor F. Bolarsky.
4Appointed February 1, 1971, to fill the vacancy caused by the disqualification of W. R. Wilson, a Delegate-elect.
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(D) Democrats
(R) Republicans

Total 100
STANDING COMMITTEES OF THE SENATE

Regular Session, 1971

AGRICULTURE

Susman (Chairman), Gainer (Vice Chairman), Dillon, Hedrick, McKown, Neeley, Smith, Williams, Leonard, Rogers and Sayre.

CONFIRMATIONS

Galperin (Chairman), Holliday (Vice Chairman), Dillon, Gainer, Hylton, McKown, Tompos, Wallace, Ward, Carrigan, Harman, Knapp and Sayre.

EDUCATION

Palumbo (Chairman), Barnett (Vice Chairman), Beall, Dillon, Galperin, Holliday, McKown, Sharpe, Wallace, Ward, Carrigan, Deem, Hubbard, Poffenbarger and Rogers.

ELECTIONS

Ward (Chairman), Fanning (Vice Chairman), Brotherton, Galperin, Moreland, Neeley, Nelson, Williams, Knapp, Leonard and Sayre.

FINANCE

McKown (Chairman), Susman (Vice Chairman), Barnett, Beall, Dillon, Fanning, Galperin, Hedrick, Hylton, Sharpe, Smith, Williams, Bowers, Deem, Harman, Leonard, Rogers and Wolfe.

HEALTH

Wallace (Chairman), Sharpe (Vice Chairman), Brotherton, Galperin, Holliday, Moreland, Knapp, Leonard and Rogers.

INSURANCE AND CORPORATIONS

Hylton (Chairman), Neeley (Vice Chairman), McKown, Moreland, Nelson, Susman, Ward, Williams, Carrigan, Harman, Hubbard, Poffenbarger and Sayre.

INTERSTATE COOPERATION

Gainer (Chairman), Moreland (Vice Chairman), Neeley, Nelson, Susman, President (nonvoting), Bowers and Hubbard.

JUDICIARY

Brotherton (Chairman), Ward (Vice Chairman), Barnett, Fanning, Gainer, Hedrick, Holliday, Moreland, Neeley, Nelson, Palumbo, Tompos, Wallace, Carrigan, Hubbard, Knapp, Poffenbarger and Sayre.

LABOR

Tompos (Chairman), Sharpe (Vice Chairman), Dillon, Holliday, Neeley, Ward, Bowers, Harman and Wolfe.
Local Government

Smith (Chairman), Moreland (Vice Chairman), Dillon, Fanning, Nelson, Ward, Poffenbarger, Rogers and Wolfe.

Military

Williams (Chairman), Hedrick (Vice Chairman), Fanning, Holliday, Moreland, Palumbo, Harman, Knapp and Poffenbarger.

Mines and Mining

Hedrick (Chairman), Hylton (Vice Chairman), Brotherton, Fanning, Gainer, Smith, Williams, Bowers and Deem.

Natural Resources

Gainer (Chairman), Fanning (Vice Chairman), Barnett, Beall, Galperin, Hedrick, Hylton, Nelson, Palumbo, Smith, Susman, Bowers, Deem, Hubbard and Wolfe.

Public Institutions

Sharpe (Chairman), Holliday (Vice Chairman), Beall, Hylton, Smith, Tompos, Wallace, Carrigan, Harman, Knapp and Leonard.

Rules

McCourt, Mr. President (Chairman ex officio), Brotherton, Gainer, McKown, Moreland, Palumbo, Carrigan, Deem and Hubbard.

Transportation

Barnett (Chairman), Dillon (Vice Chairman), Beall, Gainer, Hedrick, Hylton, Moreland, Neeley, Palumbo, Sharpe, Wallace, Williams, Bowers, Deem, Knapp, Poffenbarger, Rogers and Wolfe.

Joint Committees

Enrolled Bills

Beall (Chairman), Holliday, Palumbo, Leonard and Sayre.

Government and Finance

McCourt, Mr. President (Chairman ex officio), Barnett, Brotherton, McKown, Sharpe, Carrigan and Wolfe.

Joint Rules

McCourt, Mr. President (Chairman ex officio), Brotherton and Carrigan.
AGRICULTURE AND NATURAL RESOURCES

Hawse (Chairman), Queen (Vice Chairman), Ballouz, Belknap, Bowman, Cline, Colombo, Donley, Edgar, Fitzgerald, Goodwin, Hatfield, Holt, McKenzie, Merritt, Reed, Withrow, Broyles, Butcher, Moats (Taylor), Mulneix, Ours, Polen, Shaffer and Terry.

BANKING AND INSURANCE

Hager of Lincoln (Chairman of Banking), Cookman (Chairman of Insurance), Laulis (Vice Chairman), Albright, Belknap, Bowman, Cline, Crandall, Fantasia, Hager (Logan), Hatfield, Hawse, Myles, Neely, Pauley, Tucker, Wanstreet, Beneke, Broyles, Buck, Calendine, Halbritter, Paterno, Romine and Zakaib.

CONSTITUTIONAL REVISION

Huffman (Chairman), Dinsmore (Vice Chairman), Albright, Auvil, Ballouz, Boiarsky, Christian, Laulis, Neely, Perry, Richardson, Scott, Stalnaker, Underwood, White (Cabell), Whitlow, Paul, Copenhaver, Jones (Kanawha), Jones (Roane), Mulneix, Potter, Rogerson, Smirl and Stone.

EDUCATION

Lohr (Chairman), Goodwin (Vice Chairman), Auvil, Boiarsky, Colombo, Cookman, Davidson, Donley, Given (Kanawha), Hager (Logan), Kincaid, Merritt, Moore, Paul, Rollins, Toney, Wilson, Beneke, Calendine, Harman, Jones (Monongalia), Lilly, Moats (Taylor), Moats (6th District) and Shaffer.

FINANCE

McManus (Chairman), Burke (Vice Chairman), Auvil, Ball, Crandall, D'Aurora, Fantasia, Farley, Griffith, Hager (Logan), Kincaid, Neely, Perry, Richardson, Rutledge, Tucker, Withrow, Buck, Grewe, Herndon, Kopelman, Ours, Rogerson, Romine and Terry.

HEALTH AND WELFARE

Withrow (Chairman), D'Aurora (Vice Chairman), Ballouz, Colombo, Cookman, Davidson, Fitzgerald, Griffith, Lohr, Merritt, Moore, Rutledge, Shingleton, Stalnaker, Wanstreet, White (Boone), Wilson, Calendine, Daugherty, Lilly, Moats (6th District), Paterno, Polen, Romine and Shaffer.
INDUSTRY AND LABOR

Kopp (Chairman), Fantasia (Vice Chairman), Boiarsky, Columbo, D'Aurora, Gilliam, Given (Kanawha), Goodwin, Griffith, Hager (Lincoln), Hatfield, Holt, McKenzie, Moore, Varney, White (Boone), Whitlow, Beneke, Butcher, Copenhaver, Harman, Jones (Monongalia), Kopelman, Shaffer and Terry.

INTERSTATE COOPERATION

Hager of Logan (Chairman), Burke, Edgar, Kopp, Loop, McManus, Speaker (nonvoting), Buck and Halbritter.

JUDICIARY

Steptoe (Chairman), Sparacino (Vice Chairman), Albright, Christian, Davidson, Dinsmore, Given (Webster), Huffman, Kopp, Loop, McGraw, Myles, Queen, Scott, Underwood, Varney, White (Cabell), Daugherty, Field, Halbritter, Jones (Kanawha), Jones (Roane), Polen, Potter and Zakaib.

POLITICAL SUBDIVISIONS

Dinsmore (Chairman), Varney (Vice Chairman), Ball, Cline, Farley, Kincaid, Laulis, McGraw, Pauley, Rollins, Singleton, Stainaker, Toney, Underwood, White (Boone), White (Cabell), Wilson, Grewe, Herndon, Jones (Monongalia), Polen, Rodgers, Smirl, Stone and Zakaib.

REDISTRICTING

Perry (Chairman), Loop (Vice Chairman), Burke, Chambers, Cline, Dinsmore, Edgar, Fantasia, Farley, Given (Kanawha), Hager (Lincoln), Kopp, Lohr, Pauley, Rollins, Sparacino, Tucker, Beneke, Buck, Butcher, Field, Halbritter, Jones (Kanawha), Ours and Terry.

ROADS AND TRANSPORTATION

Bowman (Chairman), Wanstreet (Vice Chairman), Ball, Belknap, Chambers, Christian, Davidson, Donley, Fitzgerald, Gilliam, Hager (Lincoln), Hawse, Holt, Pauley, Reed, Scott, Singleton, Buck, Butcher, Copenhaver, Harman, Herndon, Moats (6th District), Paterno and Zakaib.

STATE AND FEDERAL AFFAIRS

Edgar (Chairman), Crandall (Vice Chairman), Chambers, Fantasia, Gilliam, Given (Webster), Loop, McGraw, McKenzie, Paul, Queen, Reed, Richardson, Singleton, Sparacino, Toney, Whitlow, Butcher, Halbritter, Harman, Mulneix, Potter, Smirl, Stone and Zakaib.

RULES

McManus (ex officio Chairman), Edgar, Kopp, Lohr, Myles, Perry, Steptoe, Buck, Jones (Kanawha), Ours and Seibert.
JOINT COMMITTEES

ENROLLED BILLS
Rutledge (Chairman), Crandall, Whitlow, Mulneix and Smirl.

GOVERNMENT AND FINANCE
McManus (Cochairman), Lohr, Myles, Steptoe, Ours and Seibert.

JOINT RULES
McManus (ex officio Chairman), Myles and Seibert.
AN ACT to amend chapter thirty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article one-a, relating to the uniform recognition of acknowledgments act, notarial acts performed outside this state, persons with authority to take acknowledgments, recognition and meaning of certificates of acknowledgment, short forms of taking acknowledgments and specifying other acknowledgments not affected or invalidated by this article.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1A. UNIFORM RECOGNITION OF ACKNOWLEDGMENTS ACT.

§39-1A-1. “Notarial acts” defined; who may perform notarial acts outside the state for use in state.


§39-1A-3. What person taking acknowledgment shall certify.

§39-1A-4. When form of certificate of acknowledgment accepted.
§39-1A-5. Meaning of "acknowledged before me."
§39-1A-7. Application of article; article cumulative.

§39-1A-1. "Notarial acts" defined; who may perform notarial acts outside the state for use in state.

1 For the purposes of this article, "notarial acts" means acts which the laws and regulations of this state authorize notaries public of this state to perform, including the administering of oaths and affirmations, taking proof of execution and acknowledgments of instruments, and attesting documents. Notarial acts may be performed outside this state for use in this state with the same effect as if performed by a notary public of this state by the following persons authorized pursuant to the laws and regulations of other governments in addition to any other person authorized by the laws and regulations of this state:

1 (1) A notary public authorized to perform notarial acts in the place in which the act is performed;

1 (2) A judge, clerk, or deputy clerk of any court of record in the place in which the notarial act is performed;

1 (3) An officer of the foreign service of the United States, a consular agent, or any other person authorized by regulation of the United States department of state to perform notarial acts in the place in which the act is performed;

1 (4) A commissioned officer in active service with the armed forces of the United States and any other person authorized by regulation of the armed forces to perform notarial acts if the notarial act is performed for one of the following or his dependents: A merchant seaman of the United States, a member of the armed forces of the United States or any other person serving with or accompanying the armed forces of the United States; or

1 (5) Any other person authorized to perform notarial acts in the place in which the act is performed.
1 (a) If the notarial act is performed by any of the persons described in subdivisions one to four, inclusive, section one of this article, other than a person authorized to perform notarial acts by the laws or regulations of a foreign country, the signature, rank or title and serial number, if any, of the person are sufficient proof of the authority of a holder of that rank or title to perform the act. Further proof of his authority is not required.
2 (b) If the notarial act is performed by a person authorized by the laws or regulations of a foreign country to perform the act, there is sufficient proof of the authority of that person to act if:
3 (1) Either a foreign service officer of the United States resident in the country in which the act is performed or a diplomatic or consular officer of the foreign country resident in the United States certifies that a person holding that office is authorized to perform the act; and
4 (2) The official seal of the person performing the notarial act is affixed to the document; or
5 (3) The title and indication of authority to perform notarial acts of the person appears either in a digest of foreign law or in a list customarily used as a source of such information.
6 (c) If the notarial act is performed by a person other than one described in subsections (a) and (b) of this section, there is sufficient proof of the authority of that person to act if the clerk of a court of record in the place in which the notarial act is performed certifies to the official character of that person and to his authority to perform the notarial act.
7 (d) The signature and title of the person performing the act are prima facie evidence that he is a person with the designated title and that the signature is genuine.

§39-1A-3. What person taking acknowledgment shall certify.
1 The person taking an acknowledgment shall certify that:
ACKNOWLEDGMENTS

(1) The person acknowledging appeared before him and acknowledged he executed the instrument; and

(2) The person acknowledging was known to the person taking the acknowledgment or that the person taking the acknowledgment had satisfactory evidence that the person acknowledging was the person described in and who executed the instrument.

§39-1A-4. When form of certificate of acknowledgment accepted.

The form of a certificate of acknowledgment used by a person whose authority is recognized under section one of this article shall be accepted in this state if:

(1) The certificate is in a form prescribed by the laws or regulations of this state;

(2) The certificate is in a form prescribed by the laws or regulations applicable in the place in which the acknowledgment is taken; or

(3) The certificate contains the words “acknowledged before me,” or their substantial equivalent.

§39-1A-5. Meaning of “acknowledged before me.”

The words “acknowledged before me” mean:

(1) That the person acknowledging appeared before the person taking the acknowledgment;

(2) That he acknowledged he executed the instrument;

(3) That, in the case of:

(a) A natural person, he executed the instrument for the purposes therein stated;

(b) A corporation, the officer or agent acknowledged he held the position or title set forth in the instrument and certificate, he signed the instrument on behalf of the corporation by proper authority, and the instrument was the act of the corporation for the purpose therein stated;

(c) A partnership, the partner or agent acknowledged he signed the instrument on behalf of the partner-
ship by proper authority and he executed the instru-
ment as the act of the partnership for the purposes
therein stated;
(d) A person acknowledging as principal by an at-
torney in fact, he executed the instrument by proper
authority as the act of the principal for the purposes
therein stated;
(e) A person acknowledging as a public officer, trus-
tee, administrator, guardian or other representative, he
signed the instrument by proper authority and he exe-
cuted the instrument in the capacity and for the pur-
poses therein stated; and
(4) That the person taking the acknowledgment
either knew or had satisfactory evidence that the person
acknowledging was the person named in the instrument
or certificate.


The forms of acknowledgment set forth in this section
may be used and are sufficient for their respective pur-
poses under any law of this state. The forms shall be
known as "Statutory Short Forms of Acknowledgment"
and may be referred to by that name. The authoriza-
tion of the forms in this section does not preclude the
use of other forms.

(1) For an individual acting in his own right:

State of ________________________________
County of ________________________________

The foregoing instrument was acknowledged
before me this ________________________________ by
(date)

__________________________________________
(name of person acknowledged)

__________________________________________
(Signature of Person Taking Acknowledgment)

__________________________________________
(Title or Rank)

__________________________________________
(Serial Number, if any)
For a corporation:

State of ____________________________
County of ____________________________

The foregoing instrument was acknowledged before me this ____________________________ by ____________________________

(name of officer or agent, title of officer or agent) (name of corporation acknowledging) (state or place of incorporation) corporation, on behalf of the corporation.

(Signature of Person Taking Acknowledgment)

(Title or Rank)

(Serial Number, if any)

For a partnership:

State of ____________________________
County of ____________________________

The foregoing instrument was acknowledged before me this ____________________________ by ____________________________

(name of acknowledging partner or agent), a partnership.

(Signature of Person Taking Acknowledgment)

(Title or Rank)

(Serial Number, if any)

For an individual acting as principal by an attorney in fact:

State of ____________________________
County of ____________________________
The foregoing instrument was acknowledged before me this ____________________________ by
(date)
______________________________ as attorney in fact
(name of attorney in fact)
on behalf of ____________________________
(name of principal)
______________________________
(Signature of Person Taking Acknowledgment)
______________________________
(Title or Rank)
______________________________
(Serial Number, if any)
(5) By any public officer, trustee or personal representative:
State of ____________________________
County of ____________________________
The foregoing instrument was acknowledged before me this ____________________________ by
(date)
______________________________
(name and title of position)
______________________________
(Signature of Person Taking Acknowledgment)
______________________________
(Title or Rank)
______________________________
(Serial Number, if any)

§39-1A-7. Application of article; article cumulative.
1 A notarial act performed prior to the effective date of this article is not affected by this article. This article provides an additional method of proving notarial acts.
4 Nothing in this article diminishes or invalidates the recognition accorded to notarial acts by article one of this chapter or by other laws or regulations of this state.

1 This article shall be so interpreted as to make uniform the laws of those states which enact it.

1 This article may be cited as the "Uniform Recognition of Acknowledgments Act."

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CHAPTER 2

(House Bill No. 688—By Mr. Halbritter and Mr. Bowman)

[Passed February 15, 1971; in effect July 1, 1971. Approved by the Governor.]

AN ACT to amend and reenact section fifteen, article two-a, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to annual meetings to establish uniform standards, grades and market practices concerning agricultural products.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2A. PUBLIC MARKETS.


1 The commissioner shall annually, on or before the first day of July, call together in public meeting the president and manager, or other officials, of livestock auction markets within the state for the purpose of establishing uniform standards and grades of livestock and uniform market practices and procedures for the operation of livestock auction markets in this state.

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CHAPTER 3

(House Bill No. 786—By Mr. Hawse and Mr. Ours)

[Passed February 18, 1971; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two, four, six, seven, eight, ten and eleven, article two-b, chapter nineteen of
the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the department of agriculture, to the inspection, labeling and disposition of animals, carcasses, meat, meat food products and meat by-products, to the licensing of commercial slaughterers, custom slaughterers, commercial processors, custom processors or distributors, and to the inspection of slaughterhouses and processing plants; and providing exclusions, exemptions, prohibitions and penalties.

Be it enacted by the Legislature of West Virginia:

That sections two, four, six, seven, eight, ten and eleven, article two-b, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 2B. INSPECTION OF ANIMALS, MEAT AND MEAT PRODUCTS.


§19-2B-4. License required for commercial slaughterer, custom slaughterer, commercial processor, custom processor or distributor; application for license; fees; refusal, revocation or suspension; suspension of inspection; establishment number or numbers.

§19-2B-6. Inspection, marking, labeling, branding, etc.; quarantine; segregation; scheduling of operations; disposition of carcasses, etc.; reinspection; health examinations; rejection tags.

§19-2B-7. Exclusion of slaughterhouses and processing plants under the supervision of or approved by the United States Department of Agriculture.


§19-2B-10. Additional prohibitions.


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

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

3 (b) "Commissioner" means the commissioner of agriculture of the state of West Virginia and his duly authorized representatives;

4 (c) "Person" means any individual, partnership, corporation, association, or other entity;
(d) "Contract veterinarian" means a graduate of a school of veterinary medicine accredited by the American Veterinary Medical Association who provides services for the department under contract;

(e) "Veterinary supervisor" means a graduate of a school of veterinary medicine accredited by the American Veterinary Medical Association, and employed by the department to inspect and supervise the inspection of animals, carcasses, meat, meat food products or meat by-products;

(f) "Meat inspector" means an individual employed by the department to inspect animals, carcasses, meat, meat food products or meat by-products under the supervision of a veterinary supervisor;

(g) "State inspection" means inspection services conducted by the department at or in connection with establishments required to be licensed by this article;

(h) "W. Va. condemned," or abbreviation thereof, means the animal so marked has been inspected and found to be in a dying condition, or to be affected with any other condition or disease that would require condemnation of its carcass;

(i) "W. Va. inspected and condemned," or abbreviation thereof, means that the carcass, meat, meat food product or meat by-product, so marked or so identified, is adulterated and shall be disposed of in the manner prescribed by the commissioner;

(j) "W. Va. retained" means that the carcass, meat, meat food product or meat by-product so identified is held for further examination by a veterinary supervisor or contract veterinarian to determine its disposal;

(k) "W. Va. suspect" means that the animal so marked and identified is suspected of being affected with a disease or condition which may require its condemnation, in whole or in part, when slaughtered, and is subject to further examination by a contract veterinarian or veterinary supervisor to determine its disposal;

(l) "W. Va. inspected and passed," or abbreviation thereof, means that the carcass, meat, meat food product or meat by-product, so marked, or so identified, was at
the time it was so marked or so identified found to be wholesome;

(m) “Country” when used in the name of a meat, meat food product or meat by-product means that such meat, meat food product or meat by-product was actually prepared on a farm;

(n) “Federal inspection” means the meat and poultry inspection service conducted or approved by the meat inspection division and the poultry inspection division of the United States department of agriculture;

(o) “Federal Meat Inspection Act” means the act so entitled, approved March four, one thousand nine hundred seven, as amended by the Wholesome Meat Act;

(p) “Federal Poultry Products Inspection Act” means the act of Congress approved August twenty-eighth, one thousand nine hundred fifty-seven, as amended;

(q) “Inspection legend” means a mark or a statement on a carcass, meat, meat food product or meat by-product indicating the same has been inspected and passed in this state under the provisions of this article;

(r) “Meat label” means a display of written, printed or graphic matter on a container indicating the carcass, meat, meat food product or meat by-product contained therein has been inspected and passed in this state under the provisions of this article;

(s) “Official inspection mark” means any symbol prescribed by the commissioner for the purpose of identifying the inspection status of any article so inspected;

(t) “Establishment number” means an official number assigned by the commissioner to each establishment and included on the inspection legend and meat label to identify all inspected and passed carcasses, meat, meat food products and meat by-products handled in that establishment;

(u) “Container” and “package” shall include but not be limited to any box, can, tin, cloth, plastic or any other receptacle, wrapper or cover;

(v) “Sell” means offer for sale, expose for sale, have in possession for sale, exchange, barter or trade;

(w) “Animals” mean cattle, swine, sheep and goats;
(x) "Carcass" means all or any part of a slaughtered animal, including viscera, which is capable of being used for human consumption;

(y) "Meat" means the edible part of the muscle of animals, which is skeletal or which is found in the tongue, in the diaphragm, in the heart or in the esophagus with or without the accompanying or overlying fat, and the portions of bone, skin, sinew nerve and blood vessels which normally accompany the muscle tissue and which are not separated from it in the process of dressing; it does not include the muscle found in the lips, snout or ears;

(z) "Meat food product" means any article of food for human consumption or any article which enters into the composition of food for human consumption, which is derived or prepared in whole or in part from any portion of any animal, except organotherapeutic substances, meat juices, meat extract and the like which are only for medicinal purposes and are advertised only to the medical profession; any edible part of the carcass which has been manufactured, cured, smoked, processed or otherwise treated shall be considered a meat food product;

(aa) "Meat by-product" means any edible part of an animal other than meat or meat food product;

(bb) "Denature" means the uniform application of sufficient quantities of crude carbolic acid, cresylic disinfectant, or any other agent approved by the commissioner upon and into the freely slashed flesh of any carcass or product condemned;

(cc) "Decharacterization" means the uniform application of sufficient quantities of dye, charcoal, malodorous fish oil, or any other agent approved by the commissioner, upon and into the freely slashed flesh of carcasses or meat not being rendered, so as to unequivocally preclude its use for human food;

(dd) "Inedible" means meat, meat food products and meat by-products derived from 4-D or condemned animals, or animals which the meat, meat food products or meat by-products are otherwise unsuitable for human consumption and shall include meat, meat food products
or meat by-products regardless of origin, which have deteriorated so far as to be unfit for human consumption;

(ee) “4-D animal” means an animal that is dead, dying, down or diseased on arrival at the slaughterhouse;

(ff) “Commercial slaughterer” means a person engaged for profit in this state in the business of slaughtering or dressing animals for human consumption which are to be sold or offered for sale through a commercial outlet or establishment, and shall include a person who, in addition to such commercial slaughtering, also engages in the business of a custom slaughterer;

(gg) “Custom slaughterer” means a person engaged for profit in this state in the business of slaughtering or dressing animals for human consumption which are not to be sold or offered for sale through a commercial outlet, commercial establishment, distributor, or to an individual, and shall include the boning or cutting up of carcasses of such animals and the grinding, chopping and mixing of the carcasses thereof;

(hh) “Slaughterhouse” shall include but not be limited to all buildings, structures and facilities used in the slaughtering or dressing of animals for human consumption;

(ii) “Distributor” means a person engaged for profit in this state in the business where carcasses, meat, meat food products or meat by-products are received from state or federally inspected establishments, or approved by the United States department of agriculture, and who stores and distributes to commercial outlets, processors or individuals, and who conducts no processing other than wrapping and/or cutting of carcasses or its parts into quarters or wholesale cuts;

(jj) “Processor” means a person who engages for profit in this state in the business of packing or packaging carcasses, meat, meat food products or meat by-products for human consumption or a person engaged for profit in the business of curing, salting, smoking, processing or other preparing of carcasses, meat, meat food products or meat by-products for human consumption;

(kk) “Commercial processor” means a processor for
commercial outlets or distributors and shall include the business of custom processing;

(II) "Custom processor" means a processor in which the meat, meat food products or meat by-products derived through processing cannot be sold or offered for sale through a commercial outlet, commercial establishment, distributor, or to an individual;

(mm) "Processing plant" shall include but not be limited to all buildings, structures, chill rooms, aging rooms, processing rooms, sanitary facilities, other facilities, and utensils, used by or in connection with the operations of a processor;

(nn) "Establishment" means any slaughterhouse, processing plant or distributor in this state;

(oo) "Related industries" means rendering plants, refrigerated meat warehouses, food lockers, meat and poultry wholesalers, brokers, pet food manufacturers, other animal food manufacturers, animal impoundments whose main source of food supply is derived from the raw meats, transportation firms and private carriers;

(pp) "Commercial outlet" means a place of business in this state and shall include all retail stores and public eating places in which carcasses, meat, meat food products or meat by-products are stored, sold or offered for sale for human consumption by the purchaser or others;

(qq) "Commercial dealer" means any person who operates one or more commercial outlets and who sells or offers for sale thereat any carcasses, meat, meat food products or meat by-products for human consumption, and who does not can, cook, cure, dry, smoke, or render any carcass, meat, meat food products or meat by-products at such outlets and who conducts no slaughtering or preparing of carcasses, meat, meat food products or meat by-products at such outlets other than boning or cutting up of carcasses, and other than grinding, chopping and mixing operations at such outlets with respect to trim or meat derived only from such boning or cutting up operations;

(rr) "Custom slaughtered carcass or meat," "custom slaughtered meat food products" or "custom slaughtered
meat by-products" mean, respectively, carcasses, meat, slaughtered, dressed or otherwise processed by a custom slaughterer;

(ss) "Wholesome" means sound, healthful, clean, and otherwise fit for human consumption;

(tt) "Adulterated" means and shall apply to any carcass, part thereof, meat or meat food product under one or more of the following circumstances:

(i) if it bears or contains any poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance, such article shall not be considered adulterated under this clause if the quantity of such substance in or on such article does not ordinarily render it injurious to health;

(ii) (a) if it bears or contains (by reason of administration of any substance to the live animal or otherwise) any added poisonous or added deleterious substance (other than one which is (1) a pesticide chemical in or on a raw agricultural commodity; (2) a food additive; or (3) a color additive) which may, in the judgment of the commissioners make such article unfit for human food;

(b) if it is, in whole or in part, a raw agricultural commodity and such commodity bears or contains a pesticide chemical which is unsafe within the meaning of the Federal Food, Drug and Cosmetic Act;

(c) if it bears or contains any food additive which is unsafe within the meaning of the Federal Food, Drug and Cosmetic Act;

(d) if it bears or contains any color additive which is unsafe within the meaning of the Federal Food, Drug and Cosmetic Act: Provided, That an article which is not adulterated under clause (b), (c), or (d) shall nevertheless be deemed adulterated if use of the pesticide chemical, food additive, or color additive in or on such article is prohibited by regulations in establishments at which inspection is maintained;

(iii) if it consists in whole or in part of any filthy, putrid, or decomposed substance or is for any other
reason unsound, unhealthful, unwholesome, or otherwise unfit for human food;
(iv) if it has been prepared, packed, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health;
(v) if it is, in whole or in part, the product of an animal which has died otherwise than by slaughter;
(vi) if its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health;
(vii) if it has been intentionally subjected to radiation, unless the use of the radiation was in conformity with a regulation or exemption in effect pursuant to the Federal Food, Drug and Cosmetic Act;
(viii) if any valuable constituent has been in whole or in part omitted or abstracted therefrom; or if any substance has been substituted, wholly or in part therefore; or if damage or inferiority has been concealed in any manner; or if any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight, or reduce its quality or strength, or make it appear better or of greater value than it is;
(ix) if it is margarine containing animal fat and any of the raw material used therein consisted in whole or in part of any filthy, putrid, or decomposed substance;
(uu) "Antemortem" means before death;
(vv) "Postmortem" means after death;
(ww) "Reinspection" means inspection of the preparation of animal products and poultry products, as well as a reexamination of articles previously inspected;
(xx) "Licensee" means any person licensed under the provisions of this article.

§19-2B-4. License required for commercial slaughterer, custom slaughterer, commercial processor, custom processor or distributor; application for license; fees; refusal, revocation or suspension; suspension of inspection; establishment number or numbers.

(a) No commercial slaughterer, custom slaughterer,
commercial processor, custom processor or distributor shall operate an establishment unless he shall first have obtained a license from the commissioner so to do, which license remains unsuspended and unrevoked. Application for such license shall be made on forms prescribed by the commissioner and shall be accompanied by the fee required in this section. When such a person operates as a commercial slaughterer and also operates as a commercial processor, whether such operations are located on the same or different premises in this state, each such operation shall be licensed. When such a person operates two or more slaughterhouses not on the same premises in this state, or operates two or more processing plants not on the same premises in this state, a separate license shall be required for each such slaughterhouse and each such processing plant. Each license shall expire on the thirtieth day of June next following its issuance, and the annual fee for each such license shall be based upon the average number of animals slaughtered per year and upon the average finished product poundage processed per year, as set forth in the following table, except that the annual fee for the license of a person who operates solely as a custom slaughterer shall be ten dollars or as a custom processor shall be five dollars or as a distributor shall be five dollars.

<table>
<thead>
<tr>
<th>Class</th>
<th>Average Number of Animals Slaughtered Per Year</th>
<th>Annual Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Small</td>
<td>1 - 500</td>
<td>$10.00</td>
</tr>
<tr>
<td>Medium</td>
<td>501 - 1000</td>
<td>$25.00</td>
</tr>
<tr>
<td>Large</td>
<td>1001 - 5000</td>
<td>$50.00</td>
</tr>
<tr>
<td>Extra Large</td>
<td>Over 5000</td>
<td>$75.00</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Class</th>
<th>Average Finished Product Poundage Processed Per Year</th>
<th>Annual Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Small</td>
<td>1 - 25,000</td>
<td>$10.00</td>
</tr>
<tr>
<td>Medium</td>
<td>25,001 - 250,000</td>
<td>$25.00</td>
</tr>
<tr>
<td>Large</td>
<td>250,001 - 1,000,000</td>
<td>$50.00</td>
</tr>
<tr>
<td>Extra Large</td>
<td>Over 1,000,000</td>
<td>$75.00</td>
</tr>
</tbody>
</table>

Before issuing any license required by the provisions of this section, the commissioner shall inspect the applicant's establishment and if the commissioner is satisfied
that the establishment is clean and sanitary, is properly
equipped, and is in conformity with the provisions of
this article and any reasonable rules and regulations
promulgated by the commissioner, and if he is further
satisfied that the carcasses, meat, meat food products
or meat by-products to be sold or offered for sale there-
from through commercial outlets will be wholesome
and unadulterated, he shall issue the license. Each
license shall specify the location of the establishment
at which the licensee shall carry on his operations. The
license shall also contain the establishment number as-
signed by the commissioner.
(b) When a licensee changes the location of his
establishment, he shall not operate at such new location
unless and until his establishment at such new location
has been inspected by the commissioner and a new
license has been issued, or when a licensee leases, sells,
changes name, incorporates or in any other way changes
the status of his establishment with relationship to issu-
ance of current license, the new lessee, owner, etc.,
shall not operate at the location unless and until the
establishment at such location has been inspected and
approved by the commissioner and a new license has
been issued in accordance with the provisions of sub-
section (a) of this section: Provided, That a fee shall
not be charged for such new license during the license
year in which the change in location or change in owner-
ship, name or leasing was made.
(c) The commissioner may refuse to grant a license
or may suspend or revoke a license issued under the
provisions of this section whenever he finds that the
applicant's or licensee's establishment, as the case may
be, is not clean or sanitary, or is not properly equipped,
or is not in conformity with the provisions of this article
or any reasonable rules and regulations promulgated
by the commissioner, or if he finds that the carcasses,
meat, meat food products or meat by-products to be
sold or offered for sale therefrom through commercial
outlets are or will be adulterated. Upon the refusal to
grant a license, the commissioner shall furnish a written
statement to the applicant specifying the grounds for
such refusal. No such revocation or suspension of a license shall be effective until the licensee has received written notice thereof, which notice shall specify the grounds for such revocation or suspension. Whenever there is sufficient cause for the revocation or suspension of a license as hereinabove specified, the commissioner may in lieu of such revocation or suspension, suspend inspections at the establishment. Immediately upon suspension of such inspections the commissioner shall give the licensee written notice thereof, and such notice shall contain a recitation of the deficiencies which must be fully and completely corrected before inspections shall be resumed. Upon receipt of a written statement advising that a license has been refused or upon receipt of a written notice of the revocation or suspension of a license, or upon the suspension of inspections at the licensee's establishment, the applicant or licensee, as the case may be, may, in writing, demand a hearing. The commissioner shall hold such a hearing within ten days after receipt of such written demand, in accordance with the provisions of section nine of this article.

§19-2B-6. Inspection, marking, labeling, branding, etc.; quarantine; segregation; scheduling of operations; disposition of carcasses, etc.; reinspection; health examinations; rejection tags.

(a) The commissioner shall provide antemortem and postmortem inspection of all animals which are to be sold or offered for sale through a commercial outlet, establishment or distributor.

(b) The commissioner shall provide reinspection of carcasses, meat, meat food products and meat by-products during further preparation and processing which have previously been inspected.

(c) All inspections under the provisions of this article shall be performed in accordance with reasonable rules and regulations promulgated by the commissioner.

(d) The commissioner shall inspect all establishments under state inspection to make certain that they are operating in accordance with the provisions of this article.
and all reasonable rules and regulations promulgated by
the commissioner.

(e) When one inspector is assigned to make inspec-
tions at two or more establishments where few animals
are slaughtered, or where small quantities of carcasses,
meat, meat food products or meat by-products are
handled, or where the operations at such establishments
are sporadic, and such establishments in any of such
cases are in reasonable close proximity to one another,
the commissioner, giving full consideration to the con-
venience of the licensees of such establishments, may by
written notice to such licensees specify a reasonable
schedule for such operations: Provided, That the com-
missioner may not require operations other than during
normal working hours.

(f) Every conveyance used by any establishment
under state inspection, and, notwithstanding the pro-
visions of section seven of this article, every convey-
ance used by any slaughterhouse, processing plant or
distributor operating under federal inspection or ap-
proved by the United States department of agriculture,
for the transportation of carcasses, meat, meat food
products or meat by-products shall be maintained in a
clean and sanitary condition and may be inspected in
accordance with the provisions of this article and reason-
able rules and regulations promulgated by the com-
missioner.

(g) The commissioner shall require such quarantine
and segregation of animals, carcasses, meat, meat food
products and meat by-products in establishments as is
deemed necessary to effectuate the provisions of this
article.

(h) The head, tongue, tail, thymus glands, viscera,
blood and other parts of any slaughtered animal shall
be retained in such a manner as to preserve their iden-
tity until after the postmortem inspection has been com-
pleted.

(i) Each licensee shall pay for such devices for the
affixing of marks, brands, or stamps and for such meat
labels as may be prescribed for his establishment by
the commissioner. Such devices and meat labels shall
be under the exclusive control and supervision of the commissioner. The meat label used by any licensee shall be of the form and size prescribed by reasonable rules and regulations promulgated by the commissioner.

(j) Each carcass that has been inspected and passed in this state by the commissioner shall be marked at the time of inspection with the inspection legend. Any carcass which is not passed shall be marked conspicuously by the commissioner at the time of inspection in the following manner: "W. Va. inspected and condemned," or any abbreviation thereof.

(k) Each primal part of a carcass that has been inspected and passed shall be marked with the inspection legend, and each liver, beef heart and beef tongue that has been inspected and passed shall be branded with the inspection legend at the time of final inspection. Meat that has been boned out, cut from primal parts or otherwise changed so that the inspection legend is no longer plainly visible, and meat food products and meat by-products that are too small to be marked with the inspection legend shall be packed in closed containers to which shall be affixed the meat label indicating that the meat, meat food products or meat by-products contained therein have been inspected and passed. Upon removal of the contents of such containers bearing such label, the label shall be defaced to prevent its reuse.

(l) All carcasses, meat, meat food products and meat by-products which have been derived from an animal slaughtered by a custom slaughterer or processed by a custom slaughterer or custom processor shall be marked "W. Va. custom slaughtered" in letters not less than three eights of an inch in height.

(m) Each official inspection mark shall contain the establishment number of the establishment involved, unless otherwise authorized by rules and regulations promulgated by the commissioner.

(n) The commissioner is hereby authorized and empowered to seize and destroy (i) any animal to be slaughtered in this state and thereafter sold or offered for sale through a commercial outlet or distributor which cannot be made fit for human consumption; (ii) any
animal, carcass, meat, meat food product or meat by-
product slaughtered or processed in this state in violation
of the provisions of this article or any reasonable rules
and regulations promulgated by the commissioner; (iii)
any carcass, meat, meat food product or meat by-product
that does not bear an inspection legend or meat label
provided for by this article or which has not been in-
spected and passed under federal inspection or approved
by the United States department of agriculture and
which is intended to be sold or offered for sale
through a commercial outlet or distributor; and (iv)
any animal, carcass, meat, meat food product or meat
by-product which is adulterated. Where appropriate
the commissioner may in lieu of destruction as afore-
said denature, decharacterize, mutilate or slash any
carcass, meat, meat food product or meat by-product
intended to be sold or offered for sale through a com-
mercial outlet or distributor. The commissioner is also
authorized and empowered to seize and retain under a
retained tag any animal, carcass, meat, meat food pro-
duct or meat by-product until the commissioner deter-
mines to destroy, denature, decharacterize, mutilate,
slash or release the same. Whenever the commissioner
is authorized or empowered to take any of the actions
specified in this subsection, he may order and direct the
person having custody or possession of such animal,
carcass, meat, meat food product or meat by-product,
or the licensee of the establishment in which it is found,
to be responsible for the disposition thereof, as well
as any necessary storage, handling or other incidentals
related thereto. Such disposition shall be carried out
only under the direction and supervision of the com-
missioner.

(o) Whenever practicable, the commissioner shall
forgo the actions authorized in the immediately pre-
ceding subsection and permit reprocessing if such re-
processing will correct or eliminate the conditions which
would have justified any of such actions. Any such re-
processing in this state shall be under the supervision of
the commissioner.
Whenever the commissioner has good cause to believe that any carcass, meat, meat food product or meat by-product whether fresh, frozen, cured or otherwise prepared, and which is intended to be sold or offered for sale through a commercial outlet or distributor, may be adulterated or otherwise injurious to health, he may inspect or reinspect the same under the provisions of this article and any reasonable rules and regulations promulgated by him, even though such carcass, meat, meat food product or meat by-product may have been previously inspected and passed.

No licensee shall employ in any establishment any person who has any communicable disease or infected wounds or who is a carrier of any communicable disease. To enforce the provisions of this subsection, the commissioner may require any employee or prospective employee to submit to a health examination by a physician and furnish to the commissioner a certificate from such physician concerning his findings. The cost of conducting such examination and furnishing such certificate shall be borne by the licensee concerned.

Whenever the commissioner inspects any room, compartment, equipment or utensil in any establishment subject to state inspection and finds the same not to be clean and sanitary or finds the same to be otherwise unsuitable for the slaughtering or processing operations carried on in such establishment, he shall affix thereto a rejection tag or rejection notice. No such rejected room, compartment, equipment or utensil shall be used until the deficiencies requiring such rejection shall have been fully and completely corrected and the rejection tag or rejection notice has been removed. No person other than the commissioner shall remove any such rejection tag or notice.

When any animal, carcass, meat, meat food product or meat by-product has been inspected hereunder, the appropriate official inspection mark shall be affixed thereto, and no person shall remove the same unless authorized so to do by the commissioner.
§19-2B-7. Exclusion of slaughterhouses and processing plants under the supervision of or approved by the United States Department of Agriculture.

The provisions of this article shall not apply to any slaughterhouse or processing plant operating under the Federal Meat Inspection Act or the Federal Poultry Products Inspection Act, or approved by the United States department of agriculture.


(a) In order to accomplish the objectives of this article, the commissioner may by reasonable rules and regulations exempt from inspection:

(i) Any commercial dealer, provided all carcasses, meat, meat food products and meat by-products sold or offered for sale by such dealer were slaughtered and/or processed in commercial establishments under state inspection or have been inspected and passed by the United States department of agriculture or have been approved by the United States department of agriculture and shall be prepared, identified, labeled and sold in normal retail quantities as prescribed by reasonable rules and regulations promulgated by the commissioner;

(ii) The slaughtering by any person of animals of his own raising, and the preparation by him of the carcasses, meat, meat food products and meat by-products of such animals exclusively for use by him and members of his household and his nonpaying guests and employees; or custom slaughtered animals, by a custom slaughterer, delivered by the owner thereof for such slaughter and the preparation by such slaughterer or custom processor of the carcasses, meat, meat food products and meat by-products of such animals, exclusively for use, in the household of such owner, by him and members of his household and his nonpaying guests and employees: Provided, That the custom slaughterer or custom processor is not handling adulterated carcasses, meat, meat food products and meat by-products; maintains identity of carcasses, meat, meat food products and meat by-products; and maintains acceptable sanitation and operational controls as prescribed by reason-
able rules and regulations promulgated by the commissioner;

(iii) Antemortem and postmortem inspection of a licensed custom slaughterer;

(iv) Any other operations which the commissioner may determine would best be exempted to further the purposes of this article, to the extent such exemptions conform to the Federal Meat Inspection Act and the Federal Poultry Products Inspection Act as amended from time to time and the regulations thereunder;

(b) Any institution operated by the state requiring inspection under this article shall be exempt from the licensing fee as required by section four of said article.

§19-2B-10. Additional prohibitions.

In addition to any other prohibitions contained in this article, it shall be unlawful:

(a) For any person to operate any establishment under state inspection which is not clean and sanitary;

(b) To slaughter any adulterated animal intended to be sold or offered for sale through a commercial outlet or distributor;

(c) To sell or offer for sale through a commercial outlet or distributor any carcass, meat, meat food product or meat by-product for human consumption which is adulterated;

(d) To slaughter for human consumption any animal tagged or permanently identified as "W. Va. condemned," or abbreviation thereof;

(e) To process, sell or offer for sale for human consumption any carcass, meat, meat food product or meat by-product which is mislabeled with intent to deceive or which is marked "W. Va. inspected and condemned," or abbreviation thereof;

(f) To process in an establishment under state inspection for sale through any commercial outlet or distributor any carcass, meat, meat food product or meat by-product intended for human consumption and derived in whole or in part from any calf, pig, kid or lamb
which is so immature as to be lacking in nutritional value;

(g) To knowingly or intentionally expose any carcass, meat, meat food product or meat by-product in any establishment under state inspection to insects, live animals or any contamination;

(h) To add kangaroo meat, horse meat, mule meat or other equine meat to any animal meat, or meat food product or meat by-product derived from animals and to be sold or offered for sale through commercial outlets or distributors for human consumption;

(i) To remove any hide, skin or any other part of an unborn or stillborn animal in the confines of a room in an establishment where any animals, carcasses, meat, meat food products or meat by-products are slaughtered or processed, as the case may be, or to be sold or offered for sale through a commercial outlet or distributor;

(j) To process for human consumption in any establishment subject to state inspection any carcass, meat, meat food product or meat by-product derived from any animal which died other than by slaughter;

(k) To transport to any commercial outlet or distributor for the purpose of being sold or offered for sale therein, any carcass, meat, meat food product or meat by-product which is not marked, branded or stamped as having been inspected and passed by the commissioner or by the United States department of agriculture or which has not been approved by the United States department of agriculture;

(l) For any commercial outlet or distributor to receive, for the purpose of being sold or offered for sale therein, any carcass, meat, meat food product or meat by-product which is not marked, branded or stamped as having been inspected and passed by the commissioner or by the United States department of agriculture or which has not been approved by the United States department of agriculture;

(m) To slaughter any horse, mule or other equine in any establishment under state inspection in which animals are slaughtered for human consumption for
the purpose of being sold or offered for sale through commercial outlets;
(n) To bring any kangaroo meat, horse meat, mule meat or other equine meat into any establishment under state inspection where animal carcasses, meat, meat food products or meat by-products are processed for human consumption for the purpose of being sold or offered for sale through commercial outlets;
(o) To transport, process, sell or offer for sale any kangaroo meat, horse meat, mule meat or other equine meat within this state for human consumption unless it is conspicuously and plainly identified or stamped as such;
(p) For any person to use an establishment number not assigned to him or to use an establishment number in connection with operations concerning which a different establishment number was assigned by the commissioner;
(q) To remove from any article any retained tag affixed by the commissioner, unless such removal is authorized by him;
(r) For a licensee to use any container bearing an official inspection mark unless it contains the exact carcass, meat, meat food product or meat by-product which was in the container at the time such contents were inspected and passed: Provided, That such a container may be otherwise used if such official inspection mark thereon is removed, obliterated or destroyed, and such other use is authorized by reasonable rules and regulations promulgated by the commissioner;
(s) For any person, other than the commissioner, to possess, keep or use, except as authorized by the commissioner, any meat label or device for the affixing of a mark, brand or stamp prescribed for inspection purposes hereunder;
(t) For any person, with intent to deceive, to possess, keep or use any meat label, mark, brand or stamp similar in character or import to an official meat label, mark, brand or stamp prescribed by the commissioner hereunder or to an official meat label, mark, brand or
(u) To falsely make, falsely issue, falsely publish, alter, forge, simulate or counterfeit any inspection certificate, memorandum, meat label, mark, brand, or stamp, or device for making an inspection mark, brand or stamp, or to possess, keep or use the same, with intent to deceive;

(v) For any person to refuse to permit the commissioner to enter and inspect at any time, upon presentation of appropriate credentials, an establishment under state inspection, or to interfere with any such lawful entry or inspection;

(w) For any person to refuse to permit the commissioner, upon presentation of appropriate credentials, to examine and copy the records described in section five of this article;

(x) For a person to prevent or fail to decharacterize or denature carcasses, meat or meat food products as prescribed by reasonable rules and regulations promulgated by the commissioner;

(y) For a person to transport offal, blood, or inedible and condemned parts of animal bodies from slaughterhouses, meat processing plants or other related industries: Provided, That such products may be transported if placed in suitable containers with tight covers, or water-tight tanks so as not to contaminate the public highways or private roadways while going to or from the points of pickup;

(z) For a person to store offal, blood, or inedible and condemned parts of animal bodies from slaughterhouses, meat processing plants or other related industries during interim transit movement in refrigerated warehouses, food lockers or other related industries: Provided, That such products may be otherwise stored if properly marked "NOT FOR HUMAN FOOD" "FOR ANIMAL FOOD ONLY" and identified as approved products to be used for animal food;

(aa) For a person knowingly to purchase or deliver, or both, a 4-D animal to an establishment in this state;
(bb) For any person to transport carcasses, meat, meat food products or meat by-products that are intended for human consumption in a manner which would permit the products to become adulterated;

(cc) For any person who forcibly assaults, resists, opposes, impedes, intimidates, or interferes with the commissioner or his representative while engaged in or on account of the performances of his official duties.


Any person who shall violate any of the provisions of this article shall be guilty of a misdemeanor, and, upon conviction thereof, shall for the first offense be fined not less than fifty nor more than five hundred dollars and upon conviction of each subsequent offense shall be fined not less than one hundred nor more than one thousand dollars.

CHAPTER 4

(House Bill No. 858—By Mr. Bowman and Mr. Edgar)

[Passed March 13, 1971; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal article nineteen, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections one and five, article eighteen of said chapter, all relating to the general and optional stock law.

Be it enacted by the Legislature of West Virginia:

That article nineteen, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that sections one and five, article eighteen of said chapter be amended and reenacted to read as follows:

ARTICLE 18. GENERAL STOCK LAW.

§19-18-1. Stock trespassing on grounds of another; damages.

§19-18-1. Stock trespassing on grounds of another; damages.

1 If any horse, mule, ass, jennet, cattle, sheep, swine, or goat shall enter into any grounds, the owner or manager of any such stock shall be liable to the owner or tenant of such grounds for any damage he may sustain thereby, and the party so injured may, if he find such stock on his premises, impound them, or a sufficient number thereof, subject to the provisions of sections eight, nine and ten of this article, until such damages and costs of keeping have been paid.


1 Should any stock, while running at large contrary to the provisions of sections one, two, three or four of this article, injure or destroy the property of another, the owner or manager of any such stock shall, notwithstanding any penalty imposed by said sections, be liable to the party whose property shall have been injured or destroyed for the amount of damage sustained by him by reason of such injury or destruction. And the party so injured may, if he find such stock on his premises, impound them, or a sufficient number thereof, subject to the provisions of sections eight, nine and ten of this article, until such damages and costs of keeping be paid.

CHAPTER 5

(House Bill No. 762—By Mr. Whitlow and Mr. Broyles)

[Passed February 22, 1971; in effect July 1, 1971. Approved by the Governor.]

AN ACT to amend and reenact sections fourteen, fifteen, sixteen, seventeen and eighteen, article twenty, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to dogs killing or worrying livestock or poultry and damages resulting therefrom; penalties.
Ch. 5] AGRICULTURE 31

Be it enacted by the Legislature of West Virginia:

That sections fourteen, fifteen, sixteen, seventeen and eighteen, article twenty, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 20. DOGS.

§19-20-14. Dog killing or worrying livestock or poultry—Recovery of damages from owner of dog or county court.

§19-20-15. Same—Assessment of damages; appraisers.

§19-20-16. Same—When lawful to kill dog.

§19-20-17. Same—Unlawful to harbor dog; penalty.

§19-20-18. Same—Duty of owner to kill dog; proceeding before justice on failure of owner to kill.

§19-20-14. Dog killing or worrying livestock or poultry—Recovery of damages from owner of dog or county court.

1 If any dog shall have killed or assisted in killing,
2 wounding or worrying any sheep, lambs, goats, kids,
3 calves or poultry out of the enclosure of the owner of
4 such dog, the owner or keeper of such dog shall be liable
5 to the amount of such sheep, lambs, goats, kids, calves
6 or poultry in the amount of the damages sustained, to
7 be recovered in an action before any court or justice
8 having jurisdiction of such action; and it shall not be
9 necessary to sustain such action to prove that the owner
10 of such dog knew such dog was accustomed to do such
11 worrying, killing or wounding; but a recovery under
12 this section shall bar and preclude the owner of such
13 sheep, lambs, goats, kids, calves or poultry from obtain-
14 ing compensation from the county court under the pro-
15 visions of this article. If such person suffering such loss
16 or damage cannot ascertain the owner or keeper of
17 such dog, or if such owner or keeper is not financially
18 responsible, then the person suffering such loss or dam-
19 age may file his claim with, and prove the same before,
20 the county court of the county in which such loss or
21 damage is sustained, in the manner provided in this
22 article, and the court shall pay such loss or damage out
23 of the fund provided for such purposes and according
24 to the provisions of this article. When compensation
25 is so obtained from the county court, said county court
is authorized to sue under this section and recover as
the owner of the sheep, lambs, goats, kids, calves or
poultry might have done, and the amount so recovered
shall be paid into the county treasury; but no suit shall
be commenced unless authorized by the county court.

§19-20-15. Same—Assessment of damages; appraisers.

1 Authority is hereby given to justices of the peace and
notaries public within this state, and within their re-
spective jurisdictions, to summon three substantial, up-
right and worthy bona fide residents, citizens and tax-
payers of his county to assess the damages suffered by
any person on account of the destruction, loss or injury
of any sheep, lambs, goats, kids, calves or poultry by
dogs within the county. Such appraisers shall be ap-
pointed upon the request of any person suffering dam-
ages on account of such destruction, loss or injury, and
shall go upon the ground and investigate fully the ex-
tent of such destruction, loss or injury, taking all the
evidence deemed necessary to arrive at the facts to be
passed upon in arriving at the amount of damage, if any,
suffered by the party making the complaint. Before
such appraisers may be summoned by such justice or
notary public, such complainant shall be required to
make a sworn complaint before such justice or notary
public, setting out in plain, easily comprehended terms
the facts concerning his damage to the best of his knowl-
edge. And after making a full investigation of the facts
involved, such appraisers, with the assistance of such
justice or notary public, shall make a sworn statement
and report the facts ascertained and the damages suf-
fered, which report and statement shall be filed with
the county court or the clerk thereof in vacation. The
fees and mileage for services allowed in such cases shall
be the same as are allowed justices, witnesses and arbi-
trators in justices’ courts in this state for similar ser-
ices. In the event that such appraisers find that the
complainant has suffered no damage, then the com-
plainant shall be responsible for and pay all the costs
and expenses of such proceeding; and in the event that
such complainant has suffered damages on account of
the destruction, loss or injury of any such domestic
animals, according to the finding of such appraisers, then in such event the owner, keeper or person permitting the dog, or dogs, causing such damage to remain upon premises under his control shall be liable for all damage sustained by the complainant, including all costs and necessary expenses, all of which shall be collectible by an action at law before any court or justice have jurisdiction of the matter. All papers in connection with any such claim shall be filed and preserved in the office of the clerk of the county court.

§19-20-16. Same—When lawful to kill dog.

Any person may kill any dog that he may see chasing, worrying, wounding or killing any sheep, lambs, goats, kids, calves or poultry outside of the enclosure of the owner of such dog, unless the same be done by the direction of the owner of such sheep, lambs, goats, kids, calves or poultry.

§19-20-17. Same—Unlawful to harbor dog; penalty.

Any person who shall harbor or secrete or aid in secreting any dog which he knows or has reasons to believe has worried, chased or killed any sheep, lambs, goats, kids, calves or poultry not the property of the owner of such dog, out of his enclosure, or knowingly permits the same to be done on any premises under his control, shall be guilty of a misdemeanor, and, upon conviction thereof, before any court or justice having jurisdiction thereof in the county in which the offense is committed, shall be fined not less than ten nor more than fifty dollars, and, at the discretion of the court or justice, imprisoned in the county jail not more than thirty days; and each day that such dog is harbored, kept or secreted shall constitute a separate offense.

§19-20-18. Same—Duty of owner to kill dog; proceeding before justice on failure of owner to kill.

The owner or keeper of any dog that has been worrying, wounding, chasing or killing any sheep, lambs, goats, kids, calves or poultry not the property of such owner or keeper, out of his enclosure, shall, within forty-eight
hours, after having received notice thereof in writing from a reliable and trustworthy source, under oath, cause such dog to be killed. If the owner or keeper refuses to kill said dog as hereinbefore provided, any justice of the peace, upon information, shall summon the owner or keeper of such dog, and, after receiving satisfactory proof that his dog did the mischief, shall issue a warrant on application being made by the owner of the sheep, lambs, goats, kids, calves or poultry killed; and give it into the hands of the constable, special constable or sheriff, who shall kill the dog forthwith. The cost of such proceedings shall be paid by the owner or keeper of the dog so killed, including a fee of fifty cents to the officer killing the dog. The owner or keeper of the dog so killed shall, in addition to the costs, be liable to the owner of the sheep, lambs, goats, kids, calves or poultry or to the county court, for the value of the sheep, lambs, goats, kids, calves or poultry so killed or injured.

*CHAPTER 6

(Com. Sub. for Senate Bill No. 142—Originating in the Senate Committee on Finance)

[Passed March 16, 1971; in effect from passage. Approved by the Governor March 20, 1971, after deleting and reducing certain items and parts of items and disapproving certain items and parts of items.]

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

Be it enacted by the Legislature of West Virginia:

Title
2. Appropriations.
3. Administration.

*See Clerk's note on page 100.
TITLE 1. GENERAL PROVISIONS.
§1. General policy.
§2. Definitions.
§3. Classification of appropriations.

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

1 Sec. 2. Definitions.—For the purpose of this act:
2 “Governor” shall mean the Governor of the State of West Virginia;
3 “Spending Unit” shall mean the department, agency or institution to which an appropriation is made;
4 The “fiscal year one thousand nine hundred seventy-two” shall mean the period from July first, one thousand nine hundred seventy-one through June thirtieth, one thousand nine hundred seventy-two;
5 “From collections” shall mean that part of the total appropriation which must be collected by the spending unit to be available for expenditure. If the authorized amount of collections is not collected, the total appropriation for the spending unit shall be reduced automatically by the amount of the deficiency in the collection. If the amount collected exceeds the amount designated “from collections” the excess shall be set aside in a special surplus fund and may be expended for the purpose of the spending unit as provided by Chapter 5-A, Article 2 of the Code of West Virginia.

1 Sec. 3. Classification of Appropriations.—An appropriation for:
2 “Personal Services” shall be expended only for the payment of salaries, wages, fees and other compensation for skill, work, or employment, except from the appropriations made to the spending units of State Government, there may be transferred upon approval of the Governor, to a special account an amount sufficient to match Federal Funds under any Federal Acts;
Unless otherwise specified, appropriations for personal services shall include salaries of heads of spending unit;

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

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

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

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

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

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

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

Title 2. Appropriations.

§1. Appropriations from general revenue.

Agriculture

Department of agriculture—Acct. No. 510

Department of agriculture (agricultural awards)—Acct. No. 515

Department of agriculture (division of rural resources)—Acct. No. 513

Department of agriculture (meat inspection)—Acct. No. 514

Department of agriculture (soil conservation committee)—Acct. No. 512
### BUSINESS AND INDUSTRIAL RELATIONS

<table>
<thead>
<tr>
<th>Organization</th>
<th>Account No.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Antiquities commission</td>
<td>478</td>
</tr>
<tr>
<td>Bureau of labor and department of weights and measures</td>
<td>450</td>
</tr>
<tr>
<td>Council of State Governments</td>
<td>472</td>
</tr>
<tr>
<td>Department of banking</td>
<td>460</td>
</tr>
<tr>
<td>Department of commerce</td>
<td>465</td>
</tr>
<tr>
<td>Department of mines</td>
<td>460</td>
</tr>
<tr>
<td>Interstate commission on Potomac river basin</td>
<td>473</td>
</tr>
<tr>
<td>Interstate education compact</td>
<td>477</td>
</tr>
<tr>
<td>Ohio river valley water sanitation commission</td>
<td>474</td>
</tr>
<tr>
<td>Southern regional education board</td>
<td>475</td>
</tr>
<tr>
<td>State commission on manpower, technology and training</td>
<td>470</td>
</tr>
<tr>
<td>West Virginia air pollution commission</td>
<td>476</td>
</tr>
<tr>
<td>West Virginia nonintoxicating beer commissioner</td>
<td>490</td>
</tr>
<tr>
<td>West Virginia racing commission</td>
<td>495</td>
</tr>
<tr>
<td>West Virginia state aeronautics commission</td>
<td>485</td>
</tr>
</tbody>
</table>

### CHARITIES AND CORRECTION

<table>
<thead>
<tr>
<th>Organization</th>
<th>Account No.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Andrew S. Rowan memorial home</td>
<td>384</td>
</tr>
<tr>
<td>Forestry camp for boys</td>
<td>371</td>
</tr>
<tr>
<td>Huttonsville Correctional Center</td>
<td>376</td>
</tr>
<tr>
<td>West Virginia children’s home</td>
<td>390</td>
</tr>
<tr>
<td>West Virginia Forestry Camp (Leckie)</td>
<td>373</td>
</tr>
<tr>
<td>West Virginia industrial home for girls</td>
<td>372</td>
</tr>
<tr>
<td>West Virginia industrial school for boys</td>
<td>370</td>
</tr>
<tr>
<td>West Virginia penitentiary</td>
<td>375</td>
</tr>
<tr>
<td>West Virginia state prison for women</td>
<td>374</td>
</tr>
</tbody>
</table>

### CONSERVATION AND DEVELOPMENT

<table>
<thead>
<tr>
<th>Organization</th>
<th>Account No.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Department of natural resources</td>
<td>565</td>
</tr>
<tr>
<td>Department of veterans affairs</td>
<td>584</td>
</tr>
<tr>
<td>Geological and economic survey commission</td>
<td>520</td>
</tr>
</tbody>
</table>

### EDUCATIONAL

<table>
<thead>
<tr>
<th>Organization</th>
<th>Account No.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Archives and history</td>
<td>340</td>
</tr>
<tr>
<td>Department of education</td>
<td>286</td>
</tr>
<tr>
<td>Department of education (aid for exceptional children)</td>
<td>296</td>
</tr>
<tr>
<td>Educational broadcasting authority</td>
<td>291</td>
</tr>
<tr>
<td>FFA-FHA camp and conference center</td>
<td>336</td>
</tr>
<tr>
<td>State board of education (early childhood education)</td>
<td>278</td>
</tr>
<tr>
<td>State board of education (to implement federal vocational education act)</td>
<td>293</td>
</tr>
<tr>
<td>State board of education (vocational division)</td>
<td>294</td>
</tr>
<tr>
<td>State board of education (vocational division—adult basic education)</td>
<td>289</td>
</tr>
<tr>
<td>State board of school finance (state aid to schools)</td>
<td>295</td>
</tr>
<tr>
<td>State department of education (school lunch program)</td>
<td>287</td>
</tr>
<tr>
<td>State department of education (teacher education program)</td>
<td>277</td>
</tr>
<tr>
<td>Teachers retirement board</td>
<td>298</td>
</tr>
<tr>
<td>West Virginia board of regents</td>
<td>280</td>
</tr>
<tr>
<td>West Virginia board of regents (control)</td>
<td>279</td>
</tr>
<tr>
<td>West Virginia library commission</td>
<td>350</td>
</tr>
<tr>
<td>West Virginia schools for the deaf and blind</td>
<td>333</td>
</tr>
<tr>
<td>West Virginia University (medical school)</td>
<td>289</td>
</tr>
</tbody>
</table>
## EXECUTIVE

Governor's office—Acct. No. 120

## FISCAL

<table>
<thead>
<tr>
<th>Account</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>150</td>
<td>Auditor's office (general administration)</td>
<td>48</td>
</tr>
<tr>
<td>210</td>
<td>Department of finance and administration</td>
<td>48</td>
</tr>
<tr>
<td>170</td>
<td>Sinking fund commission</td>
<td>47</td>
</tr>
<tr>
<td>225</td>
<td>State board of insurance</td>
<td>49</td>
</tr>
<tr>
<td>190</td>
<td>State commissioner of public institutions</td>
<td>48</td>
</tr>
<tr>
<td>180</td>
<td>State tax department</td>
<td>47</td>
</tr>
<tr>
<td>185</td>
<td>State tax department (property appraisal)</td>
<td>47</td>
</tr>
<tr>
<td>160</td>
<td>Treasurer's office</td>
<td>47</td>
</tr>
</tbody>
</table>

## INCORPORATING AND RECORDING

<table>
<thead>
<tr>
<th>Account</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>250</td>
<td>Secretary of state</td>
<td>51</td>
</tr>
</tbody>
</table>

## LEGAL

<table>
<thead>
<tr>
<th>Account</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>240</td>
<td>Attorney general</td>
<td>50</td>
</tr>
<tr>
<td>245</td>
<td>Commission on uniform state laws</td>
<td>51</td>
</tr>
</tbody>
</table>

## HEALTH AND WELFARE

<table>
<thead>
<tr>
<th>Account</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>424</td>
<td>Barboursville state hospital</td>
<td>63</td>
</tr>
<tr>
<td>439</td>
<td>Berkeley Springs sanitarium</td>
<td>64</td>
</tr>
<tr>
<td>419</td>
<td>Colin Anderson Center</td>
<td>61</td>
</tr>
<tr>
<td>432</td>
<td>Denmar state hospital</td>
<td>64</td>
</tr>
<tr>
<td>410</td>
<td>Department of mental health</td>
<td>61</td>
</tr>
<tr>
<td>404</td>
<td>Department of veterans affairs</td>
<td>59</td>
</tr>
<tr>
<td>405</td>
<td>Department of welfare</td>
<td>60, 61</td>
</tr>
<tr>
<td>425</td>
<td>Fairmont emergency hospital</td>
<td>63</td>
</tr>
<tr>
<td>430</td>
<td>Hopemont state hospital</td>
<td>63</td>
</tr>
<tr>
<td>422</td>
<td>Huntington state hospital</td>
<td>62</td>
</tr>
<tr>
<td>423</td>
<td>Lakin state hospital</td>
<td>62</td>
</tr>
<tr>
<td>431</td>
<td>Pinecrest state hospital</td>
<td>63</td>
</tr>
<tr>
<td>421</td>
<td>Spencer state hospital</td>
<td>62</td>
</tr>
<tr>
<td>440</td>
<td>State board of education (rehabilitation division)</td>
<td>64</td>
</tr>
<tr>
<td>406</td>
<td>State commission on aging</td>
<td>60</td>
</tr>
<tr>
<td>400</td>
<td>State health department</td>
<td>59</td>
</tr>
<tr>
<td>426</td>
<td>Welch emergency hospital</td>
<td>63</td>
</tr>
<tr>
<td>420</td>
<td>Weston state hospital</td>
<td>61</td>
</tr>
</tbody>
</table>

## JUDICIAL

<table>
<thead>
<tr>
<th>Account</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>111</td>
<td>Auditor's office</td>
<td>44</td>
</tr>
<tr>
<td>118</td>
<td>Judicial council</td>
<td>45</td>
</tr>
<tr>
<td>114</td>
<td>State law library</td>
<td>45</td>
</tr>
<tr>
<td>110</td>
<td>Supreme court of appeals</td>
<td>44</td>
</tr>
</tbody>
</table>

## LEGISLATIVE

<table>
<thead>
<tr>
<th>Account</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>102</td>
<td>House of Delegates</td>
<td>41</td>
</tr>
<tr>
<td>103</td>
<td>Joint expenses</td>
<td>43</td>
</tr>
<tr>
<td>101</td>
<td>Senate</td>
<td>40</td>
</tr>
</tbody>
</table>

## MISCELLANEOUS BOARDS AND COMMISSIONS

<table>
<thead>
<tr>
<th>Account</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>595</td>
<td>Board of architects</td>
<td>75</td>
</tr>
<tr>
<td>588</td>
<td>Board of chiropractic examiners</td>
<td>74</td>
</tr>
<tr>
<td>593</td>
<td>Board of embalmers and funeral directors</td>
<td>75</td>
</tr>
<tr>
<td>597</td>
<td>Board of examiners for practical nurses</td>
<td>74</td>
</tr>
<tr>
<td>591</td>
<td>Board of osteopathy</td>
<td>74</td>
</tr>
<tr>
<td>590</td>
<td>Board of law examiners</td>
<td>75</td>
</tr>
</tbody>
</table>
§2. Appropriations from other funds.

**PAYABLE FROM SPECIAL REVENUE FUND**

Auditor's office (land department operating fund)—Acct. No. 812... 81
Department of agriculture—Acct. No. 818.......................... 82
Department of finance and administration (division of purchases—
revolving fund)—Acct. No. 814...................................... 82
Department of natural resources—Acct. No. 830........................ 85
Department of public safety (inspection fees)—Acct. No. 835........... 86
Public service commission—Acct. No. 828.......................... 83
Public service commission (gas pipeline division)—Acct. No. 8285... 84
Public service commission (motor carrier division)—
Acct. No. 829 ................................................................ 85
Real estate commission—Acct. No. 801.................................. 80
State committee of barbers and beauticians—Acct. No. 822............ 83
Treasurer's office—Acct. No. 800........................................ 80
West Virginia alcohol beverage control—Acct. No. 837.............. 86, 91
West Virginia board of regents (special capital improvement
fund)—Acct. No. 854........................................................ 88
West Virginia board of regents—West Virginia University (special
capital improvement fund)—Acct. No. 853.............................. 87
West Virginia civil service system—Acct. No. 840....................... 87
West Virginia racing commission—Acct. No. 808....................... 81

**PAYABLE FROM STATE ROAD FUND**

Department of motor vehicles—Acct. No. 671.......................... 79, 92
State department of highways—Acct. No. 670.......................... 78
State tax department (gasoline tax division)—Acct. No. 672.......... 79

**PAYABLE FROM GENERAL SCHOOL FUND**

Department of education (veterans education)—Acct. No. 702......... 80

**PAYABLE FROM MEDICAL FUND**

West Virginia university (medical school)—Acct. No. 873............... 90
PAYABLE FROM WORKMEN'S COMPENSATION FUND

Workmen's compensation commission—Acct. No. 900

§3. Supplemental and deficiency appropriations.
§4. Awards for claims against the state.
§5. Legislative findings of fact claims.
§6. Special revenue appropriations.
§7. Specific funds and collection accounts.
§8. Appropriation for refunding erroneous payments.
§10. Appropriations from taxes and license fees.
§11. Appropriations to pay cost of publication of delinquent corporations.
§12. Appropriations for local governments.
§13. Total appropriations.

Section 1. Appropriations from General Revenue.—From the state fund, general revenue, there is hereby appropriated conditionally upon the fulfillment of the provisions set forth in Chapter 5-A, Article 2 of the Code of West Virginia, the following amounts, as itemized, for expenditure during the fiscal year one thousand nine hundred seventy-two.

LEGISLATIVE
1—Senate
Acct. No. 101

Fiscal Year
1970-71

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Fiscal Year 1970-71</th>
</tr>
</thead>
<tbody>
<tr>
<td>Compensation and per diem of officers and attaches</td>
<td>$151,900.00</td>
</tr>
<tr>
<td>Compensation of Members</td>
<td>$181,500.00</td>
</tr>
<tr>
<td>expenses of Members</td>
<td>$113,500.00</td>
</tr>
<tr>
<td>To pay Clerk of the Senate for compiling and publishing the West Virginia Blue Book, the distribution of which shall be made by</td>
<td>$150,000.00</td>
</tr>
</tbody>
</table>
the office of the Clerk of the Senate and shall include seventy-five copies for each member of the Legislature and two copies to each classified and approved High and Junior High School and one to each Elementary School within the state

To pay cost of printing the 1971 edition of the Blue Book

The appropriations for the Senate for the fiscal year 1970-71 are to remain in full force and effect, and are hereby reappropriated to June 30, 1972.

Any balances so reappropriated may be transferred and credited to the 1971-72 accounts.

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

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

2—House of Delegates

Acct. No. 102

Compensation and per diem of officers and attaches

Current Expenses and Contingent Fund

Fiscal Year 1970-71
### Appropriations

**Fiscal Year 1971-72**

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Compensation of Members</td>
<td>$415,900.00</td>
</tr>
<tr>
<td>2</td>
<td>Compensation and per diem of officers and attaches</td>
<td>$197,100.00</td>
</tr>
<tr>
<td>3</td>
<td>Expenses of Members</td>
<td>$275,500.00</td>
</tr>
<tr>
<td>4</td>
<td>Current Expenses and Contingent Fund</td>
<td>$166,000.00</td>
</tr>
</tbody>
</table>

The appropriation for the House of Delegates for the fiscal year 1970-71 are to remain in full force and effect, and are hereby reappropriated to June 30, 1972.

Any balances so reappropriated may be transferred and credited to the 1971-72 accounts.

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

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

For duties imposed by law and by the House of Delegates, including the salary allowed by law as keeper of the rolls, the Clerk of the House of Delegates shall be paid a monthly salary as provided in Committee Substitute for House Resolution No. 10,
adopted January 25, 1971, payable from the contingent fund of the House of Delegates, and the Clerk may employ a secretary and a bookkeeper, one custodian-messenger, and two janitors at the salaries provided in said resolution.

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

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

3—Joint Expenses
Acct. No. 103

1 Joint Committee on Government and
2 Finance
3 Cost of Legislative Printing

Fiscal Year
1970-71
4 Appropriations

4 Commission on Interstate Cooperation

1 To pay the cost of legislative printing $165,000.00
2 Commission on Interstate Cooperation 35,000.00
3 Joint Committee on Government and Finance 1,340,650.00
4 Other Legislative Committees 30,000.00

6 The appropriation for Joint Expenses for the fiscal year 1970-71, are to remain in full force and effect, and are hereby reappropriated to June 30, 1972.

Any balances so reappropriated may be transferred and credited to the 1971-72 accounts.

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

JUDICIAL

4—Supreme Court of Appeals

Acct. No. 110

1 Salaries of Judges $137,500.00
2 Other Personal Services 234,024.00
3 Current Expenses 36,000.00
4 Equipment 5,000.00

5 Total $412,524.00

5—Judicial—Auditor's Office

Acct. No. 111

1 Salaries of Judges $637,000.00
2 Other Personal Services 174,400.00
3 Current Expenses 45,400.00
4 Judges Retirement System ..................................... 300,000.00
5 Criminal Charges ............................................... 600,000.00

6 Total ..................................................................... $1,756,800.00

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 .............................................. $ 59,560.00
2 Current Expenses ............................................. 10,125.00
3 Equipment ....................................................... 40,000.00

4 Total ..................................................................... $ 109,685.00

7—Judicial Council

Acct. No. 118

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

EXECUTIVE

8—Governor's Office

Acct. No. 120

1 Salary of Governor ........................................... $ 25,000.00
2 Other Personal Services .................................. 131,250.00
3 Current Expenses ........................................... 60,000.00
4 Equipment ....................................................... 15,000.00
5 Civil Contingent Fund ...................................... 400,000.00
Of this appropriation there may be expended, at the discretion of the Governor, an amount not to exceed $1,000.00 as West Virginia's contribution to the Interstate Oil Compact Commission.

Custodial Fund

To be used for current general expenses, including compensation of servants and employees, household maintenance, cost of official functions, and any additional household expenses occasioned by such official functions.

Federal State Coordination

To match and aid Federal Programs, and any part of this appropriation may be transferred to any department for such purposes.

Any unexpended balance remaining in the appropriation—"Civil Contingent Fund, Office of Federal State Relations, and Federal State Coordination," at the close of the fiscal year 1970-71 is hereby reappropriated for expenditure during the fiscal year 1971-72.

Total

________________________

$ 2,006,250.00

FISCAL

9—Auditor's Office—General Administration

Acct. No. 150

Salary of State Auditor $ 18,000.00
Other Personal Services 500,060.00
Current Expenses 136,025.00
Equipment 10,000.00
Microfilm Program 10,000.00

Total $ 674,085.00
10—Treasurer's Office

Acct. No. 160

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Salary of State Treasurer</td>
<td>$17,500.00</td>
</tr>
<tr>
<td>2 Other Personal Services</td>
<td>$167,980.00</td>
</tr>
<tr>
<td>3 Current Expenses</td>
<td>$28,190.00</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>$8,080.00</td>
</tr>
<tr>
<td>5 Board of Investments</td>
<td>$1,500.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$223,250.00</strong></td>
</tr>
</tbody>
</table>

11—Sinking Fund Commission

Acct. No. 170

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$34,272.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$3,075.00</td>
</tr>
<tr>
<td>3 Equipment</td>
<td>$1,000.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$38,347.00</strong></td>
</tr>
</tbody>
</table>

12—State Tax Department

Acct. No. 180

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$2,477,328.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$832,885.00</td>
</tr>
<tr>
<td>3 Equipment</td>
<td>$44,000.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$3,354,213.00</strong></td>
</tr>
</tbody>
</table>

13—State Tax Department

Property Appraisal

Acct. No. 185

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$554,500.00</td>
</tr>
<tr>
<td>2 Other Expenses</td>
<td>$45,500.00</td>
</tr>
<tr>
<td>3 Total</td>
<td><strong>$600,000.00</strong></td>
</tr>
</tbody>
</table>

Any balance remaining in the Property Appraisal Account at the close of the fiscal year 1970-71 is hereby reappropriated for expenditure during the fiscal year 1971-72.
### 14—State Commissioner of Public Institutions

**Acct. No. 190**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Salary of Commissioner</td>
<td>$16,000.00</td>
</tr>
<tr>
<td>2 Salaries of Board Members—Board of Probation and Parole</td>
<td>$36,000.00</td>
</tr>
<tr>
<td>3 Other Personal Services</td>
<td>$435,267.00</td>
</tr>
<tr>
<td>4 Current Expenses</td>
<td>$135,900.00</td>
</tr>
<tr>
<td>5 Equipment</td>
<td>$3,000.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$626,167.00</strong></td>
</tr>
</tbody>
</table>

### 15—Department of Finance and Administration

**Acct. No. 210**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$865,250.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$397,300.00</td>
</tr>
<tr>
<td>3 Repairs and Alterations</td>
<td>$65,200.00</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>$18,600.00</td>
</tr>
<tr>
<td>5 Postage</td>
<td>$260,000.00</td>
</tr>
<tr>
<td>6 Records Management</td>
<td>$49,000.00</td>
</tr>
<tr>
<td>7 Office of State Emergency Planning</td>
<td>$24,000.00</td>
</tr>
<tr>
<td>8 Transportation Division</td>
<td>$50,000.00</td>
</tr>
<tr>
<td>9 Information Systems Service Division</td>
<td>$206,016.00</td>
</tr>
<tr>
<td>10 Major Building Repairs</td>
<td>$150,000.00</td>
</tr>
<tr>
<td>11 National Youth Science Camp</td>
<td>$80,000.00</td>
</tr>
<tr>
<td>12 State Agency Surplus Property</td>
<td>$50,000.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$2,215,366.00</strong></td>
</tr>
</tbody>
</table>

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

Any unexpended balance remaining in the "Postage Account" and "National Youth Science Camp" at the close of the fiscal year 1970-71 is hereby reappropriated for expenditure during the fiscal year 1971-72.

Any unexpended balance remaining in "Major Building Repairs", at the close of the 1970-71 fiscal year, is hereby reappropriated for expenditure during the fiscal year 1971-72, (Major Building Repairs to include maintenance and repairs to Governor's Mansion).

State Department of Highways, shall reimburse the appropriation of the Department of Finance and Administration monthly for all actual expenses incurred pursuant to the provisions of Chapter 17, Article 2-A, Section 13 of the Code of West Virginia.

16—State Board of Insurance

<table>
<thead>
<tr>
<th>Acct. No. 225</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services $23,520.00</td>
</tr>
<tr>
<td>2 Current Expenses $8,480.00</td>
</tr>
<tr>
<td>3 Equipment $500.00</td>
</tr>
<tr>
<td>4 Fire Insurance Premiums $350,000.00</td>
</tr>
<tr>
<td>5 Automobile Insurance Premiums $125,000.00</td>
</tr>
</tbody>
</table>
6 Bonds Premiums .............................................. $50,000.00
7 Self-Insurance Fund ....................................... 300,000.00

8 Total ......................................................... $857,500.00

9 The above appropriations on lines 4, 5, 6 and 7
10 are for the purpose of paying premiums for
11 the various state agencies. Should these ap-
12 propriations be insufficient to meet the prem-
13 ium 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 1970-71 is
23 hereby reappropriated for expenditure dur-
24 ing the fiscal year 1971-72.

LEGAL

17—Attorney General

Acct. No. 240

1 Salary of Attorney General ...................... $18,500.00
2 Other Personal Services ........................... 342,657.00
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 ......................................................... $425,157.00

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.

18—Commission on Uniform State Laws

   Acct. No. 245
   1 Total ................................................. $ 5,000.00
   2 To pay expenses of members of the Com-
   3 mission on Uniform State Laws.

INCORPORATING AND RECORDING

19—Secretary of State

   Acct. No. 250
   1 Salary of Secretary of State ................. $ 17,000.00
   2 Other Personal Services .................... 117,755.00
   3 Current Expenses .............................. 34,000.00
   4 Equipment ................................... 7,650.00

   5 Total ................................................. $ 176,405.00

EDUCATIONAL

20—State Department of Education

   Acct. No. 277
   1 Teacher Education Program ................ $ 100,000.00

21—State Board of Education

   Acct. No. 278
   1 Early Childhood Ed. (Public Kindergarten) .. $ 3,500,000.00

22—West Virginia Board of Regents (Control)

   Acct. No. 279
   1 Personal Services ............................ $48,421,124.00
   2 Current Expenses ............................ 5,523,769.00
   3 Repairs and Alterations ................... 1,880,432.00
   4 Equipment .................................... 2,938,175.00
   5 Oak Wilt Research .......................... 10,000.00
6 Veterinary Tuition ........................................... 40,200.00
7 Educational TV ............................................ 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 Community Development and Research ............... 18,000.00
14 Center for Economic Action ............................ 45,000.00
15 Branch College ........................................... 203,200.00
16 Individual Accreditation—2-year Colleges and Graduate Center ................................. 500,000.00
18 New Programs ............................................. 110,000.00
19 Unclassified ............................................... 1,305,100.00
20 State Commission on Higher Education— Operating Expenses ............................................. 28,400.00
21 Title I—Matching Funds .................................. 130,000.00
22 Scholarship Program ..................................... 300,000.00
23 Awareness .................................................. 50,000.00

25 Total .................................................................. $62,492,100.00

23—West Virginia Board of Regents
Acct. No. 280

1 Personal Services ............................................ $ 247,340.00
2 Current Expenses ............................................. 83,625.00
3 Equipment ..................................................... 4,800.00

4 Total .................................................................. $ 335,765.00

24—West Virginia University—Medical School
Acct. No. 285

1 Total .................................................................. $ 3,560,000.00
2 To be transferred to the West Virginia University—Medical School Fund upon the requisition of the Governor.

25—Department of Education
Acct. No. 286

1 Personal Services ............................................ $ 650,273.00
2 Current Expenses ............................................. 188,305.00
3 Equipment .................................................. 9,350.00
4 National Defense Education Act .................. 301,000.00
5 Statewide Testing Program ......................... 176,000.00
6 Experimental Projects .................................. 10,730.00
7 Safety Education—Aid to Counties ............... 135,000.00
8 State Aid to Children’s Home ...................... 25,000.00
9 Comprehensive Education Program ............... 1,000,000.00

10 Total .......................................................... $ 2,495,658.00

11 The above appropriation includes the State
12 Board of Education and their executive
13 offices.
14 Any part or all of the appropriation for
15 “National Defense Education Act” may be
16 transferred to a Special Revenue Fund for
17 the purpose of matching Federal Funds for
18 this program.

26—State Department of Education—School Lunch Program
Acct. No. 287

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$93,429.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$19,560.00</td>
</tr>
<tr>
<td>3 Aid to Counties—Includes hot lunches and canning for hot lunches</td>
<td>$650,000.00</td>
</tr>
<tr>
<td>5 Total</td>
<td>$762,989.00</td>
</tr>
</tbody>
</table>

27—State Board of Education—Vocational Division
Acct. No. 289

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$104,850.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$66,500.00</td>
</tr>
<tr>
<td>3 Equipment</td>
<td>$1,650.00</td>
</tr>
<tr>
<td>4 Vocational Aid</td>
<td>$378,335.00</td>
</tr>
<tr>
<td>5 Adult Basic Education</td>
<td>$200,000.00</td>
</tr>
<tr>
<td>6 Total</td>
<td>$751,335.00</td>
</tr>
</tbody>
</table>

7 Any balance remaining in the appropriations
8 “Vocational Aid and Aid to Counties” at
9 the close of the fiscal year 1970-71 is hereby
reappropriated for expenditure during the fiscal year 1971-72.

28—Educational Broadcasting Authority

Acct. No. 291

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$40,000.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$35,020.00</td>
</tr>
<tr>
<td>3 Equipment</td>
<td>$2,050.00</td>
</tr>
<tr>
<td>4 Regional ETV</td>
<td>$1,009,382.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$1,086,452.00</strong></td>
</tr>
</tbody>
</table>

For participation in the construction and operation of Regional ETV stations by Marshall University, Concord College, Bluefield State College, West Virginia Institute of Technology and West Virginia State College and may be transferred to special revenue accounts for matching County and/or Federal Funds.

29—State Board of Education—Vocational Division

Acct. No. 293

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 To implement Vocational Education Act of 1963 P.L. 88-210</td>
<td>$2,250,000.00</td>
</tr>
<tr>
<td>3 The above appropriation includes $100,000.00 for Manpower Training.</td>
<td></td>
</tr>
</tbody>
</table>

30—State Board of Education—Vocational Division

Acct. No. 294

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Total</td>
<td>$150,000.00</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation “Aid to Counties” at the close of the fiscal year 1970-71 is hereby re-appropriated for expenditure during the fiscal year 1971-72.

31—State Department of Education—Aid to Schools

Acct. No. 295

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 State Aid to Schools</td>
<td>$148,650,594.00</td>
</tr>
</tbody>
</table>
32—Department of Education—Aid for Exceptional Children

**Acct. No. 296**

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$35,028.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>16,240.00</td>
</tr>
<tr>
<td>3 Out-of-State Instruction</td>
<td>90,000.00</td>
</tr>
<tr>
<td>4 Aid to Counties</td>
<td>424,000.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$565,268.00</strong></td>
</tr>
</tbody>
</table>

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

33—Teachers Retirement Board

**Acct. No. 298**

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Benefit Fund—Payments to Retired Teachers</td>
<td>$14,502,000.00</td>
</tr>
<tr>
<td>3 Employers’ Accumulation Fund—To match contributions of members</td>
<td>3,525,000.00</td>
</tr>
<tr>
<td>5 Expense Fund</td>
<td>35,000.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$18,062,000.00</strong></td>
</tr>
</tbody>
</table>

34—West Virginia Schools for the Deaf and Blind

**Acct. No. 333**

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$1,059,903.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>212,900.00</td>
</tr>
<tr>
<td>3 Repairs and Alterations</td>
<td>63,850.00</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>43,800.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$1,380,453.00</strong></td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation "Intermediate Classroom
Dormitory Unit” at the close of the fiscal year 1970-71 is hereby reappropriated for expenditure during the fiscal year 1971-72.

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

Acct. No. 336

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$41,665.00</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$7,250.00</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>$10,200.00</td>
</tr>
<tr>
<td>Equipment</td>
<td>$10,000.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$69,115.00</strong></td>
</tr>
</tbody>
</table>

### 36—Department of Archives and History

Acct. No. 340

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$85,590.00</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$18,000.00</td>
</tr>
<tr>
<td>Equipment</td>
<td>$21,500.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$125,090.00</strong></td>
</tr>
</tbody>
</table>

### 37—West Virginia Library Commission

Acct. No. 350

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$138,000.00</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$4,900.00</td>
</tr>
<tr>
<td>Equipment</td>
<td>$5,000.00</td>
</tr>
<tr>
<td>Books and Periodicals</td>
<td>$31,480.00</td>
</tr>
<tr>
<td>To Match Federal Funds</td>
<td>$210,000.00</td>
</tr>
<tr>
<td>Library Matching Fund</td>
<td>$250,000.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$639,380.00</strong></td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation “Library Matching Fund” at the close of the fiscal year 1970-71 is hereby reappropriated for expenditure during the fiscal year 1971-72.
## CHARITIES AND CORRECTION

### 38—West Virginia Industrial School for Boys

**Acct. No. 370**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$669,038.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$223,620.00</td>
</tr>
<tr>
<td>3 Repairs and Alterations</td>
<td>$53,650.00</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>$95,200.00</td>
</tr>
</tbody>
</table>

**Total** $1,041,508.00

### 39—Forestry Camp for Boys

**Acct. No. 371**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$151,702.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$92,750.00</td>
</tr>
<tr>
<td>3 Repairs and Alterations</td>
<td>$10,500.00</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>$16,300.00</td>
</tr>
</tbody>
</table>

**Total** $271,252.00

### 40—West Virginia Industrial Home for Girls

**Acct. No. 372**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$279,287.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$101,700.00</td>
</tr>
<tr>
<td>3 Repairs and Alterations</td>
<td>$19,600.00</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>$22,000.00</td>
</tr>
<tr>
<td>5 Vocational Training</td>
<td>$5,000.00</td>
</tr>
</tbody>
</table>

**Total** $427,587.00

### 41—West Virginia Forestry Camp (Leckie)

**Acct. No. 373**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$148,534.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$103,300.00</td>
</tr>
<tr>
<td>3 Repairs and Alterations</td>
<td>$5,500.00</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>$30,000.00</td>
</tr>
</tbody>
</table>

**Total** $287,334.00
### Appropriations

#### 42—West Virginia State Prison for Women

**Acct. No. 374**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$72,418.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$41,630.00</td>
</tr>
<tr>
<td>3 Repairs and Alterations</td>
<td>$9,000.00</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>$7,350.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$130,398.00</strong></td>
</tr>
</tbody>
</table>

#### 43—West Virginia Penitentiary

**Acct. No. 375**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$1,245,800.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$537,600.00</td>
</tr>
<tr>
<td>3 Repairs and Alterations</td>
<td>$68,200.00</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>$38,100.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$1,889,700.00</strong></td>
</tr>
</tbody>
</table>

#### 44—Huttonsville Correctional Center

**Acct. No. 376**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$563,950.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$215,000.00</td>
</tr>
<tr>
<td>3 Repairs and Alterations</td>
<td>$25,000.00</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>$28,000.00</td>
</tr>
<tr>
<td>5 Roof Installation</td>
<td>$150,000.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$981,950.00</strong></td>
</tr>
</tbody>
</table>

#### 45—West Virginia Children's Home

**Acct. No. 380**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$77,137.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$39,130.00</td>
</tr>
<tr>
<td>3 Repairs and Alterations</td>
<td>$14,000.00</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>$14,600.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$144,867.00</strong></td>
</tr>
</tbody>
</table>
### 46—Andrew S. Rowan Memorial Home

**Acct. No. 384**

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$393,645.00</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$190,000.00</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>$32,000.00</td>
</tr>
<tr>
<td>Equipment</td>
<td>$55,000.00</td>
</tr>
</tbody>
</table>

**Total**                                           $670,645.00

### HEALTH AND WELFARE

**47—State Health Department**

**Acct. No. 400**

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$720,295.00</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$131,140.00</td>
</tr>
<tr>
<td>Equipment</td>
<td>$21,443.00</td>
</tr>
<tr>
<td>Emergency Medical Services</td>
<td>$35,000.00</td>
</tr>
<tr>
<td>Cancer Control and Treatment</td>
<td>$175,000.00</td>
</tr>
<tr>
<td>Local Health Services</td>
<td>$700,000.00</td>
</tr>
<tr>
<td>Dental Clinics</td>
<td>$60,000.00</td>
</tr>
<tr>
<td>Heart Disease Control</td>
<td>$125,000.00</td>
</tr>
<tr>
<td>Maternal and Child Healthmobile Medical Examination Clinic</td>
<td>$150,000.00</td>
</tr>
<tr>
<td>Home Health Services</td>
<td>$40,000.00</td>
</tr>
<tr>
<td>Mobile Chest X-Ray &amp; Diagnostic Services</td>
<td></td>
</tr>
<tr>
<td>for Tuberculosis Control</td>
<td>$80,000.00</td>
</tr>
<tr>
<td>Hospital and Medical Facilities Construction</td>
<td></td>
</tr>
<tr>
<td>Program</td>
<td>$17,500.00</td>
</tr>
<tr>
<td>Special Project for Eradication of Tuberculosis</td>
<td>$237,000.00</td>
</tr>
<tr>
<td>Environmental Health Services</td>
<td>$69,000.00</td>
</tr>
<tr>
<td>Repairs to State Hygienic Laboratory</td>
<td>$20,000.00</td>
</tr>
<tr>
<td>Nursing Home Inspection Unit</td>
<td>$64,000.00</td>
</tr>
</tbody>
</table>

**Total**                                           $2,645,378.00

### 48—Department of Veterans Affairs

**Acct. No. 404**

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$247,000.00</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$64,400.00</td>
</tr>
</tbody>
</table>
3 Equipment .................................................. $ 5,100.00
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 .......................................................... 20,000.00

9 Total ................................................................ $ 336,500.00
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 1970-71 is
14 hereby reappropriated for expenditure dur-
15 ing the fiscal year 1971-72.

49—Department of Welfare

Acct. No. 405

1 Personal Services .............................................. $ 4,750,000.00
2 Current Expenses .............................................. 1,876,000.00
3 Equipment .......................................................... 104,213.00
4 Public Assistance Grants—Classified Aid .......... 16,050,000.00
5 Aid to Crippled Children ................................... 920,000.00
6 Medical Services .................................................. 7,500,000.00
7 Child Welfare Services ......................................... 3,562,100.00
8 General Relief and Boarding Care .................. 300,000.00
9 Social Security Matching Fund ......................... 281,687.00

10 Total ................................................................ $ 35,344,000.00

50—State Agency on Aging

Acct. No. 406

1 Personal Services ............................................... $ 36,729.00
2 Current Expenses .............................................. 2,805.00
3 Programs for the Elderly ................................. 50,000.00

4 Total ................................................................ $ 89,534.00
### 51—Department of Mental Health

<table>
<thead>
<tr>
<th>Acct. No. 410</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$764,430.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$159,630.00</td>
</tr>
<tr>
<td>3 Equipment</td>
<td>$13,800.00</td>
</tr>
<tr>
<td>4 Research and Training</td>
<td>$30,000.00</td>
</tr>
<tr>
<td>5 Civil Service Costs</td>
<td>$82,000.00</td>
</tr>
<tr>
<td>6 Division of Health Education</td>
<td>$18,500.00</td>
</tr>
<tr>
<td>7 Day Care Center</td>
<td>$100,000.00</td>
</tr>
<tr>
<td>8 Division of Alcoholism</td>
<td>$350,000.00</td>
</tr>
<tr>
<td>9 Division of Community Services</td>
<td>$362,000.00</td>
</tr>
<tr>
<td>10 Roney’s Point Branch Hospital</td>
<td>$185,000.00</td>
</tr>
<tr>
<td>11 Commission on Mental Retardation</td>
<td>$20,000.00</td>
</tr>
<tr>
<td>12 Total</td>
<td>$2,085,360.00</td>
</tr>
</tbody>
</table>

### 52—Colin Anderson Center

<table>
<thead>
<tr>
<th>Acct. No. 419</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$1,981,046.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$332,100.00</td>
</tr>
<tr>
<td>3 Repairs and Alterations</td>
<td>$57,300.00</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>$94,782.00</td>
</tr>
<tr>
<td>5 Total</td>
<td>$2,465,228.00</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation “Capital Outlay Improvement” at the close of fiscal year 1970-71 is hereby reappropriated for expenditure during the fiscal year 1971-72.

### 53—Weston State Hospital

<table>
<thead>
<tr>
<th>Acct. No. 420</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$3,605,545.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$1,100,000.00</td>
</tr>
<tr>
<td>3 Repairs and Alterations</td>
<td>$115,000.00</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>$100,000.00</td>
</tr>
<tr>
<td>5 Psychiatric Training Center for Student Nurses</td>
<td>$310,000.00</td>
</tr>
<tr>
<td>7 Total</td>
<td>$5,230,545.00</td>
</tr>
</tbody>
</table>
8 Any unexpended balance remaining in the appropriation "Boiler Replacement" at the close of fiscal year 1970-71 is hereby reappropriated for expenditure during fiscal year 1971-72.

54—Spencer State Hospital
Acct. No. 421

1 Personal Services .............................................. $2,251,536.00
2 Current Expenses .............................................. 610,000.00
3 Repairs and Alterations ...................................... 75,000.00
4 Equipment ..................................................... 75,000.00

5 Total ................................................................ $3,011,536.00

55—Huntington State Hospital
Acct. No. 422

1 Personal Services .............................................. $2,377,274.00
2 Current Expenses .............................................. 801,580.00
3 Repairs and Alterations ...................................... 120,000.00
4 Equipment ..................................................... 75,000.00

5 Total ................................................................ $3,373,854.00

56—Lakin State Hospital
Acct. No. 423

1 Personal Services .............................................. $1,144,500.00
2 Current Expenses .............................................. 325,000.00
3 Repairs and Alterations ...................................... 100,000.00
4 Equipment ..................................................... 59,100.00

5 Total ................................................................ $1,628,600.00

6 Any unexpended balance remaining in the appropriation—"Renovate Classroom Building, Construct Ward Building," at the close of the fiscal year 1970-71 is hereby reappropriated for expenditure during the fiscal year 1971-72.
### 57—Barboursville State Hospital

**Acct. No. 424**

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$595,686.00</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$180,000.00</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>$45,000.00</td>
</tr>
<tr>
<td>Equipment</td>
<td>$17,200.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$837,886.00</strong></td>
</tr>
</tbody>
</table>

### 58—Fairmont Emergency Hospital

**Acct. No. 425**

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$358,500.00</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$115,000.00</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>$25,000.00</td>
</tr>
<tr>
<td>Equipment</td>
<td>$13,600.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$512,100.00</strong></td>
</tr>
</tbody>
</table>

### 59—Welch Emergency Hospital

**Acct. No. 426**

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$392,978.00</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$175,000.00</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>$47,500.00</td>
</tr>
<tr>
<td>Equipment</td>
<td>$58,000.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$673,478.00</strong></td>
</tr>
</tbody>
</table>

### 60—Hopemont State Hospital

**Acct. No. 430**

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$1,568,414.00</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$310,000.00</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>$36,200.00</td>
</tr>
<tr>
<td>Equipment</td>
<td>$20,000.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$1,934,614.00</strong></td>
</tr>
</tbody>
</table>

### 61—Pinecrest State Hospital

**Acct. No. 431**

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$1,172,629.00</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>2 Current Expenses</td>
<td>450,000.00</td>
</tr>
<tr>
<td>3 Repairs and Alterations</td>
<td>31,800.00</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>70,300.00</td>
</tr>
<tr>
<td>5 Total</td>
<td>1,724,729.00</td>
</tr>
</tbody>
</table>

62—Denmar State Hospital

<table>
<thead>
<tr>
<th></th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>914,338.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>244,000.00</td>
</tr>
<tr>
<td>3 Repairs and Alterations</td>
<td>33,100.00</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>100,000.00</td>
</tr>
<tr>
<td>5 Total</td>
<td>1,291,438.00</td>
</tr>
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</table>

63—Berkeley Springs Sanitarium

<table>
<thead>
<tr>
<th></th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>68,240.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>10,000.00</td>
</tr>
<tr>
<td>3 Repairs and Alterations</td>
<td>12,000.00</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>3,000.00</td>
</tr>
<tr>
<td>5 Total</td>
<td>93,240.00</td>
</tr>
</tbody>
</table>

64—State Board of Education—Rehabilitation Division

<table>
<thead>
<tr>
<th></th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>597,730.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>120,508.00</td>
</tr>
<tr>
<td>3 Rehabilitation Center</td>
<td>487,038.00</td>
</tr>
<tr>
<td>4 Case Services</td>
<td>1,111,655.00</td>
</tr>
<tr>
<td>5 Supervisory Services for Vending Stand Program for the Blind</td>
<td>22,321.00</td>
</tr>
<tr>
<td>6 Training and Special Projects</td>
<td>67,755.00</td>
</tr>
<tr>
<td>7 Social Security Matching Fund</td>
<td>40,000.00</td>
</tr>
<tr>
<td>9 Total</td>
<td>2,447,007.00</td>
</tr>
</tbody>
</table>
## BUSINESS AND INDUSTRIAL RELATIONS

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

Acct. No. 450

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$569,110.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$187,975.00</td>
</tr>
<tr>
<td>3 Equipment</td>
<td>$32,350.00</td>
</tr>
<tr>
<td>4 W. Va. Labor-Management Relations Board</td>
<td>$38,000.00</td>
</tr>
<tr>
<td>5 Total</td>
<td>$827,435.00</td>
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</table>

### 66—Department of Mines

Acct. No. 460

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$1,507,400.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$222,187.00</td>
</tr>
<tr>
<td>3 Equipment</td>
<td>$37,000.00</td>
</tr>
<tr>
<td>4 Total</td>
<td>$1,766,587.00</td>
</tr>
</tbody>
</table>

5 Out of the above appropriation for “Personal Services” the sum of $19,000.00 is to be expended for the employment of the “deputy director for oil and gas” and only in the event such deputy director is qualified pursuant to Chapter 22, Article 4, Section 1(b) of the code of West Virginia, as amended.

### 67—Department of Commerce

Acct. No. 465

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$393,750.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$812,000.00</td>
</tr>
<tr>
<td>3 Equipment</td>
<td>$5,000.00</td>
</tr>
<tr>
<td>4 Mt. State Forest Festival</td>
<td>$15,000.00</td>
</tr>
<tr>
<td>5 Alpine Festival</td>
<td>$1,500.00</td>
</tr>
<tr>
<td>6 West Virginia Historical Drama Association</td>
<td>$35,000.00</td>
</tr>
</tbody>
</table>
### Appropriations

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>7 Arts and Humanities Fund</td>
<td>$150,000.00</td>
</tr>
<tr>
<td>8 West Virginia Water Festival</td>
<td>$5,000.00</td>
</tr>
<tr>
<td>9 Independence Hall, Wheeling, West Virginia</td>
<td>$125,000.00</td>
</tr>
<tr>
<td>10 White Water Weekend</td>
<td>$2,000.00</td>
</tr>
<tr>
<td>11 Industrial Development Loan Fund</td>
<td>$500,000.00</td>
</tr>
<tr>
<td>12 Oil and Gas Festival</td>
<td>$2,000.00</td>
</tr>
<tr>
<td>13 Calhoun County Wood Festival</td>
<td>$2,500.00</td>
</tr>
<tr>
<td>14 New Martinsville Regatta</td>
<td>$2,000.00</td>
</tr>
<tr>
<td>15 Braxton County Regatta</td>
<td>$4,000.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$2,054,750.00</strong></td>
</tr>
</tbody>
</table>

The above appropriations, “Mountain State Forest Festival, Alpine Festival, White Water Weekend, Oil and Gas Festival, West Virginia Water Festival, West Virginia Historical Drama Association, Calhoun County Wood Festival, New Martinsville Regatta and Braxton County Regatta” shall be expended only upon authorization of the Commerce Commissioner and in accordance with the provisions of Chapter 5-A of the Code of West Virginia.

All Federal moneys received as reimbursements to the Department of Commerce, for moneys expended from the General Revenue fund for Arts and Humanities are hereby reappropriated for the purposes as originally made, including Personal Services, Current Expenses and Equipment.

Any unexpended balance remaining in the appropriation “Independence Hall, Wheeling, West Virginia” at the close of the fiscal year 1970-71 is hereby reappropriated for expenditure during the fiscal year 1971-72.

---

### 68—State Commission on Manpower, Technology and Training

<table>
<thead>
<tr>
<th>Acct. No. 470</th>
<th>Personal Services</th>
<th>$22,050.00</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$22,050.00</td>
<td></td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$7,400.00</td>
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</tr>
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</table>
### Equipment

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>200.00</td>
</tr>
</tbody>
</table>

### Total

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>29,650.00</td>
</tr>
</tbody>
</table>

#### 69—Council of State Governments

**Acct. No. 472**

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total</td>
<td>21,900.00</td>
</tr>
</tbody>
</table>

#### 70—Interstate Commission on Potomac River Basin

**Acct. No. 473**

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>West Virginia’s contribution to Potomac River Basin Interstate Commission</td>
<td>12,450.00</td>
</tr>
</tbody>
</table>

#### 71—Ohio River Valley Water Sanitation Commission

**Acct. No. 474**

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>West Virginia’s contribution to the Ohio River Valley Water Sanitation Commission</td>
<td>20,657.00</td>
</tr>
</tbody>
</table>

#### 72—Southern Regional Education Board

**Acct. No. 475**

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>West Virginia’s contribution to Southern Regional Education Board</td>
<td>55,072.00</td>
</tr>
<tr>
<td>To be expended upon requisition of the Governor.</td>
<td></td>
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</table>

#### 73—West Virginia Air Pollution Commission

**Acct. No. 476**

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>299,100.00</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>77,750.00</td>
</tr>
<tr>
<td>Equipment</td>
<td>19,400.00</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total</td>
<td>396,250.00</td>
</tr>
</tbody>
</table>

#### 74—Interstate Education Compact

**Acct. No. 477**

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>West Virginia’s contribution to Interstate Education Compact</td>
<td>9,500.00</td>
</tr>
</tbody>
</table>
### 75—Antiquities Commission

**Acct. No. 478**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$15,372.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$6,000.00</td>
</tr>
<tr>
<td>3 Equipment</td>
<td>$1,862.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$23,234.00</strong></td>
</tr>
</tbody>
</table>

### 76—Department of Banking

**Acct. No. 480**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$157,755.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$59,605.00</td>
</tr>
<tr>
<td>3 Equipment</td>
<td>$2,524.00</td>
</tr>
<tr>
<td>4 HCR No. 10—Banking Study</td>
<td>$50,000.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$269,884.00</strong></td>
</tr>
</tbody>
</table>

### 77—West Virginia State Aeronautics Commission

**Acct. No. 485**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$27,006.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$18,300.00</td>
</tr>
<tr>
<td>3 Equipment</td>
<td>$1,000.00</td>
</tr>
<tr>
<td>4 Aerial Markers</td>
<td>$1,300.00</td>
</tr>
<tr>
<td>5 Civil Air Patrol Expenses</td>
<td>$12,000.00</td>
</tr>
<tr>
<td>6 Airport Matching Fund</td>
<td>$750,000.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$809,606.00</strong></td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation “Airport Matching Fund” at the close of the fiscal year 1970-71 is hereby reappropriated for expenditure during fiscal year 1971-72.

### 78—West Virginia Nonintoxicating Beer Commissioner

**Acct. No. 490**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$147,619.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$66,000.00</td>
</tr>
<tr>
<td>3 Equipment</td>
<td>$2,500.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$216,119.00</strong></td>
</tr>
</tbody>
</table>
### Ch. 6] Appropriations

#### 79—West Virginia Racing Commission

**Acct. No. 495**

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$276,082.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$36,355.00</td>
</tr>
<tr>
<td>3 Equipment</td>
<td>$6,500.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$318,937.00</strong></td>
</tr>
</tbody>
</table>

#### AGRICULTURE

**80—Department of Agriculture**

**Acct. No. 510**

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Salary of Commissioner</td>
<td>$17,000.00</td>
</tr>
<tr>
<td>2 Other Personal Services</td>
<td>$771,110.00</td>
</tr>
<tr>
<td>3 Current Expenses</td>
<td>$293,700.00</td>
</tr>
<tr>
<td>4 Repairs and Alterations</td>
<td>$30,000.00</td>
</tr>
<tr>
<td>5 Equipment</td>
<td>$25,000.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$1,136,810.00</strong></td>
</tr>
</tbody>
</table>

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

#### 81—Department of Agriculture—Soil Conservation Committee

**Acct. No. 512**

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$121,500.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$43,000.00</td>
</tr>
<tr>
<td>3 Watershed Program</td>
<td>$75,000.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$239,500.00</strong></td>
</tr>
</tbody>
</table>

5 Any unexpended balance remaining in the Watershed Program at the end of the fiscal year 1970-71 is hereby reappropriated for expenditure during fiscal year 1971-72.
### Department of Agriculture—Division of Rural Resources (Acct. No. 513)

1. Matching Fund: $320,000.00
2. Any part or all of this appropriation may be transferred to Special Revenue Fund for the purpose of matching Federal Funds for the above-named program.

### Department of Agriculture—Meat Inspection (Acct. No. 514)

1. Unclassified: $240,000.00
2. Any part or all of this appropriation may be transferred to Special Revenue Fund for the purpose of matching Federal Funds for the above-named program.
3. Any unexpended balance remaining in the appropriation “Meat Inspection” at the close of the fiscal year 1970-71 is hereby reappropriated for expenditure during the fiscal year 1971-72.

### 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. Marshall Fair: $2,000.00
8. Town and Country Days: $2,000.00
9. Potato Festival: $1,500.00
10. Total: $90,000.00

### Geological and Economic Survey Commission (Acct. No. 520)

1. Personal Services: $260,000.00
2 Current Expenses ___________________________ 110,000.00
3 Equipment ___________________________ 30,000.00
4 Cooperative Mapping Program ___________ 60,000.00

5 Total ___________________________ $ 460,000.00

Of the above appropriations for Current Expenses, the sum of $50,000.00 may be used to cooperate with the United States Geological Survey in Ground Waters Resources Study.

86—Department of Veterans Affairs

Acct. No. 564

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

87—Department of Natural Resources

Acct. No. 565

1 Personal Services ___________________________ $ 2,592,521.00
2 Current Expenses ___________________________ 702,806.00
3 Repairs and Alterations ___________________________ 233,100.00
4 Equipment ___________________________ 249,570.00
5 Subsistence for Conservation Officers ___________________________ 184,830.00
6 Clarke-McNary Fire Prevention ___________________________ 200,000.00
7 A.R.A.-E.D.A. Park Programs ___________________________ 94,940.00
8 Water Resources Board ___________________________ 12,000.00
9 U.S. Geological Survey ___________________________ 40,500.00
10 Rabies Control ___________________________ 30,000.00
11 Work Incentive Program ___________________________ 270,709.00
12 French Creek Game Farm ___________________________ 30,000.00
13 Cacapon State Park Golf Course ___________________________ 265,000.00
14 Grave Creek Mound Park ___________________________ 100,000.00

15 Total ___________________________ $ 5,005,976.00
Out of the above appropriation for Subsistence for Conservation Officers, subsistence shall be paid at the rate of five dollars per calendar day to the chief conservation officer and each full-time uniformed conservation officer, under his direct supervision, whose primary duties and responsibilities are law enforcement.

Any unexpended balance remaining in the appropriation "Clarke-McNary—Fire Prevention" at the close of the fiscal year 1970-71 is hereby reappropriated for expenditure during the fiscal year 1971-72.

Out of the above appropriation for "Repairs and Alterations" there shall be expended an amount of $40,000.00 for improvements to the Camping Facilities at North Bend State Park.

Any unexpended balance remaining in the appropriation "Capital Improvements, State Parks" at the close of the fiscal year 1970-71 is hereby reappropriated for expenditure during the fiscal year 1971-72.

Any or all of the appropriation "Capital Improvements, State Parks" may be used to match and aid Federal funds.

**PROTECTION**

88—Department of Public Safety

Acct. No. 570

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>$4,520,387.00</td>
</tr>
<tr>
<td>2</td>
<td>2,033,895.00</td>
</tr>
<tr>
<td>3</td>
<td>130,500.00</td>
</tr>
<tr>
<td>4</td>
<td>859,048.00</td>
</tr>
<tr>
<td>5</td>
<td>10,000.00</td>
</tr>
<tr>
<td>6</td>
<td><strong>Total</strong> $7,553,830.00</td>
</tr>
</tbody>
</table>
89—Adjutant General—State Militia

Acct. No. 580

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$104,129.00</td>
</tr>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>$196,660.00</td>
</tr>
<tr>
<td>3</td>
<td>Repairs and Alterations</td>
<td>$23,200.00</td>
</tr>
<tr>
<td>4</td>
<td>Equipment</td>
<td>$2,300.00</td>
</tr>
<tr>
<td>5</td>
<td>Compensation of Commanding Officers, Clerical Allowances and Uniform Allowances</td>
<td>$92,800.00</td>
</tr>
<tr>
<td>6</td>
<td>Property Maintenance</td>
<td>$196,200.00</td>
</tr>
<tr>
<td>7</td>
<td>State Armory Board</td>
<td>$919,000.00</td>
</tr>
<tr>
<td>9</td>
<td>Total</td>
<td>$1,534,289.00</td>
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</tbody>
</table>

90—Department of Civil and Defense Mobilization

Acct. No. 581

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$44,395.00</td>
</tr>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>$10,862.00</td>
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<tr>
<td>3</td>
<td>Equipment</td>
<td>$600.00</td>
</tr>
<tr>
<td>4</td>
<td>Total</td>
<td>$55,857.00</td>
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91—Auditor's Office—Social Security

Acct. No. 582

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>To match contributions of state employees for social security</td>
<td>$3,400,000.00</td>
</tr>
</tbody>
</table>
| 3    | The above appropriation is intended to cover the state's share of social security costs for those spending units operating from General Revenue Fund. The State Department of Highways, Department of Motor Vehicles, Workmen's Compensation Commission, Public Service Commission, and other departments operating from Special Revenue Fund and/or Federal Funds shall pay their proportionate share of the social security cost for their respective divisions. Any unexpended balance remaining in this appropriation at the close of the fiscal year
16 1970-71 is hereby reappropriated for expenditure during the fiscal year 1971-72.

92—West Virginia State Board of Land Surveyors
Acct. No. 585
1 To pay the per diem of members and other general expenses $ 6,000.00
2 From Collections 6,000.00

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

94—West Virginia Board of Examiners for Practical Nurses
Acct. No. 587
1 To pay the per diem of members and other general expenses $ 31,000.00
2 From Collections 31,000.00

95—State Board of Chiropractic Examiners
Acct. No. 588
1 To pay the per diem of members and other general expenses $ 700.00
2 From Collections 700.00

96—State Board of Pharmacy
Acct. No. 590
1 To pay the per diem of members and other general expenses $ 37,350.00
2 From Collections 37,350.00

97—State Board of Osteopathy
Acct. No. 591
1 To pay the per diem of members and other general expenses $ 2,356.00
2 From Collections 2,356.00
98—State Board of Embalmers and Funeral Directors
Acct. No. 593
1 To pay the per diem of members and other general expenses $ 25,000.00
3 From Collections 25,000.00

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

100—State Board of Architects
Acct. No. 595
1 To pay the per diem of members and other general expenses $ 9,000.00
3 From Collections 9,000.00

101—State Veterinary Board
Acct. No. 596
1 To pay the per diem of members and other general expenses $ 1,000.00
3 From Collections 1,000.00

102—State Board of Law Examiners
Acct. No. 597
1 To pay the per diem of members and other general expenses $ 3,400.00

103—Human Rights Commission
Acct. No. 598
1 Personal Services $ 107,432.00
2 Current Expenses 64,778.00
3 Equipment 3,125.00
4 Total $ 175,335.00
104—West Virginia State Board of Sanitarians
Acct. No. 599

1 To pay the per diem of members and other general expenses $ 800.00
2 From Collections $ 800.00

105—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

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

106—West Virginia Public Employees Insurance Board
Acct. No. 615

1 Expense Fund $ 48,000.00
2 Public Employees Health Insurance—State $ 1,000,000.00

4 Total $ 1,048,000.00
107—**Insurance Commissioner**

*Acct. No. 616*

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$367,500.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$81,900.00</td>
</tr>
<tr>
<td>3 Repairs and Alterations</td>
<td>$5,500.00</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>$5,000.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$459,900.00</strong></td>
</tr>
</tbody>
</table>

108—**State Department of Highways**

*Acct. No. 617*

1 Total ........................................................................................................... $459,900.00

The total amount herein appropriated to be transferred in equal amounts quarterly to the State Sinking Fund Commission upon the requisition of the Governor for Department of Highways bond requirements after June 30, 1972.

Sec. 2. **Appropriations from Other Funds.**—From the funds designated there is hereby appropriated conditionally upon the fulfillment of the provisions set forth in Chapter 5-A, Article 2 of the Code of West Virginia, the following amounts, as itemized, for expenditure during the fiscal year one thousand nine hundred seventy-two.

109—**State Department of Highways**

*Acct. No. 670*

**TO BE PAID FROM STATE ROAD FUND**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Federal-Aid Construction—Interstate Program</td>
<td>$193,500,000.00</td>
</tr>
<tr>
<td>2 Federal-Aid Construction—ABC Program</td>
<td>$27,500,000.00</td>
</tr>
<tr>
<td>3 Appalachian Program</td>
<td>$102,300,000.00</td>
</tr>
<tr>
<td>4 Interstate Maintenance</td>
<td>$6,000,000.00</td>
</tr>
<tr>
<td>5 Maintenance</td>
<td></td>
</tr>
<tr>
<td>6 Maintenance</td>
<td></td>
</tr>
<tr>
<td>7 —Expressway, Trunkline and Feeder</td>
<td>$20,000,000.00</td>
</tr>
</tbody>
</table>
8 Maintenance
9 —State Local Service ........................................ 26,000,000.00
10 Nonfederal Aid Construction .............................. 20,000,000.00
11 Emergency Road Operations ................................. 8,000,000.00
12 Scenic Highway ............................................. 1,200,000.00
13 Forest Highway ................................................ 300,000.00
14 General Operations ........................................... 23,000,000.00
15 Equipment Purchases .......................................... 3,500,000.00
16 Inventory Purchases ........................................... 1,000,000.00
17 Debt Service ..................................................... 33,755,000.00

18 Total .............................................................. $466,555,000.00

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

20 Out of the above appropriations there shall be an amount of ________________ for replacement of Bridge No. 1406 on Alternate Route Three, spanning the New River at Hinton, West Virginia Summers County.

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

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

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

Notwithstanding the provisions of Chapter 5A, Article 2, Section 19, Code of West Virginia, one thousand nine hundred thirty-one, as amended, transfer of amounts between the line items of appropriation herein is authorized.

110—Department of Motor Vehicles

Acct. No. 671

TO BE PAID FROM STATE ROAD FUND

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$1,029,376.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>626,865.00</td>
</tr>
<tr>
<td>3 Equipment</td>
<td>30,000.00</td>
</tr>
<tr>
<td>4 Purchase of License Plates</td>
<td>160,000.00</td>
</tr>
<tr>
<td>5 Social Security Matching Fund</td>
<td>53,365.00</td>
</tr>
<tr>
<td>6 Public Employees Retirement Matching Fund</td>
<td>95,960.00</td>
</tr>
<tr>
<td>7 Public Employees Health Insurance</td>
<td>24,505.00</td>
</tr>
<tr>
<td>8 Total</td>
<td>$2,020,071.00</td>
</tr>
</tbody>
</table>

111—State Tax Department—Gasoline Tax Division

Acct. No. 672

TO BE PAID FROM STATE ROAD FUND

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$263,277.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>100,000.00</td>
</tr>
<tr>
<td>3 Equipment</td>
<td>4,000.00</td>
</tr>
</tbody>
</table>
4 Social Security Matching Fund $14,328.00
5 Public Employees Health Insurance $6,270.00

6 Total $387,875.00

112—Department of Education—Veterans Education

Acct. No. 702

TO BE PAID FROM GENERAL SCHOOL FUND

1 Personal Services $58,464.00
2 Current Expenses $20,135.00

3 Total $78,599.00

4 Expenditures from this appropriation shall not exceed the amount to be reimbursed by the Federal Government.
5 Federal funds in excess of the amounts hereby appropriated may be made available by budget amendment upon request of the State Superintendent of Schools and approval of the Governor for any emergency which might arise in the operation of this Division during the fiscal year.

113—Treasurer’s Office

Acct. No. 800

TO BE PAID FROM SPECIAL REVENUE FUND

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

114—Real Estate Commission

Acct. No. 801

TO BE PAID FROM SPECIAL REVENUE FUND

1 Personal Services $39,540.00
2 Current Expenses $16,614.00
3 Social Security Matching Fund $1,865.00
4 Public Employees Retirement Matching Fund $3,265.00
5 Public Employees Health Insurance .......................... 870.00

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

115—West Virginia Racing Commission

Acct. No. 808

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Medical Expenses</td>
<td>$5,000.00</td>
</tr>
</tbody>
</table>

The total amount of this appropriation shall be paid from Special Revenue Fund out of collections of license fees and fines as provided by law.

No expenditures shall be made from this account except for hospitalization, medical care, and/or funeral expenses for persons contributing to this fund.

Special funds in excess of the amounts hereby appropriated may be made available by budget amendments upon request of the West Virginia Racing Commission and approval of the Governor.

116—Auditor’s Office—Land Department Operating Fund

Acct. No. 812

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$23,670.00</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$16,000.00</td>
</tr>
<tr>
<td>Microfilm Program</td>
<td>$5,000.00</td>
</tr>
<tr>
<td>Public Employees Health Insurance</td>
<td>$570.00</td>
</tr>
</tbody>
</table>

The total amount of this appropriation shall be paid from Special Revenue Fund out of fees and collections as provided by law.
Special funds in excess of the amount herein appropriated may be made available by budget amendments upon request of the State Auditor and the approval of the Governor.

117—Department of Finance and Administration—Division of Purchases—Revolving Fund

Acct. No. 814

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$183,750.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$20,000.00</td>
</tr>
<tr>
<td>3 Equipment</td>
<td>$20,000.00</td>
</tr>
<tr>
<td>4 Social Security Matching Fund</td>
<td>$8,000.00</td>
</tr>
<tr>
<td>5 Public Employees Retirement Matching Fund</td>
<td>$10,000.00</td>
</tr>
<tr>
<td>6 Public Employees Health Insurance</td>
<td>$5,000.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$246,750.00</strong></td>
</tr>
</tbody>
</table>

The total amount of this appropriation shall be paid from Special Revenue Fund as provided by Chapter 5-A, Article 2 of the Code of West Virginia.

The above appropriation includes salaries and operating expenses.

There is hereby appropriated from this fund, in addition to the above appropriation, the necessary amount for the purchase of supplies for resale.

Special funds in excess of the amounts hereby appropriated may be made available by budget amendments upon request of the Department of Finance and Administration and approval of the Governor.

118—Department of Agriculture

Acct. No. 818

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$229,950.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$58,585.00</td>
</tr>
</tbody>
</table>
### Appropriations

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>3</td>
<td>Equipment</td>
<td>25,000.00</td>
</tr>
<tr>
<td>4</td>
<td>Social Security Matching Fund</td>
<td>10,950.00</td>
</tr>
<tr>
<td>5</td>
<td>Public Employees Retirement Matching Fund</td>
<td>19,200.00</td>
</tr>
<tr>
<td>6</td>
<td>Public Employees Health Insurance</td>
<td>5,475.00</td>
</tr>
<tr>
<td>7</td>
<td>Total</td>
<td>349,160.00</td>
</tr>
</tbody>
</table>

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

#### State Committee of Barbers and Beauticians

**Acct. No. 822**

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$69,615.00</td>
</tr>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>35,150.00</td>
</tr>
<tr>
<td>3</td>
<td>Equipment</td>
<td>1,000.00</td>
</tr>
<tr>
<td>4</td>
<td>Social Security Matching Fund</td>
<td>3,736.00</td>
</tr>
<tr>
<td>5</td>
<td>Public Employees Retirement Matching Fund</td>
<td>6,962.00</td>
</tr>
<tr>
<td>6</td>
<td>Public Employees Health Insurance</td>
<td>1,650.00</td>
</tr>
<tr>
<td>7</td>
<td>Total</td>
<td>118,113.00</td>
</tr>
</tbody>
</table>

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

#### Public Service Commission

**Acct. No. 828**

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Salaries of Commissioners</td>
<td>$48,000.00</td>
</tr>
<tr>
<td>2</td>
<td>Other Personal Services</td>
<td>800,155.00</td>
</tr>
</tbody>
</table>
### Appropriations

3 Current Expenses ........................................ 127,835.00  
4 Equipment .................................................. 16,265.00  
5 Social Security Matching Fund ......................... 31,200.00  
6 Public Employees Retirement Matching Fund .......... 44,700.00  
7 Public Employees Health Insurance ..................... 16,095.00  

<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>8</td>
<td>Total</td>
<td>$1,084,250.00</td>
</tr>
</tbody>
</table>

9 The total amount of this appropriation shall  
10 be paid from Special Revenue Fund out of  
11 collections for special license fees from  
12 public service corporations as provided by  
13 law. Out of the above appropriation  
14 $5,000.00 may be transferred to the State  
15 Water Resources Commission of the De-  
16 partment of Natural Resources for use in  
17 cooperation with the U. S. Geological Sur-  
18 vey in a program of stream gauging.

121—Public Service Commission  
Gas Pipeline Division  
Acct. No. 8285  

TO BE PAID FROM SPECIAL REVENUE FUND

<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$86,420.00</td>
</tr>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>23,520.00</td>
</tr>
<tr>
<td>3</td>
<td>Equipment</td>
<td>6,930.00</td>
</tr>
<tr>
<td>4</td>
<td>Social Security Matching Fund</td>
<td>2,890.00</td>
</tr>
<tr>
<td>5</td>
<td>Public Employees Retirement Matching Fund</td>
<td>4,100.00</td>
</tr>
<tr>
<td>6</td>
<td>Public Employees Health Insurance</td>
<td>690.00</td>
</tr>
</tbody>
</table>

<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>7</td>
<td>Total</td>
<td>$124,550.00</td>
</tr>
</tbody>
</table>

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

**Acct. No. 829**

**TO BE PAID FROM SPECIAL REVENUE FUND**

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$329,180.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$84,100.00</td>
</tr>
<tr>
<td>3 Equipment</td>
<td>$4,860.00</td>
</tr>
<tr>
<td>4 Social Security Matching Fund</td>
<td>$13,427.00</td>
</tr>
<tr>
<td>5 Public Employees Retirement Matching Fund</td>
<td>$18,575.00</td>
</tr>
<tr>
<td>6 Public Employees Health Insurance</td>
<td>$6,740.00</td>
</tr>
</tbody>
</table>

**Total** $456,882.00

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

### 123—Department of Natural Resources

**Acct. No. 830**

**TO BE PAID FROM SPECIAL REVENUE FUND**

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$1,463,215.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$667,591.00</td>
</tr>
<tr>
<td>3 Repairs and Alterations</td>
<td>$98,700.00</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>$135,789.00</td>
</tr>
<tr>
<td>5 Public Employees Health Insurance</td>
<td>$34,900.00</td>
</tr>
</tbody>
</table>

**Total** $2,400,195.00

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

124—Department of Public Safety—Inspection Fees

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$168,381.00</td>
</tr>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>$103,720.00</td>
</tr>
<tr>
<td>3</td>
<td>Repairs and Alterations</td>
<td>$7,600.00</td>
</tr>
<tr>
<td>4</td>
<td>Equipment</td>
<td>$15,550.00</td>
</tr>
<tr>
<td>5</td>
<td>Social Security Matching Fund</td>
<td>$1,210.00</td>
</tr>
<tr>
<td>6</td>
<td>Public Employees Health Insurance</td>
<td>$4,440.00</td>
</tr>
<tr>
<td></td>
<td><strong>Total</strong></td>
<td><strong>$300,901.00</strong></td>
</tr>
</tbody>
</table>

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

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

125—West Virginia Alcohol Beverage Control

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Salary of Commissioner</td>
<td>$16,000.00</td>
</tr>
<tr>
<td>2</td>
<td>Other Personal Services</td>
<td>$4,200,000.00</td>
</tr>
<tr>
<td>3</td>
<td>Current Expenses</td>
<td>$1,200,000.00</td>
</tr>
<tr>
<td>4</td>
<td>Repairs and Alterations</td>
<td>$29,000.00</td>
</tr>
<tr>
<td>5</td>
<td>Equipment</td>
<td>$252,500.00</td>
</tr>
<tr>
<td>6</td>
<td>Social Security Matching Fund</td>
<td>$229,000.00</td>
</tr>
<tr>
<td>7</td>
<td>Public Employees Retirement Matching Fund</td>
<td>400,000.00</td>
</tr>
<tr>
<td>8</td>
<td>Fund</td>
<td>105,000.00</td>
</tr>
<tr>
<td>10</td>
<td><strong>Total</strong></td>
<td><strong>$6,431,500.00</strong></td>
</tr>
</tbody>
</table>
The total amount of this appropriation shall be paid from Special Revenue Fund out of liquor revenues.

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

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

126—West Virginia Civil Service System

Acct. No. 840

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$226,800.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$101,950.00</td>
</tr>
<tr>
<td>3 Social Security Matching Fund</td>
<td>$10,689.00</td>
</tr>
<tr>
<td>4 Public Employees Retirement Matching Fund</td>
<td>$20,000.00</td>
</tr>
<tr>
<td>5 Public Employees Health Insurance</td>
<td>$5,400.00</td>
</tr>
<tr>
<td>6 Total</td>
<td>$364,839.00</td>
</tr>
</tbody>
</table>

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

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

127—Board of Regents—West Virginia University—Special Capital Improvement Fund

Acct. No. 853

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Debt Service</td>
<td>$665,000.00</td>
</tr>
</tbody>
</table>
2 Property Acquisition .................................. 400,000.00
3 Miscellaneous Small Projects ......................... 600,000.00
4 Creative Arts ........................................... 800,000.00
5 Utilities, Roads and Parking ............................ 250,000.00
6 Renovating of Existing Buildings ..................... 185,000.00
7 Medical Center—Repairs and Alterations .......... 1,000,000.00

Total .................................................. $3,900,000.00

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

Any unexpended balance remaining in this appropriation at the close of the fiscal year 1969-70 and 1970-71 is hereby reappropriated for expenditure during the fiscal year 1971-72.

128—Board of Regents—Special Capital Improvement Fund

Acct. No. 854

TO BE PAID FROM SPECIAL REVENUE FUND

1 Debt Service ........................................... $2,019,225.00
2 Develop Plans and Specifications for the following buildings:
4 Marshall University, Academic Building No. 1 240,000.00
5 Marshall University, Academic Building No. 2 120,000.00
6 Fairmont State College, Health and Physical Education Building ............................... 135,000.00
7 Shepherd College, Academic Building .......... 140,000.00
9 West Liberty State College, Science Building 250,000.00
10 Miscellaneous Projects ............................... 800,000.00
11 Campus Long Range Land Utilization and Facilities Master Planning ........... 150,000.00
13 West Virginia Institute of Technology, Additional Amount for New Library Building 200,000.00
15 West Liberty State College, Furniture and Equipment for New Twin Towers Dormitory Complex 250,000.00
18 West Virginia Institute of Technology, Equipment for New Community and Technical College Building ....................................................... 550,000.00
19 West Virginia State College, Equipment for New Classroom Building ................................................................. 116,700.00
20 Shepherd College, Under or Overpass Across Route 48 ........................................................................................................ 50,000.00
21 Shepherd College, Additional Amount for Renovation of Heating System in Science Hall .................................................. 80,000.00
22 Bluefield State College, Technical Equipment .................................................................................................................. 175,000.00
23 Glenville State College, Intramural Activities Playing Fields, Tennis Courts, etc. ................................................................. 136,000.00
24 Concord College, Swimming Pool for New Physical Education Building ........................................................................... 400,000.00
25 West Liberty State College, Addition to Sanitation System ................................................................................................. 200,000.00
26 West Virginia State College, Additional Amount for Steam Plant Renovation and ROTC Facility, Phase A ............... 100,000.00
27 Bluefield State College, Parking Lot Addition, Road, Drains, Lighting, etc. ................................................................. 175,000.00
28 Fairmont State College, Library Alterations and Addition .................................................................................................. 1,200,000.00
29 West Virginia Institute of Technology, Maintenance Building and Allied Equipment .................................................. 375,000.00
30 West Liberty State College, Maintenance Building and Allied Equipment ............................................................................. 400,000.00
31 West Virginia State College, Renovate Administration Building .......................................................................................... 190,000.00

47 Total ............................................................................................................................................................................. $ 8,451,925.00

48 The appropriation of items on lines 1 through 38 is to be paid on a cash basis and made available from date of passage; items on lines 39 through 46 are to be started as funds become available and then only in listed order of priority.

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

Any unexpended balance remaining in the appropriation to this account for the fiscal years 1969-70 and 1970-71 and in this appropriation at the close of the fiscal year is hereby reappropriated for expenditure during the next fiscal year.

The appropriation heretofore authorized by the Legislature for expenditures during the fiscal year 1969-70, set forth in the Budget Bill, Regular Session, 1969, Section 2, Appropriations from Other Funds, pages 47 through 50, inclusive, West Virginia Board of Regents—Special Capital Improvement Fund, Account No. 854, lines 42 and 43, and lines 46 through 64, inclusive is hereby voided.

It is intended that only complete and usable units or projects be constructed and/or equipped, and then only in the listed order of priority.

129—West Virginia University—Medical School

TO BE PAID FROM MEDICAL SCHOOL FUND

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$12,247,536.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>3,767,194.00</td>
</tr>
<tr>
<td>3 Repairs and Alterations</td>
<td>455,000.00</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>690,315.00</td>
</tr>
<tr>
<td>5 Total</td>
<td>$17,160,045.00</td>
</tr>
</tbody>
</table>

Special funds in excess of the amounts hereby appropriated may be made available by budget amendment upon request of the Board of Regents and approval of the Governor.
Ch. 6] Appropriations 91

130—Workmen's Compensation Commission

Acct. No. 900

TO BE PAID FROM WORKMEN'S COMPENSATION FUND

1 Personal Services .................................. $ 1,094,528.00
2 Current Expenses .................................. 442,035.00
3 Equipment ......................................... 22,600.00
4 Social Security Matching Fund ..................... 50,580.00
5 Public Employees Retirement Matching Fund ....... 102,000.00
6 Public Employees Health Insurance .................. 25,985.00

7 Total .................................................. $ 1,737,728.00

8 There is hereby authorized to be paid out of
9 the above appropriation for current ex-
10 penses the amount necessary for the pre-
11 miums on bonds given by the State Treas-
12 urer and bond custodian for the protection
13 of the Workmen's Compensation Fund.
14 This sum shall be transferred to the Board
15 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-one, to supple-
6 ment the 1970-71 appropriations, and to be available for
7 expenditure upon date of passage.

131—Department of Welfare

Acct. No. 405

1 Total .................................................. $ 2,000,000.00

132—West Virginia Alcohol Beverage Control

Acct. No. 837

TO BE PAID FROM SPECIAL REVENUE FUND

1 Personal Services .................................. $ 230,000.00
2 Current Expenses .................................. 95,000.00
133—Department of Motor Vehicles

Acct. No. 671

TO BE PAID FROM STATE ROAD FUND

1 Public Employees Retirement Matching Fund

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3 Public Employees Retirement Matching Fund

4 -

5 Social Security Matching Fund

6 Total

$ 409,800.00

1 Sec. 3a. Appropriations of surplus for fiscal year 1970-71.—The item set forth below in this section is appropriated from the State Fund, General Revenue for fiscal year 1970-71, subject to the terms and conditions set forth in this section. By Executive Message No. 16, dated March fifteen, one thousand nine hundred seventy-one, the governor transmitted to the Legislature a revised statement of the State Fund, General Revenue for fiscal year 1970-71, revised as of March fifteen, one thousand nine hundred seventy-one, in which it is stated that the estimated revenue in the State Fund, General Revenue for fiscal year 1970-71 will be $302,458,234.00. Therefore, the governor shall continue to review the revenue in the State Fund, General Revenue from the first day of July, one thousand nine hundred seventy, to the date the appropriation under this section is expected to be made available for expenditure and determine whether, in his opinion, the revenue in the State Fund, General Revenue then in prospect or on hand will be sufficient to meet all appropriations from the State Fund, General Revenue under the budget bill for fiscal year 1970-71, and make a finding with respect thereto. In the event that such findings shall show sufficient revenue in prospect or on hand to meet all other appropriations made from the State Fund, General Revenue under the budget bill for fiscal year 1970-71, the Governor may, from any excess over and above the amount required to meet all such appropriations, release the following item, if available funds will permit:
29 Item: Department of Welfare, to the extent of any surplus in excess of said sum of $302,458,234.00, up to a maximum surplus of $5,500,000.00.

1 Sec. 4. Awards for Claims Against the State.—From the funds designated there are hereby appropriated for the fiscal year 1971-72 for payment of claims against the state, the following amounts as itemized.

5 (a) Claims Versus the Department of Highways

<table>
<thead>
<tr>
<th>TO BE PAID FROM STATE ROAD FUND</th>
</tr>
</thead>
<tbody>
<tr>
<td>7  (1) Equitable Gas Company</td>
</tr>
<tr>
<td>8  (2) Mr. and Mrs. H. B. Lewis</td>
</tr>
<tr>
<td>9  (3) Sam Melvin</td>
</tr>
<tr>
<td>10 (4) C. J. Langenfelder &amp; Son,</td>
</tr>
<tr>
<td>11 Inc.</td>
</tr>
<tr>
<td>12 (5) Harold E. Price</td>
</tr>
<tr>
<td>13 (6) M &amp; M Construction Co.</td>
</tr>
<tr>
<td>14 (7) Monongahela Power Co.</td>
</tr>
<tr>
<td>15 (8) Olaf Humphrey</td>
</tr>
<tr>
<td>16 (9) Chesapeake &amp; Ohio Railway</td>
</tr>
<tr>
<td>17 (10) Dale E. Olive</td>
</tr>
<tr>
<td>18 (11) Mrs. Jessie P. Randall</td>
</tr>
<tr>
<td>19 (12) State Farm Mutual Automobile Insurance Co., assignee to Sarah G. Romans</td>
</tr>
<tr>
<td>21 (13) Frank Fedorka</td>
</tr>
<tr>
<td>22 (14) Lowell C. Shinn</td>
</tr>
<tr>
<td>23 (15) Gerald S. Swiger</td>
</tr>
<tr>
<td>24 (16) Everett and Betty Miller</td>
</tr>
<tr>
<td>25 (17) Perry K. and Anne B. Caldwell</td>
</tr>
<tr>
<td>26 (18) Lemuel L. and Estelle Warden</td>
</tr>
<tr>
<td>27 (19) Charleston Concrete Floor Company, Inc.</td>
</tr>
<tr>
<td>29 (20) State Farm Mutual Automobile Insurance Co.</td>
</tr>
<tr>
<td>30 (21) Esdel B. and Sylvia J. Yost</td>
</tr>
<tr>
<td>31 (22) Joyce J. Droddy Ayers</td>
</tr>
<tr>
<td>32 (23) Charles E. Talbert</td>
</tr>
<tr>
<td>33 (24) Robert Lee Holley</td>
</tr>
</tbody>
</table>
36 (b) Claims Versus the Office of the Governor
TO BE PAID FROM GENERAL REVENUE FUND
37 (1) Pitney-Bowes, Inc. $90.05
38 (c) Claims Versus the West Virginia Board of Regents
TO BE PAID FROM GENERAL REVENUE FUND
39 (1) Helen I. Wotkiewicz $1,258.00
40 (d) Claims Versus the Department of Motor Vehicles
TO BE PAID FROM STATE ROAD FUND
41 (1) West Virginia Business Forms, Inc. $249.97
42 (e) Claims Versus the Department of Mental Health
TO BE PAID FROM GENERAL REVENUE FUND
43 (1) Betsy Ross Bakeries, Inc. $841.10
44 (f) Claims Versus the Department of Natural Resources
TO BE PAID FROM GENERAL REVENUE FUND
45 (1) W. M. McClintic $46.77
46 (g) Claims Versus the Department of Public Institutions
TO BE PAID FROM GENERAL REVENUE FUND
47 (1) Cecil Smith, Jr. $3,000.00

1 Sec. 5. Legislative Findings of Fact Claims.—The Legislature has heretofore made findings of fact that the state has received the benefit of the commodities and services rendered by certain claimants herein and has considered claims against the state and agencies thereof which have arisen due to over-expenditures of departmental appropriations by officers of certain state spending units, such claims having been previously considered by the court of claims which found that the state has received the benefit of the commodities and services rendered by each claimant, but were denied by the court of claims on the purely statutory grounds that to allow such claims would be condoning illegal acts contrary to the laws of the state.
The Legislature, pursuant to its findings of fact and also by the adoption of the findings of fact by the court of claims as its own, and, while not condoning such illegal acts, hereby declares it to be the moral obligation of the state to pay each such claim in the amount specified below, and directs the auditor to issue warrants for the payment thereof out of any fund appropriated and available for such purpose, and hereby directs the Attorney General to review the bonds executed by all public officials and employees who are in any way responsible for the State spending units over-expending departmental appropriations and where it appears feasible to institute proper legal proceedings to recover for the State sums equal to the claims specified below; and in instances where the Attorney General determines that such legal proceedings are not feasible, to report to the Legislative Auditor the reasons why such legal proceedings are not feasible.

From the funds designated there are hereby appropriated for the fiscal year 1971-72 for payment of claims against the state, the following amounts as itemized.

(a) **Claims Versus the Department of Mental Health**

**TO BE PAID FROM GENERAL REVENUE FUND**

<table>
<thead>
<tr>
<th>Claimant</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Airken Sales and Service</td>
<td>$630.00</td>
</tr>
<tr>
<td>Odorite Service and Supply Company</td>
<td>$1,673.40</td>
</tr>
<tr>
<td>McCormick Office Supplies, Inc.</td>
<td>$77.10</td>
</tr>
<tr>
<td>Riverside Paper Company, Inc.</td>
<td>$178.07</td>
</tr>
<tr>
<td>Laird Office Equipment Company</td>
<td>$98.83</td>
</tr>
<tr>
<td>Guthrie-Morris-Campbell Company</td>
<td>$1,813.40</td>
</tr>
<tr>
<td>Southern Chemical Company</td>
<td>$1,217.80</td>
</tr>
<tr>
<td>Tri-State Drug Company</td>
<td>$166.36</td>
</tr>
<tr>
<td>Copco Papers, Inc.</td>
<td>$299.52</td>
</tr>
<tr>
<td>Copco Papers, Inc.</td>
<td>$224.64</td>
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<tr>
<td>Fry Brothers Company</td>
<td>$168.00</td>
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<tr>
<td>Fry Brothers Company</td>
<td>$605.00</td>
</tr>
<tr>
<td>Union 76—Pure Oil Division</td>
<td>$824.94</td>
</tr>
<tr>
<td>Vaughan’s Termite Control Company</td>
<td>$290.00</td>
</tr>
<tr>
<td>S. B. Wallace and Company</td>
<td>$120.00</td>
</tr>
<tr>
<td>Oxford Chemicals</td>
<td>$1,555.75</td>
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<td>90</td>
<td>(52)</td>
</tr>
</tbody>
</table>

<p>| 91 | (53)             |                        |        |
| 92 | (54)             |                        |        |
| 93 | (55)             |                        |        |
| 94 | (56)             |                        |        |</p>
<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>95</td>
<td>Karoll's, Inc.</td>
<td>1,796.48</td>
</tr>
<tr>
<td>96</td>
<td>William J. Swearingen</td>
<td>500.00</td>
</tr>
<tr>
<td>97</td>
<td>Charles V. Selby, Jr.</td>
<td>200.00</td>
</tr>
<tr>
<td>98</td>
<td>Granville H. Lance</td>
<td>500.00</td>
</tr>
<tr>
<td>99</td>
<td>K. V. Pathology, Inc.</td>
<td>1,500.00</td>
</tr>
<tr>
<td>100</td>
<td>Mt. Clare Provision Company</td>
<td>2,116.00</td>
</tr>
<tr>
<td>101</td>
<td>Dowling Pool Company</td>
<td>33.80</td>
</tr>
<tr>
<td>102</td>
<td>St. Joseph's Hospital</td>
<td>13.50</td>
</tr>
<tr>
<td>103</td>
<td>St. Joseph's Hospital</td>
<td>88.70</td>
</tr>
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<td>104</td>
<td>St. Joseph's Hospital</td>
<td>527.64</td>
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<tr>
<td>105</td>
<td>St. Joseph's Hospital</td>
<td>9.25</td>
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<tr>
<td>106</td>
<td>St. Joseph's Hospital</td>
<td>15.00</td>
</tr>
<tr>
<td>107</td>
<td>St. Joseph's Hospital</td>
<td>1,160.38</td>
</tr>
<tr>
<td>108</td>
<td>St. Joseph's Hospital</td>
<td>28.00</td>
</tr>
<tr>
<td>109</td>
<td>The Red Head Oil Company</td>
<td>52.75</td>
</tr>
<tr>
<td>110</td>
<td>Picker X Ray</td>
<td>347.16</td>
</tr>
<tr>
<td>111</td>
<td>Empire Foods, Inc.</td>
<td>494.70</td>
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<tr>
<td>112</td>
<td>General Electric Company</td>
<td>2,594.82</td>
</tr>
<tr>
<td>113</td>
<td>Kellogg Sales Company</td>
<td>547.70</td>
</tr>
<tr>
<td>114</td>
<td>James Produce Company</td>
<td>572.97</td>
</tr>
<tr>
<td>115</td>
<td>Fairmont Foods Company</td>
<td>1,310.34</td>
</tr>
<tr>
<td>116</td>
<td>Union Oil Company of California</td>
<td>302.24</td>
</tr>
<tr>
<td>117</td>
<td>Standard Brands Sales Company</td>
<td>1,290.40</td>
</tr>
<tr>
<td>118</td>
<td>Ace Exterminators, Inc.</td>
<td>160.00</td>
</tr>
<tr>
<td>119</td>
<td>A. B. Dick Products Company</td>
<td>211.60</td>
</tr>
<tr>
<td>120</td>
<td>Capitol Paper Supply, Inc.</td>
<td>382.80</td>
</tr>
<tr>
<td>121</td>
<td>Genuine Parts Co. of W. Va.</td>
<td>94.39</td>
</tr>
<tr>
<td>122</td>
<td>Noe Office Equipment</td>
<td>281.68</td>
</tr>
<tr>
<td>123</td>
<td>The Universal Supply Co.</td>
<td>172.14</td>
</tr>
<tr>
<td>124</td>
<td>McGlothin Printing Co.</td>
<td>546.76</td>
</tr>
<tr>
<td>125</td>
<td>Appalachian Power Company</td>
<td>$34,979.13</td>
</tr>
<tr>
<td>126</td>
<td>Potomac Edison Company of W. Va.</td>
<td>5,170.24</td>
</tr>
<tr>
<td>127</td>
<td>Utilities, Inc.</td>
<td>4,915.82</td>
</tr>
<tr>
<td>128</td>
<td>Crook's Wholesale Food Company</td>
<td>$1,657.90</td>
</tr>
</tbody>
</table>

**Claims Versus the Department of Public Institutions**

TO BE PAID FROM GENERAL REVENUE FUND

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>129</td>
<td>Appalachian Power Company</td>
<td>$34,979.13</td>
</tr>
<tr>
<td>130</td>
<td>Potomac Edison Company of W. Va.</td>
<td>5,170.24</td>
</tr>
<tr>
<td>131</td>
<td>Utilities, Inc.</td>
<td>4,915.82</td>
</tr>
<tr>
<td>132</td>
<td>Crook's Wholesale Food Company</td>
<td>$1,657.90</td>
</tr>
</tbody>
</table>
Sec. 6. Special Revenue Appropriations.—There is hereby appropriated for expenditure during the fiscal year one thousand nine hundred seventy-two appropriations made by general law from special revenue which are not paid into the state fund as general revenue under the provisions of Chapter 12, Article 2, Section 2 of the Code of West Virginia, one thousand nine hundred thirty-one: Provided, however, That none of the moneys so appropriated by this section shall be available for expenditure except in compliance with and in conformity to the provisions of Chapter 12, Articles 2 and 3, and Chapter 5A, Article 2 of the Code of West Virginia, unless the spending unit has filed with the state director of the budget, the state auditor and the legislative auditor prior to the beginning of each fiscal year:

(a) An estimate of the amount and sources of all revenues accruing to such fund;

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

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

Sec. 8. Appropriation for Refunding Erroneous Payments.—Money that has been erroneously paid into the state treasury is hereby appropriated out of the fund into which it was paid for refund to the proper person.

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

Sec. 9. Sinking Fund Deficiencies.—There is hereby appropriated to the Governor a sufficient amount to meet
a deficiency that may arise in the funds of the State Sinking Fund Commission because of the failure of any state agency for either general obligation or revenue bonds or any local taxing district for general obligation bonds to remit funds necessary for the payment of interest and sinking fund requirements. The Governor is authorized to transfer from time to time such amounts to the State Sinking Fund Commission as may be necessary for this purpose.

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

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

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

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

(a) For the redemption of lands;
(b) By public service corporations;
(c) For tax forfeitures.
Sec. 13. Total Appropriations.—Where only a total sum is appropriated to a spending unit that total sum shall include personal services, current expenses, and capital outlay, except as otherwise provided in Title I, Section 3.

Sec. 14. General School Fund.—The balance of the proceeds of the general school fund remaining after the payment of the appropriations made by this act is appropriated for expenditure in accordance with Chapter 18, Article 9-A, Section 16 of the Code of West Virginia.

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

Section 1. Appropriations Conditional.—The expenditure of the appropriations made by this act, except those appropriations made to the legislative and judicial branches of the state government, are conditioned upon the compliance by the spending unit with the requirements of Chapter 5A, Article 2 of the Code of West Virginia.

Where former spending units have been absorbed by or combined with other spending units by acts of this Legislature it is the intent of this act that reappropriation shall be to the succeeding or later spending unit created unless otherwise indicated.

Sec. 2. Constitutionality.—If any part of this act is declared unconstitutional by a court of competent jurisdiction, its decision shall not affect any portion of this act which remains, but the remaining portion shall be in full force and effect as if the portion declared unconstitutional had never been a part of the act.

House Clerk's Note: The Governor disapproved and deleted items and parts of items in the Budget Bill as follows:

Acct. No. 101, line 2, $68,430.00
Acct. No. 102, line 2, $55,000.00
Acct. No. 102, line 3, $24,000.00
Acct. No. 103, line 2, $797,500.00
Acct. No. 103, line 3, $75,000.00
Acct. No. 103, line 4, $11,000.00
Acct. No. 617, line 1, $7,000,000.00
Acct. No. 670, line 30, $900,000.00
Reductions in items and parts of items were made by the Governor as follows:

Acct. No. 150, line 2, from $536,480.00 to $500,060.00
Acct. No. 150, line 3, from $158,275.00 to $136,025.00
Acct. No. 150, line 6, from $732,755.00 to $674,085.00
Acct. No. 240, line 2, from $612,830.00 to $342,657.00
Acct. No. 240, line 8, from $695,330.00 to $425,157.00
Acct. No. 450, line 5, from $40,000.00 to $38,000.00
Acct. No. 450, line 6, from $829,435.00 to $827,435.00
Acct. No. 510, line 2, from $809,665.00 to $771,110.00
Acct. No. 510, line 3, from $297,440.00 to $293,700.00
Acct. No. 510, line 6, from $1,179,105.00 to $1,136,810.00

CHAPTER 7

(House Bill No. 609—By Mr. Speaker, Mr. Boiarsky, and Mr. Seibert)

[Passed January 20, 1971; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section nineteen, article two, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, authorizing the governor to transfer amounts between items of the total appropriation made to the department of welfare for fiscal year one thousand nine hundred seventy-one, and requiring notices of transfer.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. BUDGET DIVISION.

§5A-2-19. Transfers between items of appropriation prohibited; exceptions.

1 Notwithstanding any other provision of law to the contrary except as to the authority of the state department of highways contained in the budget act for fiscal year one thousand nine hundred seventy-one—seventy-one relating to items of appropriation, Account No. 670, and except as provided in this section, there shall be no
transfer of amounts between items of appropriation, and
moneys appropriated for any particular purpose shall
not be spent by a spending unit for any other pur-
pose.
Upon the written request of the commissioner of the
department of welfare, the governor may transfer
amounts between items of the total appropriation for
the department of welfare, Account No. 405, as appro-
priated for expenditure during the fiscal year one thou-
sand nine hundred seventy-one, by chapter one, acts of
the Legislature, first extraordinary session, one thousand
nine hundred seventy. Notices of any such transfer shall
be sent to the state auditor, the state treasurer and the
legislative auditor.

CHAPTER 8
(Senate Bill No. 147—By Mr. Hedrick)

[Passed February 8, 1971; in effect ninety days from passage. Approved by the
Governor.]

AN ACT to amend and reenact section thirteen, article sixteen,
chapter eleven of the code of West Virginia, one thousand
nine hundred thirty-one, as amended, relating to unlawful
acts of beer licensees and penalties thereof and changing
the hours, other than in private clubs, during which beer
may not be sold, given, dispensed, drunk or consumed in
or on any licensed premises or in any rooms directly
connected therewith.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 16. NONINTOXICATING BEER.

§11-16-13. Unlawful acts of licensees; penalties.

It shall be unlawful:
(a) For any licensee, his, its or their servants, agents or employees to sell, give or dispense, or any individual to drink or consume, in or on any licensed premises or in any rooms directly connected therewith, non-intoxicating beer on weekdays between the hours of two o'clock a.m., and seven o'clock a.m., or between the hours of two o'clock a.m., and one o'clock p.m., on any Sunday, except in private clubs licensed under the provisions of article seven, chapter sixty of this code, where the hours shall conform with the hours of sale of alcoholic liquors;

(b) For any licensee, his, its or their servants, agents or employees, to sell, furnish or give any nonintoxicating beer to any person visibly or noticeably intoxicated, or to any insane person, or to any habitual drunkard, or to any person under the age of eighteen years;

(c) For any distributor to sell or offer to sell, or any retailer to purchase or receive, any nonintoxicating beer except for cash; and no right of action shall exist to collect any claims for credit extended contrary to the provisions of this subdivision. Nothing herein contained shall prohibit a licensee from crediting to a purchaser the actual price charged for packages or containers returned by the original purchaser as a credit on any sale, or from refunding to any purchaser the amount paid or deposited for such containers when title is retained by the vendor;

(d) For any brewer or distributor or his, its or their agents, to transport or deliver nonintoxicating beer to any retail licensee on Sunday;

(e) For any brewer or distributor to give, furnish, rent or sell any equipment, fixtures, signs or supplies directly or indirectly or through a subsidiary or affiliate to any licensee engaged in selling products of the brewing industry at retail, or to offer any prize, premium, gift, or other similar inducement, except advertising matter of nominal value, to either trade or consumer buyers: Provided, That nothing contained herein shall prohibit a distributor from offering for sale or renting tanks of carbonic gas;
(f) For any licensee to transport, sell, deliver or purchase any nonintoxicating beer or product of the brewing industry upon which there shall appear a label or other informative data which in any manner refers to the alcoholic content of such beer or product of the brewing industry, or upon the label of which there appears the word or words "strong," "full strength," "extra strength," "prewar strength," "high test" or other similar expressions bearing upon the alcoholic content of such product of the brewing industry, or which refers in any manner to the original alcoholic strength, extract or balling proof from which such beverage was produced, except that such label shall contain a statement that the alcoholic content thereof does not exceed three and two-tenths percent by weight;

(g) For any licensee to permit in his premises any lewd, immoral or improper entertainment, conduct or practice;

(h) For any licensee except the holder of a license to operate a private club issued under the provisions of article seven, chapter sixty of this code, to possess a federal license, tax receipt or other permit entitling, authorizing or allowing such licensee to sell liquor or alcoholic drinks;

(i) For any licensee to obstruct the view of the interior of his premises by enclosure, lattice, drapes or any means which would prevent plain view of the patrons occupying such premises. The interior of all licensed premises shall be adequately lighted at all times: Provided, That provisions of this subdivision shall not apply to the premises of a Class B retailer or to the premises of a private club licensed under the provisions of article seven, chapter sixty of this code;

(j) For any licensee to manufacture, import, sell, trade, barter, possess, or acquiesce in the sale, possession or consumption of any alcoholic liquors on the premises covered by such license or on premises directly or indirectly used in connection therewith: Provided, That the prohibitions contained in this subdivision with respect to the selling or possessing or to the acquiescence
(k) For any licensee to print, paint or place upon the door, window, or in any other public place in or about the premises, the word "saloon" or word of similar character or nature, or for the word "saloon" or similar words to be used in any advertisement by the licensee;

(l) For any retail licensee to sell or dispense non-intoxicating beer purchased or acquired from any source other than a licensed distributor or brewer under the laws of this state;

(m) For any licensee to permit loud, boisterous or disorderly conduct of any kind upon his premises or to permit the use of loud musical instruments if either or any of the same may disturb the peace and quietude of the community wherein such business is located: Provided, That no licensee shall have in connection with his place of business any loudspeaker located on the outside of the licensed premises that broadcasts or carries music of any kind;

(n) For any person whose license has been revoked, as in this article provided, to obtain employment with any retailer within the period of one year from the date of such revocation, or for any retailer to employ knowingly any such person within such time;

(o) For any distributor to sell, possess for sale, transport or distribute nonintoxicating beer except in the original container;

(p) For any licensee to permit any act to be done upon the licensed premises, the commission of which constitutes a crime under the laws of this state;

(q) For any Class B retailer to permit the consumption of nonintoxicating beer upon his licensed premises;

(r) For any licensee, his, its or their servants, agents, or employees, or for any licensee by or through such servants, agents or employees, to allow, suffer or permit
any person under the age of eighteen years to loiter in
or upon any licensed premises; except, however, that
the provisions of this subdivision shall not apply where
such person under the age of eighteen years, is in, or
upon such premises in the immediate company of his
or her parent or parents, or where and while such person
under the age of eighteen years is in, on or upon such
premises for the purpose of and actually making a law­ful purchase of any items or commodities therein sold,
or for the purchase of and actually receiving any law­ful service therein rendered, including the consumption
of any item of food, drink or soft drink therein lawfully
prepared and served or sold for consumption on such
premises.

Any person who violates any provision of this article
or who makes any false statement concerning any ma­terial fact in submitting application for license or for
a renewal of a license or in any hearing concerning
the revocation thereof, or who commits any of the acts
herein declared to be unlawful, shall be guilty of a
misdemeanor, and shall be punished for each offense
by a fine of not less than twenty-five nor more than
five hundred dollars, or imprisoned in the county jail
for not less than thirty days or more than six months,
or by both fine and imprisonment in the discretion of
the court. Justices of the peace shall have concurrent
jurisdiction with the circuit court, and any other courts
having criminal jurisdiction in their county, for the
trial of all misdemeanors arising under this article.

CHAPTER 9
(Senate Bill No. 197—By Mr. Fanning)

[Passed March 13, 1971; in effect ninety days from passage. Approved by the
Governor.]

AN ACT to amend article sixteen, chapter eleven of the code
of West Virginia, one thousand nine hundred thirty-one,
as amended, by adding thereto a new section, designated section thirteen-b, relating to the sale of non-intoxicating beer, ale or other malt beverage; specifying certain unlawful acts of brewers, their distributors and their officers, agents and representatives; requiring all franchise agreements between a brewer and its distributors to be equitable, in writing and uniform; specifying certain provisions which must be contained in any such franchise agreement; providing that any such franchise agreement may not be cancelled, terminated or rescinded without due regard for the equities of the brewer and distributor and without just cause; providing that any such cancellation, termination or rescission shall not be effective for at least ninety days after written notice; authorizing court action with respect to the cancellation, termination or rescission of a franchise agreement for certain reasons; specifying that the bond of any brewer may be cancelled for any violation of the section; and authorizing court action to enjoin the cancellation, termination or rescission of any such franchise agreement.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 16. NONINTOXICATING BEER.

§11-16-13b. Unlawful acts of brewers and distributors; requirements as to franchise agreements; penalties; injunctions.

1 (a) On and after July one, one thousand nine hundred seventy-one, it shall be unlawful for any brewer to transfer or deliver to a distributor any nonintoxicating beer, ale or other malt beverage without first having entered into an equitable franchise agreement with such distributor, which franchise agreement shall be in writing, shall be identical as to terms and conditions with all other franchise agreements between such brewer and its other distributors in this state, and which shall contain a provision in substance or effect as follows:
11 The brewer recognizes that the distributor is free to manage his business in the manner the distributor deems best, and that this prerogative vests in the distributor the exclusive right to establish his selling prices, to select the brands of beer he wishes to handle, and to determine the efforts and resources which the distributor will exert to develop and promote the sale of the brewer's products handled by the distributor. However, since the brewer does not expect that its products handled by the distributor will be sold by others in the territory assigned to the distributor, the brewer is dependent upon the distributor alone for the sale of such products in said territory. Consequently, the brewer expects that the distributor will price competitively the products handled by the distributor, devote reasonable effort and resources to the sale of such products and maintain a satisfactory sales level.

(b) It shall also be unlawful:

(1) For any brewer or distributor, or any officer, agent or representative of any brewer or distributor, to coerce or persuade or attempt to coerce or persuade any person licensed to sell, distribute or job nonintoxicating beer, ale or other malt beverage at wholesale or retail to enter into any contracts or agreements, whether written or oral, or to take any other action, which will violate or tend to violate any provision of this article or any of the rules, regulations, standards, requirements or orders of the commissioner promulgated as provided in section fourteen of this article; or

(2) For any brewer or distributor, or any officer, agent or representative of any brewer or distributor, to cancel, terminate or rescind without due regard for the equities of such brewer or distributor, and without just cause, any franchise agreement, whether oral or written, and in the case of an oral franchise agreement, whether the same was entered into on or before the effective date of this section and prior to July one, one thousand nine hundred seventy-one, and in the case of a franchise agreement in writing, whether the same was entered into on, before or subsequent to July one, one thousand
nine hundred seventy-one. The cancellation, termination or rescission of any such franchise agreement shall not become effective for at least ninety days after written notice of such cancellation, termination or rescission has been served on the affected party and the commissioner by certified mail, return receipt requested: Provided, That said ninety-day period and said notice of cancellation, termination or rescission shall not apply if such cancellation, termination or rescission is agreed to in writing by both the brewer and the distributor involved.

(c) The violation of any provision of this section by any brewer shall constitute grounds for the forfeiture of the bond furnished by such brewer in accordance with the provisions of section five of this article. Moreover, any circuit court of the county in which a distributor's principal place of business is located shall have the jurisdiction and power to enjoin the cancellation, termination or rescission of any franchise agreement between a brewer and such distributor, and in granting an injunction to a distributor, the court shall provide that the brewer so enjoined shall not supply the customers or territory of the distributor while the injunction is in effect.

CHAPTER 10

(Senate Bill No. 286—By Mr. Carrigan and Mr. Neeley)

[Passed March 8, 1971: in effect ninety days 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 investment of public funds and classes of securities in which funds may be invested.

Be it enacted by the Legislature of West Virginia:

That section 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 be provided by law as to the securities in which funds may be invested, funds made available for investment for periods in excess of one year may be invested by the board, without the approval of any other state agency or official other than as required in section six of this article, in the following classes of securities, and not otherwise:

(a) Securities of the United States or agency thereof, or those guaranteed by, or for which the credit of the United States or agency thereof is pledged for the payment of the principal and interest thereof.

(b) Direct general obligation securities of this state, or any other state or territory of the United States, or the District of Columbia, unconditionally guaranteed as to the principal and interest by such other state or territory of the United States, or the District of Columbia: Provided, That (1) such other state, territory, or the District of Columbia has the power to levy taxes for the payment of the principal and interest of such securities, and (2) at the time of investment such other state, territory, or the District of Columbia is not in default in the payment of any part of the principal or interest owing by it upon any part of its funded indebtedness.

(c) Securities issued by a federal land bank, or by a federal intermediate credit bank, under the act of Congress of July seventeen, one thousand nine hundred sixteen, known as the "Federal Farm Loan Act," as amended or supplemented from time to time, or by the federal home loan bank system, federal national mortgage association, or banks for cooperatives.

(d) Securities issued, assumed or unconditionally guaranteed by the International Bank for Reconstruction and Development, or Tennessee Valley Authority.

(e) Any fixed interest bond, note or debenture of any corporation organized and operating within the United States: Provided, That such corporation shall have a
minimum net worth of fifteen million dollars and its
securities or its parent corporation’s securities are listed
on one or more of the national stock exchanges: Pro-
vided, however, That (1) such corporation has earned a
profit in eight of the preceding ten fiscal years as re-
flected in its statements, and (2) such corporation has not
defaulted in the payment of principal or interest on any
of its outstanding funded indebtedness during its pre-
ceding ten fiscal years, and (3) the bonds, notes or deben-
tures of such corporation to be purchased are rated “AA”
or the equivalent thereof or better than “AA” or the
equivalent thereof by at least two or more nationally
recognized rating services, such as Standard and Poor’s,
Dun & Bradstreet, or Moody’s.

(f) Any security that is secured by a first lien deed
of trust or mortgage on real property situate within
this state, and that is either (1) insured by the federal
housing administration pursuant to provisions of the Na-
tional Housing Act, as amended or supplemented from
time to time, or (2) guaranteed by the veterans admin-
istration pursuant to provisions of Title 38, United States
Code, relating to veterans benefits, as amended or supple-
mented from time to time: Provided, That the board shall
not purchase any such security from anyone other than
a federal housing administration approved mortgagee.
To facilitate and encourage the offering of such securities
to the board for its investment therein, the board shall
have the power and authority to make to any federal
housing administration approved mortgagee, at any time,
an advance written commitment and obligation, binding
upon the board and its funds, for the future purchase of
such securities in such amount or amounts, at such price
or prices, and at such future time or times as the board
may in its discretion deem to be for the best interests of
the fund, and all purchases of such securities shall be
made pursuant to such a commitment and obligation:
Provided, however, That the board shall make no com-
mitment and obligation to purchase any such securities
except in specified amounts of two hundred fifty thou-
sand dollars or more as the aggregate of the unpaid prin-
(g) Promissory notes secured by federal loan insurance on loans made to students pursuing programs of higher education or programs of vocational education pursuant to Title IV Part "B" of the Higher Education Act of 1965, as heretofore or hereafter amended: Provided, That there shall be no investment in any such promissory notes executed by nonresidents of the state of West Virginia unless such nonresidents are enrolled in good standing in a West Virginia institution of higher education or qualified vocational school or have made application to and have been accepted by such institution or vocational school: And provided further, That there shall be no investment in any such promissory notes executed pursuant to loans made prior to the effective date of this section.

CHAPTER 11

(House Bill No. 643—By Mr. Speaker, Mr. Boiarsky, and Mr. Seibert)

[Passed February 8, 1971; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section eleven, article six, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the West Virginia state board of investments and providing that
such board shall not invest more than seventy-five percent of each separate fund placed with it for investment in corporate bonds, notes or debentures.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. WEST VIRGINIA STATE BOARD OF INVESTMENTS.

§12-6-11. Purchase, sale or exchange of securities; restrictions.

1 The board shall not invest more than five percent of each fund placed with it for investment in any bonds, notes or debentures of any one corporation meeting the requirements of subdivision (e) of section nine of this article; nor shall the board invest more than seventy-five percent of each separate fund placed with it for investment in bonds, notes or debentures of corporations meeting the requirements of subdivision (e) of section nine of this article.

10 Securities purchased or held under the provisions of this article may be sold or exchanged for other securities:

Provided, That (1) no security shall be purchased, sold or exchanged without the concurrence of a majority of all members of the board, (2) no security shall be purchased at a price above, nor sold or exchanged at a price below, its prevailing fair market value, (3) no security shall be purchased, sold, or exchanged for the purpose of aiding any individual, firm or corporation by the payment of brokerage commissions or fees thereto, (4) no security shall be received in exchange which does not comply with the requirements of section nine or ten of this article, and (5) the board shall not engage in any arbitrage practices.

CHAPTER 12

(House Bill No. 1101—By Mr. Jones, of Kanawha, and Mrs. Given)

[Passed March 11, 1971; in effect July 1, 1971. Approved by the Governor.]

AN ACT to amend article five, chapter forty-nine of the code
of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section thirteen-a, providing that the prosecuting attorney in counties having a population in excess of two hundred thousand shall represent petitioners in juvenile proceedings; full-time assistants to appear before juvenile court; county court to provide office space for assistants.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. JUVENILE COURTS.

§49-5-13a. Petitioning juvenile court for disposition of suspected delinquents—Prosecuting attorney shall represent petitioner.

1 The prosecuting attorney, in counties having a population in excess of two hundred thousand, shall represent the petitioner in all juvenile proceedings before the court or judge having juvenile jurisdiction in such counties.
2 The prosecuting attorney shall assign one or more full-time assistants for the purpose of representing said petitioners.
3 The county court shall provide office space in or near the juvenile court for the assistant prosecuting attorney.

CHAPTER 13

(House Bill No. 865—By Mr. Speaker, Mr. Biarsky, and Mr. Seibert)

[Passed February 26, 1971; in effect July 1, 1971. Approved by the Governor.]

AN ACT to amend and reenact section eight, article two, chapter fourteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the court of claims and the compensation of the judges thereof and
the number of days each such judge may serve during any one fiscal year.

Be it enacted by the Legislature of West Virginia:

That section eight, 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 of court of claims; expenses.

1 Each judge of the court shall receive one hundred dollars for each day actually served, and actual expenses incurred in the performance of his duties. The number of days served by each judge shall not exceed one hundred in any fiscal year, except by authority of the joint committee on government and finance. Requisitions for compensation and expenses shall be accompanied by sworn and itemized statements, which shall be filed with the auditor and preserved as public records. For the purpose of this section, time served shall include time spent in the hearing of claims, in the consideration of the record, in the preparation of opinions, and in necessary travel.

CHAPTER 14

(House Bill No. 1121—By Mr. Kincaid and Mr. Buck)

[Passed March 13, 1971; in effect July 1, 1971. Approved by the Governor.]

AN ACT finding and declaring certain claims against the state and its agencies to be moral obligations of the state, and directing the auditor to issue warrants for the payment thereof.

Be it enacted by the Legislature of West Virginia:

§1. Finding and declaring certain claims against the department of highways; office of the governor; West Virginia board of regents; department of motor vehicles; department of mental health; department of natural resources; and department of public institutions, to be
moral obligations of the state, and directing payment thereof.

The Legislature has considered the findings of fact and recommendations reported to it by the court of claims concerning various claims against the state and agencies thereof, and in respect to each of the following claims the Legislature adopts those findings of fact as its own, and hereby declares it to be the moral obligation of the state to pay each such claim in the amount specified below, and directs the auditor to issue warrants for the payment thereof out of any fund appropriated and available for the purpose.

(a) Claims against the department of highways:

1. Equitable Gas Company $254.90
2. Mr. and Mrs. H. B. Lewis 50.00
3. Sam Melvin 11.00
4. C. J. Langenfelder & Son, Inc. 191,701.42
5. Harold E. Price 81.24
6. M & M Construction Co. 27,095.75
7. Monongahela Power Co. 189.67
8. Olaf Humphrey 128.24
9. Chesapeake & Ohio Railway 1,297.20
10. Dale E. Olive 1,071.27
11. Mrs. Jessie P. Randall 139.88
12. State Farm Mutual Automobile Insurance Co., assignee to Sarah G. Romans 168.83
13. Frank Fedorka 76.00
14. Lowell C. Shinn 409.87
15. Gerald S. Swiger 423.49
16. Everett and Betty Miller 936.25
17. Jerry K. and Anne B. Caldwell 1,497.00
18. Lemuel L. and Estelle Warden 3,000.00
19. Charleston Concrete Floor Company, Inc. 299.93
20. State Farm Mutual Automobile Insurance Co. 105.46
(21) Esdel B. and Sylvia J. Yost 355.00
(22) Joyce J. Droddy Ayers 10,000.00
(23) Charles E. Talbert 40.17
(24) Robert Lee Holley 56.14
(b) Claim against the office of the governor:
   (1) Pitney-Bowes, Inc. 90.05
(c) Claim against the West Virginia board of regents:
   (1) Helen I. Wotkiewicz 1,258.00
(d) Claim against the department of motor vehicles:
   (1) West Virginia Business Forms, Inc. 249.97
(e) Claim against the department of mental health:
   (1) Betsy Ross Bakeries, Inc. 841.10
(f) Claim against the department of natural resources:
   (1) W. M. McClintic 46.77
(g) Claim against the department of public institutions:
   (1) Cecil Smith, Jr. 3,000.00

The Legislature finds that the above moral obligations and the appropriations made in satisfaction thereof shall be the full compensation for all claimants, and that prior to the payment to any claimant provided for in this bill, the court of claims shall receive a release from said claimant releasing any and all claims for moral obligations arising from the matters considered by the Legislature in the finding of the moral obligations and the making of the appropriations for said claimant. The court of claims shall deliver all releases obtained from claimants to the department against which the claim was allowed.

CHAPTER 15

(House Bill No. 1173—By Mr. Kincaid and Mr. Buck)

[Passed March 13, 1971; in effect July 1, 1971. Approved by the Governor.]

AN ACT finding and declaring certain claims against the state and its agencies to be moral obligations of the state, and
directing the auditor to issue warrants for the payment thereof.

Be it enacted by the Legislature of West Virginia:

§1. Finding and declaring certain claims against the department of mental health; West Virginia board of regents; and department of public institutions, to be moral obligations of the state, and directing payment thereof.

The Legislature has heretofore made findings of fact that the state has received the benefit of the commodities and services rendered by certain claimants herein and has considered claims against the state and agencies thereof which have arisen due to over-expenditures of departmental appropriations by officers of certain state spending units, such claims having been previously considered by the court of claims which also found that the state has received the benefit of the commodities and services rendered by each claimant, but were denied by the court of claims on the purely statutory grounds that to allow such claims would be condoning illegal acts contrary to the laws of the state. The Legislature, pursuant to its findings of fact and also by the adoption of the findings of fact by the court of claims as its own, and, while not condoning such illegal acts, hereby declares it to be the moral obligation of the state to pay each such claim in the amount specified below, and directs the auditor to issue warrants upon receipt of a properly executed requisition supported by an itemized invoice, statement or other satisfactory document as required by chapter twelve, article three, section ten of the code of West Virginia, one thousand nine hundred thirty-one, as amended, for the payment thereof out of any fund appropriated and available for the purpose and hereby directs the attorney general to review the bonds executed by all public officials and employees who are in any way responsible for the state spending units which have overspent departmental appropriations, and where it appears feasible, to institute proper legal proceedings to recover for the state sums equal to the claims specified below, and in instances where the attorney general determines that such legal proceedings are not feasible, to report to the legislative auditor on
or before the beginning of the regular legislative session in the year one thousand nine hundred seventy-two, the reasons why such legal proceedings are not feasible.

(a) Claims against the department of mental health:

(1) Airkem Sales and Service $630.00
(2) Odorite Service and Supply Company $1,673.40
(3) McCormick Office Supplies, Inc. 77.10
(4) Riverside Paper Company, Inc. 178.07
(5) Laird Office Equipment Company 98.83
(6) Guthrie-Morris-Campbell Company 1,813.40
(7) Southern Chemical Company 1,217.80
(8) Tri-State Drug Company 166.36
(9) Copco Papers, Inc. 299.52
(10) Copco Papers, Inc. 224.64
(11) Fry Brothers Company 168.00
(12) Fry Brothers Company 605.00
(13) Union 76-Pure Oil Division 824.94
(14) Vaughan's Termite Control Company 290.00
(15) S. B. Wallace and Company 120.00
(16) Oxford Chemicals 1,155.75
(17) Spencer Business Forms Company, Inc. 175.03
(18) Armour and Company 865.54
(19) Odorite Service & Supply 112.90
(20) Willard C. Starcher, Inc. 70.20
(21) McCormick Office Supply, Inc. 183.52
(22) Goldsmidt-Black, Inc. 269.04
(23) Goldsmidt-Black, Inc. 136.60
(24) Goldsmidt-Black, Inc. 48.00
(25) Mallinckrodt Chemical Works 673.20
(26) Industrious Blind Enterprise 269.40
(27) Appalantic Corporation 12,525.72
(28) Ohio Valley Office Equipment 500.55
(29) Will Ross, Inc. 126.70
| 70 | (30) Noe Office Equipment | 15.55 |
| 71 | (31) The Medical Arts Supply Company, Inc. | 94.96 |
| 72 | (32) Roche Laboratories | 1,466.80 |
| 73 | (33) Raybestos-Manhattan, Inc.-Revolite Division | 390.00 |
| 76 | (34) Accounting Supplies and Systems, Inc. | 25.95 |
| 78 | (35) Bell Lines, Inc. | 64.75 |
| 79 | (36) Economic Laboratories | 29.82 |
| 80 | (37) Harry W. Higgins General Store | 49.20 |
| 81 | (38) Merck Sharp & Dohme | 26.46 |
| 82 | (39) Shouldis Department Store | 472.86 |
| 83 | (40) DuBois Chemicals | 809.06 |
| 84 | (41) Eaton Laboratories | 85.50 |
| 85 | (42) Sandoz-Wander, Inc. | 146.85 |
| 86 | (43) The Crocker-Fels Company | 182.66 |
| 87 | (44) Acme Cotton Products Company, Inc. | 533.12 |
| 89 | (45) William H. Rorer, Inc. | 109.96 |
| 90 | (46) Lederle Laboratories | 264.00 |
| 91 | (47) Scientific Products | 345.89 |
| 92 | (48) Martini Packing Company | 745.53 |
| 93 | (49) Smith, Kline & French Company | 261.32 |
| 94 | (50) A. B. Dick Products Company | 332.15 |
| 95 | (51) Storck Baking Company | 247.60 |
| 96 | (53) Karoll's, Inc. | 1,796.48 |
| 97 | (54) William J. Swearingen | 500.00 |
| 98 | (55) Charles V. Selby, Jr. | 200.00 |
| 99 | (56) Granville H. Lance | 500.00 |
| 100 | (57) K. V. Pathology, Inc. | 1,500.00 |
| 101 | (58) Mt. Clare Provision Company | 2,116.00 |
| 102 | (59) Dowling Pool Company | 33.30 |
| 103 | (60) St. Joseph's Hospital | 13.50 |
| 104 | (61) St. Joseph's Hospital | 88.70 |
| 105 | (62) St. Joseph's Hospital | 527.64 |
### CHAPTER 16

**AN ACT** to amend and reenact section three, article two, chapter one of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, relating to the number of members to which the state is entitled in the House of Representatives of the United States Congress and arranging the counties of the state into districts for the election thereof.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. APPORTIONMENT OF REPRESENTATION.

§1-2-3. Congressional districts.

1 The number of members to which the state is entitled in the House of Representatives of the Congress of the United States shall be apportioned among the several counties of the state, arranged into four congressional districts, numbered as follows:

First District: Brooke, Doddridge, Hancock, Harrison, Marion, Marshall, Ohio, Pleasants, Tyler, Wetzel and Wood.


Third District: Boone, Braxton, Calhoun, Clay, Gilm- mer, Jackson, Kanawha, Lincoln, Mason, Nicholas, Put- nam, Ritchie, Roane and Wirt.


CHAPTER 17

(Senate Bill No. 74—Originating in the Senate Committee on the Judiciary)

[Passed February 8, 1971; 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 two, article fourteen thereof, relating to making amendments to the state constitution.

Be it enacted by the Legislature of West Virginia:

CONSTITUTIONAL IMPROVEMENT AMENDMENT.

§1. Submitting an amendment to the state constitution.

§2. Amendment to be known as the "Constitutional Improvement Amendment"; statement of purpose.

§3. Publication of proposed amendment by governor.

§4. Form of ballot; election.

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

§6. Proclamation of result of election by governor.

§1. Submitting an amendment to the state constitution.

That the question of the ratification or rejection of an amendment to the constitution of the state 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-two, which proposed amendment is that section two, article fourteen of the constitution of the state of West Virginia, be amended to read as follows:

"ARTICLE XIV. AMENDMENTS.

"§2. How amendments are made.

"Any amendment to the Constitution of the State may be proposed in either House of the Legislature at any regular or extraordinary session thereof; and if the same, being read on three several days in each House, be agreed to on its third reading, by two thirds of the members elected thereto, the proposed amendment, with the yeas and nays thereon, shall be entered on the Journals, and it shall be the duty of the Legislature to provide by law for submitting the same to the voters of the State for ratification or rejection, at a special election, or at the next general election thereafter, and cause the same to be published, at least three months before such election in some newspaper in every county in which a newspaper is printed. And if a majority of the qualified voters, voting on the question at the polls held pursuant to such law, ratify the proposed amendment, it shall be
in force from the time of such ratification, as part of
the Constitution of the State. If two or more amend-
ments be submitted at the same time, the vote on the
ratification or rejection shall be taken on each separately,
but an amendment may relate to a single subject or to
related subject matters and may amend or modify as
many articles and as many sections of the Constitution
as may be necessary and appropriate in order to accom-
plish the objectives of the amendment. Whenever one
or more amendments are submitted at a special election,
no other question, issue or matter shall be voted upon
at such special election, and the cost of such special elec-
tion throughout the State shall be paid out of the State
Treasury.”

§2. Amendment to be known as the “Constitutional Improve-
ment Amendment”; statement 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 “Con-
5 stitutional Improvement Amendment,” and the purpose
6 of the proposed amendment is summarized as follows:
7 “To authorize proposed amendments to the West Vir-
8 ginia Constitution to be voted upon by the voters at
9 special elections as well as general elections.”

§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 provi-
8 sions of section three, article three, chapter fifty-nine
9 of the code of West Virginia, one thousand nine hundred
10 thirty-one, as amended, shall in the first instance, if
11 found necessary by him, be paid out of the governor’s
12 contingent fund and be afterwards repaid to such fund
13 by appropriation of the Legislature.
§4. Form of ballot; election.

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

No. 1. Constitutional Improvement Amendment.

☐ For  ☐ Against

The said election on the proposed amendment at each place of voting shall be superintended, conducted and returned, and the result thereof ascertained by the same officers and in the same manner as the election of officers to be voted for at said election, and all the provisions of the law relating to general elections, including all duties to be performed by any officer or board, as far as practicable, and not inconsistent with anything herein contained, shall apply to the election held under the provisions of this act, except when it is hereinafter otherwise provided. The ballots cast on the question of said proposed amendment shall be counted as other ballots cast at said election.

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

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

"We, the undersigned, who acted as commissioners (or canvassers, as the case may be) of the election held at Precinct No. _______, in the district of ______________________, in the county of ______________________, on the _____ day of
10 one thousand nine hundred seventy-two, upon the question of the ratification or rejection of the proposed constitutional amendment, do hereby certify that the result of said election is as follows:
11 "Amendment No. 1. Constitutional Improvement Amendment.
12 "For the amendment ________ votes.
13 "Against the amendment ________ votes.
14 "Given under our hands this ______ day of __________, one thousand nine hundred seventy-two."
15
16 The said two certificates shall correspond with each other in all respects and contain the full and true returns in said election at each place of voting on said question. The said commissioners, or any one of them (or said canvassers or any one of them, as the case may be), shall, within four days, excluding Sunday, after that on which said election was held, deliver one of said certificates to the clerk of the county court of the county, together with the ballots, and the other to the clerk of the circuit court of the county.
17 The said certificates, together with the ballots cast on the question of said proposed amendment, shall be laid before the commissioners of the county court at the courthouse at the same time the ballots, poll books and the certificates of election of the members of the Legislature are laid before them; and as soon as the result of said election in the county upon the question of such ratification or rejection is ascertained, two certificates of such result shall be made out and signed by said commissioners as a board of canvassers, in the form or to the following effect:
18 "We, the board of canvassers of the county of __________, having carefully and impartially examined the returns of the election held in said county, in each district thereof, on the ______ day of November, one thousand nine hundred seventy-two, do certify that the result of the election in said county, on the question of the ratification or rejection of the proposed amendment is as follows:
19 "Amendment No. 1. Constitutional Improvement Amendment."
“For the amendment _______ votes.
Against the amendment _______ votes.
“Given under our hands this ___ day of ________________,
one thousand nine hundred seventy-two.”
One of the certificates shall be filed in the office of the
clerk of the county court, and the other forwarded by
mail to the secretary of state, who shall file and preserve
the same until the day on which the result of said election
in the state is to be ascertained, as hereinafter stated.

§6. Proclamation of result of election by governor.

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

CHAPTER 18

(House Bill No. 1094—By Mr. Steptoe and Mr. Potter)

[Passed March 13, 1971; in effect ninety days from passage. Approved by the
Governor.]

AN ACT to amend and reenact sections sixty-three and sixty-
three-a, article one, chapter thirty-one of the code of West
Virginia, one thousand nine hundred thirty-one, as
amended, relating to the consolidation or merger of do-
mestic corporations and to the consolidation or merger
of a domestic corporation with a foreign corporation.
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. PROVISIONS RELATING TO CORPORATIONS GENERALLY.

§31-1-63. Consolidation or merger of domestic corporations.

§31-1-63a. Consolidation or merger of domestic with foreign corporations.

§31-1-63. Consolidation or merger of domestic corporations.

Any two or more corporations organized under the provisions of this chapter, or existing under the laws of this state, for the purpose of carrying on any kind of business, may consolidate or merge into a single corporation which may be any one of such constituent corporations or a new corporation to be formed by means of such consolidation or merger as shall be specified in the agreement hereinafter required. The directors, or a majority of them, of such corporations as desire to consolidate or merge, may enter into an agreement signed by them and under the corporate seals of the respective corporations, which agreement shall state: (1) The terms and conditions of the consolidation or merger; (2) the mode of carrying the same into effect; (3) such other provisions or facts required or permitted by this article to be stated in an agreement of incorporation as can be stated in the case of a consolidation or merger, stated in such altered form as the circumstances of the case require; (4) the manner of converting the shares of each of the constituent corporations into shares or other securities of the corporation surviving or resulting from the consolidation or merger and, if any shares of any of the constituent corporations are not to be converted solely into shares or other securities of the surviving or resulting corporation, the amount of cash or securities of any other corporation, or other property, which the holders of such shares are to receive in exchange for such shares or upon their conversion and the surrender of the certificates evidencing such shares, which cash
and securities of any other corporation, or other property,
may be in addition to or in lieu of the shares or other
securities of the surviving or resulting corporation; and
(5) such other details or provisions as are deemed de-
sirable, including, without limiting the generality of the
foregoing, a provision for the payment of cash in lieu
of the issuance of fractional shares of the surviving or
resulting corporation or of any other corporation the
securities of which are to be received in the consolidation
or merger.

Such agreement shall be submitted to the stockholders
of each constituent corporation, at a meeting thereof,
called separately for the purpose of taking the same into
consideration; of the time, place and object of which
meeting due notice shall be given by publication as a
Class II legal advertisement in compliance with the pro-
visions of article three, chapter fifty-nine of this code,
and the publication area for such publication shall be the
county wherein each such corporation either has its
principal office or conducts its business. A copy of such
notice shall also be mailed to the last known post-office
address of each stockholder of each such corporation, at
least twenty days prior to the date of such meeting: Pro-
vided, That in the consolidation or merger of banking
institutions as defined in this chapter, in the case of
emergency, and upon the order of the commissioner of
banking, the meeting may be held upon at least twelve
hours' notice sent by mail or telegraph to the last known
post-office address of each stockholder, and without pub-
lication.

At any such stockholders' meeting of any corporation
said agreement shall be considered and a vote by ballot, in
person or by proxy, taken for the adoption or rejection
of the same, each share entitling the holder thereof to
one vote; and if the votes of stockholders of each such
corporation representing two thirds of the total number
of shares of its capital stock then issued and outstand-
ing shall be for the adoption of such agreement, then
that fact shall be certified on such agreement by the
secretary of each such corporation under the seal there-
of; and the agreement so adopted and certified shall be signed by the president and secretary of each of such corporations under the corporate seals thereof and acknowledged by the president of each of such corporations before any officer authorized by the laws of this state to take acknowledgments of deeds to be the respective act, deed and agreement of each of such corporations, and the agreement so certified and acknowledged shall be filed in the office of the secretary of state, and shall thence be taken and deemed to be the agreement and act of consolidation or merger of the said corporations; and a copy of such agreement and act of consolidation or merger, duly certified by the secretary of state under the seal of his office, shall also be recorded in the offices of the clerks of the county courts of the counties of this state in which the respective corporations so consolidating or merging shall have their original certificates of incorporation recorded, if any, or if any of the corporations shall have been specially created by a public act of the Legislature, then such agreement shall be recorded in the county where such corporation shall have had its principal place of business, if any, and such record, or a certified copy thereof, shall be evidence of the agreement and act of consolidation or merger of such corporations, and of the observance and performance of all acts and conditions necessary to have been observed and performed precedent to such consolidation or merger.

On such date as shall be specified in such agreement, or if no effective date is specified in such agreement, on the date such certified copy of said agreement is issued by the secretary of state, for all purposes of the laws of this state, the separate existence of all the constituent corporations, parties to said agreement, or of all such constituent corporations except the one into which the other or others of such constituent corporations have been merged, or consolidated, as the case may be, shall cease and the constituent corporations shall become a new corporation, or be merged into one of such corporations, as the case may be, in accordance with the provisions of said agreement, possessing all the rights, privileges,
powers, franchises and trust and fiduciary duties, powers
and obligations, as well of a public as of a private nature,
and being subject to all the restrictions, disabilities and
duties of each of such corporations so consolidated or
merged, and all and singular the rights, privileges,
powers, franchises, and trust and fiduciary rights, powers,
duties and obligations, of each of said corporations; and
all property, real, personal and mixed, and all debts
due to any of said constituent corporations on whatever
account, as well for stock subscriptions as all other things
in action or belonging to each of such corporations shall
be vested in the corporation resulting from or sur-
viving such consolidation or merger; and all property,
rights, privileges, powers and franchises, and all and
every other interest shall be thereafter as effectually
the property of the resulting or surviving corporation as
they were of the several and respective constituent
corporations; and the title to any real estate, whether
vested by deed or otherwise, under the laws of this
state, vested in any of such constituent corporations, shall
not revert or be in any way impaired by reason of this
chapter: Provided, That all rights of creditors and all
liens upon any property of any of said constituent corpo-
rations shall be preserved unimpaired, and all debts, lia-
bilities and duties of the respective constituent corpo-
rations shall thenceforth attach to said resulting or sur-
viving corporation, and may be enforced against it to
to the same extent as if said debts, liabilities and duties
had been incurred or contracted by it.

§31-1-63a. Consolidation or merger of domestic with foreign
corporations.

Any one or more corporations organized under the
provisions of this chapter, or existing under the laws of
this state, may consolidate or merge with one or more
other corporations organized under the laws of any other
state or states of the United States of America, if the
laws under which said other corporation or corporations
are formed shall permit such consolidation or merger.
The constituent corporations may merge into a single
corporation, which may be any one of said constituent
corporations, or they may consolidate to form a new
corporation, which may be a corporation of the state of
incorporation of any one of said constituent corporations
as shall be specified in the agreement hereinafter re-
quired. All the constituent corporations shall enter into
an agreement of consolidation or merger, which agree-
ment shall state: (1) The terms and conditions of the
consolidation or merger; (2) the mode of carrying the
same into effect; (3) the manner of converting the shares
of each of the constituent corporations into shares or
other securities of the corporation surviving or resulting
from the consolidation or merger and, if any shares of
any of the constituent corporations are not to be con-
verted solely into shares or other securities of the sur-
viving or resulting corporation, the amount of cash or
securities of any other corporation, or other property,
which the holders of such shares are to receive in ex-
change for such shares or upon their conversion and the
surrender of the certificates evidencing such shares, which
cash or securities of any other corporation, or other prop-
erty, may be in addition to or in lieu of the shares or
other securities of the surviving or resulting corporation;
and (4) such other details or provisions as are deemed
desirable, including, without limiting the generality of
the foregoing, a provision for the payment of cash in lieu
of the issuance of fractional shares of the surviving or
resulting corporation or of any other corporation the
securities of which are to be received in the consolidation
or merger. There shall also be set forth in the agree-
ment such other matters or provisions as shall be required
to be set forth in certificates of incorporation by the
laws of the state which are stated in the agreement to
be the laws that shall govern the surviving or resulting
corporation and that can be stated in the case of a merger
or consolidation. Said agreement shall be authorized,
adopted, approved, signed and acknowledged by each of
said constituent corporations in accordance with the laws
under which it is formed and, in the case of a West
Virginia corporation, in the manner provided in section
sixty-three of this article. The agreement so authorized,
adopted, approved, signed and acknowledged shall be filed in the office of the secretary of state and a copy thereof, certified by the secretary of state, shall be recorded as provided in section sixty-three of this article with respect to the consolidation or merger of corporations of this state; and said agreement shall become effective on such date as shall be specified in such agreement, or if no effective date is specified in such agreement, on the date such certified copy of said agreement is issued by the secretary of state, and shall thenceforth be taken and deemed to be the agreement and act of consolidation or merger of said constituent corporations for all purposes of the laws of this state.

Wherever the laws of another state than West Virginia are selected as the laws which shall govern the merged or consolidated corporation, such surviving corporation shall comply with the provisions of section seventy-nine, of this article, as last amended, before it holds property or transacts business in this state, and thereafter shall comply with the laws of this state with respect to foreign corporations holding property or transacting business in this state.

CHAPTER 19

(House Bill No. 533—By Mr. Steptoe)

[Passed February 22, 1971; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections twenty-three, twenty-five and forty-two, article six, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section forty-three, all relating to building and loan associations, default by borrowers, contingent reserves, rights and powers of associations, and their authority to make certain loans and investments.
Be it enacted by the Legislature of West Virginia:

That sections twenty-three, twenty-five and forty-two, article six, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article be further amended by adding thereto a new section, designated section forty-three, all to read as follows:

ARTICLE 6. BUILDING AND LOAN ASSOCIATIONS.

§31-6-23. Default by borrower; acceleration of maturity; realizing on security.

§31-6-25. Amount and purpose of contingent reserve; undivided profit account.

§31-6-42. State associations to have same rights, powers, etc., as federal associations as to savings accounts.

§31-6-43. Certain building and loan associations may make loans and investments permitted to be made by federal savings and loan associations doing business in this state.

§31-6-23. Default by borrower; acceleration of maturity; realizing on security.

1 Whenever any borrower on a direct reduction basis shall
2 fail or neglect to pay his contracted monthly install-
3 ments, or whenever any borrower on a loan secured by
4 shares shall fail or neglect to pay dues, interest, premium,
5 or fines, as provided by the bylaws or the terms of his
6 obligation, bond, mortgage, or deed of trust or other
7 evidence of indebtedness, for a period of thirty days, or
8 shall be in default in the performance of any of the ob-
9 ligations imposed upon him thereby, then the whole of
10 said indebtedness shall become and be immediately due
11 and payable at the option of the association. Any shares
12 pledged as security for such loan may be declared can-
13 celled and their withdrawal value at the time of said
14 declaration applied as a payment on the loan, and such
15 shares shall revert to the association. The balance or
16 the amount due, with interest and premium, fines, and
17 other charges thereon, may be enforced by proceedings
18 on the defaulting borrower's security according to law.

§31-6-25. Amount and purpose of contingent reserve; undivided profit account.

1 Every building and loan association shall set aside out
2 of its earnings a contingent reserve. Until such time as
the contingent reserve equals ten percent of the assets
of the association, the association shall, at each dividend
date, transfer to such contingent reserve a credit equiv-
alent to at least five percent of the net earnings of the
association for the period since the previous dividend
date. The preceding requirement shall not apply to any
building and loan association which is an insured in-
stitution and whose accounts are insured by the federal
savings and loan insurance corporation. Such contingent
reserve shall be used only for the purpose of making
good to the association losses suffered on loans and ex-
penses incurred in the collection of loans which may not
be charged against or collected from the borrower. Every
building and loan association may also carry an undi-
vided profit account as provided in the constitution and
bylaws of the association. The contingent reserve and
the undivided profit account shall be invested as other
funds of the association.

§31-6-42. State associations to have same rights, powers, etc.,
as federal associations as to savings accounts.
(a) Building and loan associations organized and exist-
ing under the laws of the state of West Virginia are
hereby authorized to accept savings accounts and to
issue to each holder of its savings accounts an account
book, or a separate certificate, evidencing the ownership
of the account and the interest of the holder thereof in
the capital of such association, and to pay dividends and
distribute earnings thereon, all upon the same terms
and conditions and subject to the same limitations and
restrictions as were provided on the second day of Jan-
uary, one thousand nine hundred seventy-one, for fed-
eral savings and loan associations whose home offices are
located in this state, under the “Rules and Regulations
for the Federal Savings and Loan System” issued by
the federal home loan bank board, and under the “Rules
and Regulations for Insurance of Accounts,” issued by
the federal savings and loan insurance corporation: Pro-
vided, That whenever and wherever amendments to the
charter or bylaws of said federal savings and loan asso-
ciations were at such date permitted or required, as a
prerequisite to the exercise of any such right, power,
privilege or benefit, such amendments may be adopted
to the charter, constitution and bylaws of building and
loan associations organized under the laws of this state
and: Provided, however, That whenever and wherever
action by the members or by the board of directors of
said federal savings and loan associations was at said
date permitted or required as a prerequisite of the exer-
cise of such right, power, privilege or benefit, such ac-
tion may be taken by the shareholders or by the board
of directors, as the case may be, of building and loan
associations organized under the laws of this state. Noth-
ing contained in this section shall be construed to au-
thorize building and loan associations to accept savings
deposits as distinguished from savings accounts.

(b) This statute shall not grant to any building and
loan association organized under the laws of the state of
West Virginia, permission or authority to install or main-
tain any branch or to engage in business at any place
other than its principal office in this state.

§31-6-43. Certain building and loan associations may make loans
and investments permitted to be made by federal
savings and loan associations doing business in
this state.

In addition to all other powers conferred by this ar-
ticle, building and loan associations whose accounts are
insured by the federal savings and loan insurance corpo-
reration are authorized and empowered to make any loan or
investment permitted to be made by any federal savings
and loan association doing business in this state on the
second day of January, one thousand nine hundred
seventy-one: Provided, That all such loans and invest-
ments shall be made upon the same terms and conditions
and subject to the same restrictions and limitations as
were at said date prescribed for loans and investments
made by such a federal savings and loan association
doing business in this state under the provisions of the
Homeowners Loan Act of one thousand nine hundred
thirty-three, as amended, and the “Rules and Regulations
for The Federal Savings and Loan System,” as amended,
promulgated by the federal home loan bank board:
Provided, however, That (a) whenever and wherever authorization by charter or bylaws of such a federal savings and loan association was at said date required by said law or said rules and regulations as a prerequisite to the making of any such loan or investment, such authorization in the case of a building and loan association may be granted by its charter or constitution and bylaws, as the case may be, or by amendments thereto heretofore or hereafter duly adopted; (b) whenever or wherever authorization of the members of such a federal savings and loan association was at said date required by said law or by said rules and regulations as a prerequisite to the making of any such loan or investment, such authorization may in the case of a building and loan association be granted by its shareholders; and (c) whenever and wherever approval by the board of directors of such a federal savings and loan association was at said date required by said law or by said rules and regulations as a prerequisite to the making of any such loan or investment, such approval may in the case of a building and loan association be granted by the board of directors of such building and loan association.

Building and loan associations are authorized and empowered to amend their charters, constitutions and bylaws to provide for the making of all loans and investments permitted by this section and their shareholders and boards of directors are authorized to take any and all actions required to authorize the making of such loans and investments.

CHAPTER 20

(House Bill No. 627—By Mr. Myles and Mr. Halbritter)

[Passed February 22, 1971; In effect ninety days from passage. Approved by the Governor.]
sand nine hundred thirty-one, as amended, relating to industrial loan companies holding obligations secured by real estate.

Be it enacted by the Legislature of West Virginia:

That section seven, article seven, 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 7. INDUSTRIAL LOAN COMPANIES.

§31-7-7. Limitations on powers.

1 A corporation under the provisions of this article shall not:

2 (a) Make any loan under the provisions of this article for a longer period than two years from the date thereof, except upon express authorization of the board of directors of such company;

3 (b) Hold at any one time the primary obligation or obligations of any one person, firm or corporation, for more than ten percent of the amount of the paid-up capital and surplus of such industrial loan company;

4 (c) Hold at any one time the obligation or obligations of persons, firms or corporations purchased from any person, firm or corporation in excess of twenty percent of the aggregate paid-up capital and surplus of such industrial loan company;

5 (d) Make any loan or discount on the security of its own capital stock (controlling and voting stock, if there be more than one class), unless such security or purchase shall be necessary to prevent loss upon a debt previously contracted in good faith. Stock so purchased or acquired shall be sold at public or private sale or otherwise disposed of within ninety days from the time of its purchase or acquisition;

6 (e) Have outstanding at any time its evidences or certificates of indebtedness, in an aggregate sum in excess of ten times the aggregate amount of its paid-up capital (voting and controlling stock) and surplus;

7 (f) Deposit any of its funds with any other moneyed corporation unless such corporation has been designated
as such depository by a vote of the majority of the board
of directors;
(g) Pledge or hypothecate any of its securities to
any creditor, except that such companies shall have the
power to rediscount or to borrow money from any source
in addition to selling its evidences or certificates of in-
debtedness, but the aggregate amount of such redis-
counting and borrowing shall at no time exceed the sum
total of the capital, surplus and reserve funds of such
company, and the security so pledged therefor shall not
exceed two times the amount borrowed and redis-
counted;
(h) Pay any fees, bonuses, commissions, rewards, or
other consideration to any person, firm or corporation
for the privilege of using any plan of operation, scheme
or device for the organization or carrying on of business
under this article, or the use of any name, trademark
or copyright to be so used; nor shall any corporation
under this article enter into any contract for such pur-
pose or purposes, or for the purpose of giving to or vest-
ing in any other corporation any power or authority
over the organization or management of corporations
under this article.

CHAPTER 21

(Senate Bill No. 412—By Mr. Carrigan)

[Passed March 2, 1971; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article ten, chapter
thirty-one; and sections six and eight, article two, chapter
thirty-one-a of the code of West Virginia, one thou-
sand nine hundred thirty-one, as amended, all relating
to supervision by and reports to commissioner of banking,
examinations, fees, penalty for failure to report, revoca-
tion of certificates of approval, commissioner's examina-
tions of financial institution, reports, records, communica-
tions from commissioner to institution, examination by
federal agency in lieu of commissioner's examination, fees, costs and expenses of examinations, and collection.

Be it enacted by the Legislature of West Virginia:

That section six, article ten, chapter thirty-one; and sections six and eight, article two, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

Chapter

31A. Banks and Banking.

CHAPTER 31. CORPORATIONS.

ARTICLE 10. CREDIT UNIONS.

§31-10-6. Supervision by and reports to commissioner of banking; examinations; fees; penalty for failure to report; revocation of certificates of approval.

1 Credit unions shall be under the supervision of the commissioner of banking. They shall report to him at least semiannually on or before the first day of January and the first day of July of each calendar year, on blanks supplied by the said commissioner for that purpose. Additional reports may be required by said commissioner.

2 Credit unions shall be examined annually by the commissioner of banking, except that, if a credit union has assets of less than twenty-five thousand dollars, he may accept the audit of a certified public accountant in place of such examination. The fee for examination of credit unions not subject to the above exception will be charged on the basis of sixty-five dollars per day per examiner.

3 For failure to file reports when due, unless excused for cause, the credit union shall pay to the treasurer of the state five dollars for each day of its delinquency. If the commissioner of banking determines that a credit union is violating any provision of this article, or is insolvent, said commissioner may serve notice on such credit union of his intention to revoke the certificate of approval. If, for a period of fifteen days after such notice, such violation continues, the commissioner of
banking may revoke such certificate and take possession of the business and property of such credit union and maintain possession until such time as he shall permit it to continue business or its affairs are finally liquidated. He may take similar action if such report remains in arrears for more than fifteen days.

CHAPTER 31A. BANKS AND BANKING.

ARTICLE 2. DEPARTMENT OF BANKING.

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

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

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

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

The commissioner of banking, in his discretion, may (a) accept a copy of a reasonably current examination of any banking institution made by the federal deposit insurance corporation or the federal reserve system in lieu of an examination of such banking institution required or authorized to be made by the laws of this state, and the commissioner may furnish to the federal deposit insurance corporation or the federal reserve system or to any official or examiner thereof, any copy or copies of the commissioner's examinations of and reports on such banking institutions, (b) accept a copy of a reasonable current examination of any building and loan association made by the federal home loan bank board, a federal home loan bank or the federal savings and loan insurance corporation, in lieu of an examination of such building and loan association required or authorized to be made by the laws of this state, and the commissioner may furnish to the federal home loan bank or any of its member banks or to the federal savings and loan insurance corporation or any official or examiner thereof, any copy or copies of the commissioner's examination and reports on such building and loan associations; but nothing herein shall be construed to limit the duty and responsibility of banking institutions or building and loan associations to comply with all provisions of law relating to examinations and reports, nor to limit the powers and authority of the commissioner of banking with reference to examinations and reports under existing laws.
§31A-2-8. Fees, costs and expenses of examinations; collection.

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

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

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

(d) The commissioner of banking may maintain an action for the recovery of all such fees, costs and expenses in any court of competent jurisdiction.

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CHAPTER 22

(Senate Bill No. 344—By Mr. Carrigan)

[Passed March 12, 1971; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article fifteen, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section seven-a; and to amend and reenact sections four, six, seven, eight, nine and thirteen of said article fifteen, chapter thirty-one of said code, all relating to additional powers given to the West Virginia industrial
development authority authorizing the granting of loans to industrial development agencies for industrial subdivision project improvements; defining industrial subdivision project, industrial subdivision project improvements and cost of industrial subdivision project improvements; such loans not to be in excess of fifty percent of the cost or estimated cost of such improvements; prescribing the conditions to be met by loan applicants and the requirements to be made by the authority on account of such loans; prescribing the security and protection for such loans on behalf of the authority; permitting the deferment of principal and interest on industrial subdivision project improvement loans for a period not in excess of five years; limiting in any single fiscal year the aggregate amount which can be loaned to all applicants for industrial subdivision project improvements; providing that, when an agency of the federal government has made a loan or participated in a loan for, or has constructed industrial subdivision project improvements, the state will not alter or limit the powers of the authority in a manner inconsistent with the performance of any agreements between the authority and such agency; permitting loans to industrial development agencies for industrial development projects not in excess of fifty percent of the cost or estimated cost of such project in instances where federal agencies may not participate in such loans because of relocation restrictions; providing for the assignment by industrial development agencies of deeds of trust, notes and other security to the authority on loans to such agencies for industrial development projects; and elimination of the term “bond” as security on loans for industrial development projects and the substitution, in lieu thereof, the term “negotiable promissory note”.

Be it enacted by the Legislature of West Virginia:

That article fifteen, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section seven-a; and that sections four, six, seven, eight, nine and thirteen of said article fifteen, chapter thirty-one of said code be amended and reenacted, all to read as follows:
ARTICLE 15. WEST VIRGINIA INDUSTRIAL DEVELOPMENT AUTHORITY.

§31-15-7. Loans to industrial development agencies for industrial development projects.
§31-15-7a. Loans to industrial development agencies for industrial subdivision project improvements.
§31-15-8. Loan application requirements; hearings upon applications.
§31-15-13. Agreement with federal agencies not to alter or limit powers of authority.


The following terms, whenever used or referred to in this article, shall have the following meanings:

(a) The term "authority" shall mean the public corporation created by this article.

(b) The term "board" shall mean the governing body of the authority.

(c) The term "county" shall mean any county of this state.

(d) The term "critical economic area" shall mean the area encompassing any municipality or group of municipalities, county, group of counties or region of the state reasonably defined by the authority wherein critical conditions of unemployment, economic depression, widespread reliance on public assistance and unemployment compensation are found to exist by the authority. Prior to determination and designation of any area of the state as a critical economic area, the authority shall conduct such investigations of the area and of the records and statistical indices of the department of employment security, department of labor, department of natural resources, department of welfare and other applicable state agencies, as well as the declarations and statistics of any federal agencies as shall be necessary to establish the existence of the above conditions in such area. No area of the state shall be designated a critical economic area without such investigations and findings having been first made and certified to the permanent records of the authority.
(e) The term "federal agency" shall mean and include the United States of America, the president of the United States of America, and any department of, or corporation, agency or instrumentality heretofore or hereafter created, designated or established by, the United States of America.

(f) The term "government" shall mean the state and federal governments, or any political subdivision, agency or instrumentality, corporate or otherwise, of either of them.

(g) The term "industrial development agency" shall mean any incorporated organization, foundation, association or agency, regardless of the particular name, and to whose members or shareholders no profit shall inure, which shall have as its primary function the promotion, encouragement and development of industrial, manufacturing and tourist facility enterprises in a critical economic area.

(h) The term "industrial development fund" shall mean the account created by section nine of this article.

(i) The term "industrial development project" shall mean any site, structure, facility or undertaking comprising or being connected with or being a part of an industrial, manufacturing or tourist facility enterprise established or to be established by an industrial development agency in a critical economic area.

(j) The term "industrial subdivision project" shall mean any tract of land located within a critical economic area, together with utilities, services and access roads, the clear, unencumbered and marketable legal title to which tract of land is held by an industrial development agency for sale or lease for an industrial development project.

(k) The terms "industrial subdivision project improvements" and "improvements to industrial subdivision projects" shall embrace any or all of the following: Site preparation and grading, installation of utilities and sewage disposal facilities upon, and preparation of access roads to, an industrial subdivision project.
(l) The term "municipality" shall mean any city or town of the state.

(m) The term "responsible buyer" shall mean any person, partnership, firm, company or corporation organized for profit deemed by the authority, after proper investigation, to be financially responsible to assume all obligations prescribed by the authority in the acquisition of an industrial development project from an industrial development agency, and in the operation of an industrial or manufacturing enterprise therein or thereon.

(n) The term "responsible tenant" shall mean any person, partnership, firm, company or corporation organized for profit deemed by the authority, after proper investigation, to be financially responsible to assume all rental and all other obligations prescribed by the authority in the leasing of an industrial development project and in the operation of an industrial or manufacturing enterprise therein or thereon.

(o) The words "cost of establishing an industrial development project" shall embrace any or all of the following: The cost of construction, the cost of all lands, property rights, easements, and in cases of demonstrated need, machinery and equipment, if said demonstrated need shall have been shown to the satisfaction of the authority, which are deemed necessary for such construction, financing charges, interest prior to and during construction, cost of engineering and legal expense, plans, specifications, surveys, estimates of costs and other expenses necessary or incident to determining the feasibility or practicability of any industrial development project, together with such other expenses as may be necessary or incidental to the financing and the construction of the industrial development project and the placing of the same in operation.

(p) The words "cost of industrial subdivision project improvements" shall embrace any or all of the following: Construction cost of site preparation and grading, construction cost of utilities, sewage disposal facilities and access roads; cost of acquiring easements and property rights in other lands, in connection therewith, financing
108 charges, interest prior to and during the construction
109 of such improvements, cost of engineering and legal
110 services, preparation of plans, specifications, surveys and
111 estimates of costs, together with such other expenses as
112 may be reasonably necessary or incidental to the financing
113 and the construction of improvements to industrial sub-
114 division projects.


1 The authority, as a public corporation and governmental
2 instrumentality exercising public powers of the state,
3 is hereby granted and shall have and may exercise all
4 powers necessary or appropriate to carry out and ef-
5 fectuate the purposes of this article, including the follow-
6 ing powers, in addition to others herein granted:
7
8 (a) To make determination and designation of critical
9 economic areas.
10
11 (b) To cooperate with industrial development agencies
12 in the efforts to promote the expansion of industrial
13 and manufacturing activity in critical economic areas.
14
15 (c) To determine, upon proper application of industrial
16 development agencies, whether the declared public pur-
17 pose of this article has been accomplished or will be
18 accomplished by the establishment by such industrial
19 development agencies of an industrial development project
20 in a critical economic area.
21
22 (d) To conduct examinations and investigations and
23 to hear testimony and take proof, under oath or affirma-
24 tion, at public or private hearings, on any matter ma-
25 terial for its information and necessary to the determina-
26 tion and designation of critical economic areas and the
27 establishment of industrial development projects therein.
28
29 (e) To issue subpoenas requiring the attendance of
30 witnesses and the production of books and papers perti-
31 nent to any hearing before such authority, or before one
32 or more members of the authority appointed by it to
33 conduct such hearings.
34
35 (f) To apply to any court, having territorial juris-
36 diction of the offense, to have punished for contempt any
witness who refuses to obey a subpoena, or who refuses to be sworn or affirmed or to testify, or who is guilty of any contempt after summons to appear.

(g) To authorize any member or members of such authority to conduct hearings and to administer oaths, take affidavits and issue subpoenas.

(h) To make, upon proper application of industrial development agencies, loans to such industrial development agencies of moneys held in the industrial development fund for industrial development projects and industrial subdivision project improvements, in critical economic areas, and to provide for the repayment and redeposit of such allocations and loans in the manner hereinafter provided.

(i) To have existence for a term of fifty years.

(j) To sue and be sued, implead and be impleaded, complain and defend in all courts.

(k) To adopt, use and alter at will a corporate seal.

(l) To make bylaws for the management and regulation of its affairs.

(m) To appoint officers, agents, employees and servants.

(n) To make contracts of every name and nature and to execute all instruments necessary or convenient for carrying on its business.

(o) Without limitation of the foregoing, accept grants from and enter into contracts or other transactions with any federal agency.

(p) To take title by foreclosure to any industrial development project or any industrial subdivision project where such acquisition is necessary to protect any loan previously made by the authority on account of such industrial development project or improvements to such industrial subdivision project and to sell, transfer and convey any such industrial development project or industrial subdivision project to any responsible buyer; in the event such sale, transfer and conveyance cannot be effected with reasonable promptness, the authority may, in order to minimize financial losses and sustain
employment, lease such industrial development project
or industrial subdivision project to a responsible tenant
or tenants; the authority shall not lease industrial de-
velopment projects or industrial subdivision projects ex-
cept under the conditions and for the purposes cited
in this section: Provided, That the authority shall have
no power at any time to borrow money or in any manner
to pledge the credit or taxing power of the state or any
of its municipalities or political subdivisions, nor shall
any of its obligations be deemed to be obligations of
the state or any of its political subdivisions.

(q) To participate in any reorganization proceeding
pending pursuant to Title II of the United States Bank-
ruptcy Act or in any receivership proceeding had in a
state or United States court for the purpose of reorganiza-
tion or liquidation of a responsible buyer or responsible
tenant. It may file its claim against any such responsible
buyer or responsible tenant in any of the foregoing pro-
ceedings, vote upon any question pending therein which
requires the approval of the creditors participating in
any reorganization proceeding or receivership, exchange
any evidence of said indebtedness for any property, secur-
ity or evidence of indebtedness offered as a part of the
reorganization of said responsible buyer or responsible
tenant or of any other entity formed to acquire the assets
thereof, and may compromise or reduce the amount of
any indebtedness owing to it as a part of any such
reorganization.

§31-15-7. Loans to industrial development agencies for in-
dustrial development projects.

1 When it has been determined by the authority upon
2 application of an industrial development agency and upon
3 hearing thereon in the manner hereinafter provided that
4 the establishment of a particular industrial development
5 project (of such industrial development agency) in a
6 critical economic area has accomplished or will accom-
7 plish the public purposes of this article, the authority
8 may contract to loan such industrial development agency
9 an amount not in excess of thirty percent (or, in the
10 event that agencies of the federal government may not
participate in such loan because of relocation restrictions, an amount not in excess of fifty percent) of the cost, or estimated cost, of such industrial development project, as established or to be established, subject, however, to the following conditions:

(A) Industrial development projects to be established.

1. The authority shall have first determined that the industrial development agency holds funds in an amount equal to, or property of a value equal to, not less than twenty percent of the estimated cost of establishing the industrial development project, which funds or property are available for and shall be applied to the establishment of such project; and

2. The authority shall have also determined that the industrial development agency has obtained from other independent and responsible sources, such as banks and insurance companies or otherwise, a firm commitment for all other funds, over and above the loan of the authority and such funds or property as the industrial development agency may hold, necessary for payment of all the estimated cost of establishing the industrial development project, and that the sum of all these funds is adequate to insure completion and operation of the industrial development project.

(B) Industrial development projects established with initial authority loan participation.

1. The authority shall have first determined that the industrial development agency has expended funds in an amount equal to, or has applied property of a value equal to, not less than twenty percent of the cost of establishing the industrial development project; and

2. The authority shall have also determined that the industrial development agency obtained from other independent and responsible sources, such as banks and insurance companies or otherwise, other funds necessary for payment of all the cost of establishing the industrial development project, and that the industrial development agency participation and these funds, has been adequate to insure completion and operation of the in-
Provided, That the proceeds of any loan made by the authority to the industrial development agency pursuant to this subdivision (B) shall be used only for the establishment of additional industrial development projects in furtherance of the public purposes of this article.

Any such loan of the authority shall be for such period of time and shall bear interest at such rate as shall be determined by the authority and shall be secured by the negotiable promissory note of the industrial development agency and by deed of trust on the industrial development project for which such loan was made, or by assignment of any deed of trust and negotiable promissory note and other security taken by the industrial development agency on the industrial development project, such deed of trust and note, assignment of deed of trust, and note and other security to be second and subordinate only to the deed of trust securing the first lien obligation issued to secure the commitment of funds from the aforesaid independent and responsible sources and used in the financing of the industrial development project.

Moneys so loaned by the authority to industrial development agencies shall be withdrawn from the industrial development fund and paid over to the industrial development agency in such manner as shall be provided and prescribed by the rules and regulations of the authority.

All payments of interest on said loans and the principal thereof shall be deposited by the authority in the industrial development fund.

Loans by the authority to an industrial development agency for an industrial development project shall be made only in the manner and to the extent as in this section provided, except, however, in those instances wherein an agency of the federal government participates in the financing of an industrial development project by loan, grant, or otherwise, or in those instances where any bank, insurance company, lending agency, or combination thereof, participates in any industrial develop-
ment project in an amount equal to sixty percent of the
cost of the project. Where any bank, insurance company,
lending agency, or combination thereof, participates in
an amount equal to sixty percent of the cost of the indus-
trial development project, the authority may adjust the
required ratios of financial participation by the local indus-
trial development agency to an amount not less than
ten percent of the estimated cost of establishing the indus-
trial development project. When any federal agency
participates, the authority may adjust the required ratios
of financial participation by the industrial development
agency, the source of independent funds and the authority
in such manner as to insure the maximum benefit avail-
able to the industrial development agency, the authority,
or both, by the participation of the federal agency. When
ratios are adjusted in the manner set forth above, no
such adjustment shall be made which shall cause the
authority to grant a loan to the industrial development
agency in excess of thirty percent (or in the event that
agencies of the federal government may not participate
in such loan because of relocation restrictions, an amount
not in excess of fifty percent) of the cost, or estimated
cost of the industrial development project.

Where any federal agency participating in the financing
of an industrial development project is not permitted to
take as security for such participation a deed of trust or
assignment of deed of trust and other security the lien
of which is junior to the deed of trust or assignment of
deed of trust and other security of the authority, the
authority shall, in such instances, be authorized to take
as security for its loan to the industrial development
agency a deed of trust or assignment of deed of trust
and other security junior in lien to that of the federal
agency.

§31-15-7a. Loans to industrial development agencies for in-
dustrial subdivision project improvements.

When it has been determined by the authority upon
application of an industrial development agency and
upon hearing thereon in the manner hereinafter provided
that the improvement by such industrial development
agency of a particular industrial subdivision project, owned by such industrial development agency, which industrial subdivision project shall be located in a critical economic area, will accomplish the public purposes of this article, the authority may contract to loan such industrial development agency an amount not in excess of fifty percent of the cost, or estimated cost, of such industrial subdivision project improvements, subject, however, to the following conditions:

1. The authority shall have determined that the industrial development agency has obtained from other independent and responsible sources, such as banks and insurance companies or otherwise, a firm commitment for all other funds, over and above the loan of the authority, necessary for payment of all the estimated cost of the industrial subdivision project improvements, and that the sum of all these funds is adequate to insure completion of the improvements to the industrial subdivision project; and

2. The authority shall have also determined that the industrial development agency has clear, unencumbered and marketable legal title to the industrial subdivision project to be improved; and

3. The industrial development agency shall covenant in writing to and with the authority that as long as any loan made by the authority to the industrial development agency for the improvement of any industrial subdivision project shall remain unpaid, such industrial subdivision project, or any portion thereof, shall not be sold, leased or otherwise encumbered except for the purpose of establishing an industrial development project or projects on such land by the industrial development agency.

Any such loan of the authority shall be for such period of time and shall bear interest at such rate as shall be determined by the authority and shall be secured by the negotiable, promissory note of the industrial development agency and by deed of trust on the industrial subdivision project for which such loan was made, such deed of trust to be second and subordinate only to the deed of trust securing the first lien obligation issued
to secure the commitment of funds from the aforesaid independent and responsible sources and used in the financing of the industrial subdivision project improvements.

In its discretion the authority may, in a proper case, defer the payment of principal and interest, or principal only, or interest only, upon any loan made by the authority to an industrial development agency for the improvement of any industrial subdivision project, such deferment to be for such period as may be determined by the authority, not to exceed five years from the date of the deed of trust securing the authority for the loan, and, in the event that such industrial subdivision project, or any portion thereof, is sold or leased by the industrial development agency prior to the expiration of said five-year period, all deferred installments of the principal of the loan accrued on the date of such sale or lease, or the proportionate part of such deferred principal which the sold or leased portion of the industrial subdivision project shall bear to the total acreage thereof, together with all unpaid interest accrued thereon on the date of such sale or lease shall, at the option of the authority, be and become immediately due and payable or, become subject to renegotiation by either increasing or decreasing the number of and the amount of each installment of principal and interest, without, however, effecting any change in the amount of principal of the original loan or the rate of interest as originally fixed by the authority in said deed of trust and note.

The authority may not lend in any single fiscal year, upon the aggregate of all of the applications made for loans for improvements to industrial subdivision projects, a total sum in excess of two hundred fifty thousand dollars.

Moneys so loaned by the authority to industrial development agencies shall be withdrawn from the industrial development fund and paid over to the industrial development agency in such manner as shall be provided and prescribed by the rules and regulations of the authority.
All payments of interest on said loans and the principal thereof shall be deposited by the authority in the industrial development fund.

Where any federal agency participating in the financing of improvements to industrial subdivision projects is not permitted to take as security for such participation a deed of trust the lien of which is junior to the deed of trust of the authority, the authority shall, in such instances, be authorized to take as security for its loan to the industrial development agency a deed of trust junior in lien to that of the federal agency.

§31-15-8. Loan application requirements; hearings upon applications.

Prior to the loaning of any funds to an industrial development agency for an industrial development project or for industrial subdivision project improvements, in a critical economic area, the authority shall receive from such industrial development agency a loan application in form adopted by the authority.

1. If the loan application is for an industrial development project the form shall contain, without being limited to, the following provisions:

(a) A general description of the industrial development project and a general description of the industrial or manufacturing enterprise for which the industrial development project has been or is to be established.

(b) A legal description of all real estate necessary for the industrial development project.

(c) Such plans and other documents as may be required to show the type, structure and general character of the industrial development project.

(d) A general description of the type, classes and number of employees employed or to be employed in the operation of the industrial development project.

(e) Cost or estimates of cost of establishing the industrial development project.

(f) A general description and statement of value of any property, real or personal, of the industrial develop-
ment agency applied or to be applied to the establishment
of the industrial project.

(g) A statement of cash funds previously applied, or
then held by the industrial development agency which
are available for and are to be applied, to the estab-
ishment of the industrial development project.

(h) Evidence of the arrangement made by the in-
dustrial development agency for the financing of all cost
of the industrial development project over and above
the participation of the industrial agency.

(i) A general description of the responsible tenant to
which the industrial development agency has leased or
will lease the industrial development project or of the
responsible buyer to which the industrial development
agency has sold or will sell the project.

(j) A general description of the form of lease or sales
agreement entered into or to be entered into by and
between the industrial development agency and its re-
sponsible tenant or responsible buyer.

(k) Evidence that the establishment of the industrial
development project will not cause the removal of an
industrial or manufacturing plant or facility from one
area of the state to another area of the state.

2. If the loan application is for industrial subdivision
project improvements the form shall contain, without
being limited to, the following provisions:

(a) A general description of the industrial subdivision
project and a general description of its adaptability to
industrial or manufacturing purposes, including the kinds
or types of industrial development project which may
be established thereon upon completion of the improve-
ments for which the loan is requested.

(b) A legal description of the industrial subdivision
project.

(c) Such plans and other documents as may be re-
quired to show the type, structure and general character
of the proposed improvements to the industrial sub-
division project.
(d) Cost or estimates of cost of the proposed improvements to the industrial subdivision project.

(e) Evidence of the arrangement made by the industrial development agency for the financing of all cost of the industrial subdivision project improvements over and above the participation by the authority.

(f) Evidence that the establishment of an industrial development project upon the industrial subdivision project to be improved will not cause the removal of an industrial or manufacturing plant or facility from one area of the state to another area of the state.

The board of the authority shall hold such hearings and examinations as to each loan application received as shall be necessary to determine whether the public purposes of this article will be accomplished by the granting of loans within such applications requested.

When the board shall have determined said facts favorable as to any application, it is authorized and empowered, having due regard to the promotion of the public purposes herein declared, to grant a loan to an industrial development agency in the manner and to the extent as in this article provided.


There is hereby created a special account in the treasury of the state to be known as the industrial development fund to which shall be accredited any appropriation made by the Legislature to the authority, as well as such other deposits as in this section provided.

As often as may be necessary, the authority shall requisition from the industrial development fund such amounts as may be necessary to provide adequate funds for the payment of the administration of the purposes of this article. And whenever the authority determines it to be necessary to purchase, at a foreclosure sale, any industrial development project or industrial subdivision project pursuant to subdivision (p), section six of this article, in order to protect any loan theretofore made by the authority, the authority may requisition from the industrial development fund such amount as may be necessary to pay
the purchase price thereof, notwithstanding the fact that
the purchase price, in the instance of the foreclosure sale
of any industrial development project, may exceed thirty
percent (or in the event that no agency of the federal
government participated in the loan because of relocation
restrictions, fifty percent) of the original cost of the in-
dustrial development project, or in the instance of the
foreclosure sale of any industrial subdivision project, the
purchase price may exceed fifty percent of the original
cost of the industrial subdivision project improvements.

The authority shall also requisition, from time to time,
from the industrial development fund such amounts as
shall be allocated and appropriated by the authority for
loans to industrial development agencies for industrial
development projects and for industrial subdivision proj-
ect improvements. When and as the amounts so allocated
and appropriated by the authority as loans to industrial
development agencies are repaid to the authority pursuant
to the terms of the mortgages and other agreements made
and entered into by the authority, the authority shall
pay such amounts into the industrial development fund,
it being the intent of this article that the industrial de-
velopment fund shall operate as a revolving fund where-
by all appropriations and payments made thereto may be
applied and reapplied to the purposes of this article.

Whenever the authority shall determine that the bal-
ance in the industrial development fund is in excess of
the immediate requirements for loan purposes it may
request that such excess funds be invested until needed
for loan purposes, in which case such excess funds shall
be invested in the manner provided for the investment
of other temporary state funds. All interest earned on
the money invested pursuant to this section shall be
credited to the industrial development fund.

At any time that the authority shall determine that
funds held for the credit of the industrial development
fund are in excess of the amount needed by the authority
to carry out the purposes of this article, the authority
shall take such action as shall be required to release
such excess from the industrial development fund and
transfer the same to the general fund of the state treasury.

§31-15-13. Agreement with federal agencies not to alter or
limit powers of authority.

1 The state does hereby pledge to and agree with the
2 United States and any other federal agency that in the
3 event any federal agency shall construct or loan or con-
4 tribute any funds for the construction, extension, im-
5 provement or enlargement of any industrial development
6 project, or any portion thereof, or construct improve-
7 ments to any industrial subdivision project or loan or
8 contribute any funds for the construction, extension or
9 enlargement of improvements to any industrial subdivi-
10 sion project, or any portion thereof, the state will not
11 alter or limit the rights and powers of the authority in
12 any manner which would be inconsistent with the due
13 performance of any agreements between the authority
14 and any such federal agency, and the authority shall con-
15 tinue to have and may exercise all powers herein granted,
16 so long as the same shall be necessary or desirable for the
17 carrying out of the purposes of this article.

CHAPTER 23

(Com. Sub. for House Bill No. 674—Originating in the House Committee
on Political Subdivisions)

(Passed March 13, 1971; in effect July 1, 1971. Approved by the Governor.)

AN ACT to repeal sections four, five-(one) through five-(fifty-
four), article one; and section nineteen, article five, chapter
seven of the code of West Virginia, one thousand nine
hundred thirty-one, as amended; to repeal sections five,
five-(one) through five-(fifty-five) and ten, article two,
chapter eleven of said code; to amend and reenact sections
one and five, article one, chapter seven of said code; to
amend and reenact article seven, chapter seven of said
code; and to amend and reenact section two, article two,
chapter eleven of said code, all relating generally to county government, county courts and officers and their deputies, assistants and employees; relating to the composition, powers and duties of county courts; setting forth legislative findings and a declaration of policy; establishing county in-service training programs; requiring participation in such programs as additional duties of county officials; classifying counties on the basis of assessed valuations for the purpose of determining compensation of elected county officials; establishing minimum and maximum compensation limits for elected county officials; relating to the compensation of county commissioners and the compensation of other elected county officials, county deputies, assistants and employees; prohibiting outside employment of certain elected officials; providing percentage limitations with respect to compensation in excess of minimum; relating to the county budget; relating to assistant prosecuting attorneys, and their appointment and compensation; relating to the appointment of an attorney to prosecute cases; relating to the procedure for the payment of compensation of county officials, deputies, assistants and employees; relating to affidavits as to compensation; relating to illegal orders for compensation; providing prohibitions; relating to the allowance for the expenses of sheriffs and prosecuting attorneys; relating to the training of sheriffs and their deputies; relating to the payment of training expenses by the county court; relating to the mileage allowance for county officials and their deputies, assistants and employees and reports in connection therewith; relating to annual reports by county officers; relating to the source of compensation paid judges of courts of limited jurisdiction; providing criminal penalties; providing a severability clause; and relating to the deputies, assistants and employees of assessors.

Be it enacted by the Legislature of West Virginia:

That sections four, five-(one) through five-(fifty-four), article one; and section nineteen, article five, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that sections five, five-(one)
through five-(fifty-five) and ten, article two, chapter eleven of said code be repealed; that sections one and five, article one, chapter seven of said code be amended and reenacted; that article seven, chapter seven of said code be amended and reenacted; and that section two, article two, chapter eleven of said code be amended and reenacted, all to read as follows:

Chapter

7. **County Courts and Officers.**

11. **Taxation.**

**CHAPTER 7. COUNTY COURTS AND OFFICERS.**

Article

1. **County Courts Generally.**

7. **Training Programs for County Employees, etc.; Compensation of Elected County Officials; County Assistants, Deputies and Employees, Their Number and Compensation.**

**ARTICLE 1. COUNTY COURTS GENERALLY.**

§7-1-1. County courts corporations; how constituted; election of president.

§7-1-5. Powers and duties of county commissioners.

§7-1-1. County courts corporations; how constituted; election of president.

1 The county court or tribunal in lieu thereof of every county within the state of West Virginia shall be a corporation by the name of "The county court of ___________ county", by which name it may sue and be sued, plead and be impleaded, and contract and be contracted with. Every county court shall consist of three commissioners as provided in section twenty-two, article eight of the constitution of the state of West Virginia, any two of whom shall constitute a quorum for the transaction of business, except in the case of any county which, in accordance with section twenty-nine, article eight of the constitution of the state of West Virginia or any earlier counterpart thereof, has applied to the Legislature of West Virginia for it to reform, alter or modify its county court and the Legislature by its act, in accordance therewith, and with the assent of the voters of the county voting at an election, has effected the requested reformation, alteration or modification, in which case the provisions of the act of the Legislature creating a tribunal in lieu of the county court shall apply concerning the number of county
court commissioners and the number of commissioners required to constitute a quorum. Each county court shall annually, at its first session in each year, or as soon thereafter as practicable, elect one of its commissioners as president of the county court.

Throughout this chapter the term "county court" or any reference to a county court shall include all tribunals created in lieu of the county court.

§7-1-5. Powers and duties of county commissioners.

The county commissioners of each county shall exercise the following powers and perform the following duties for their respective counties:

1. At least quarterly visit and inspect institutions within their county for housing and caring for the poor and investigate the conditions of the poor within their county and not housed within such institutions.

2. Arrange for the feeding and care of county jail prisoners and at least quarterly inspect the jails.

3. At least quarterly visit and inspect detention homes for children within their county.

4. Visit and inspect bridges and bridge approaches under their control.

5. Provide for and have general supervision over the repair and maintenance of the county courthouse, jails, houses for the poor and any other county property and prevent their deterioration.

6. Supervise and control the purchase, erection, maintenance and operation of any airport owned by the county or operated by the county court.

7. Supervise and control the purchase of furniture, fixtures, equipment and supplies for their county.

8. Attend the annual meeting of county assessors, and any other meetings called by the state tax commissioner on matters pertaining to the work of the county assessors and the county courts acting as boards of review and equalization; review and equalize the assessments made by the assessors, inspect and review the lists of property, both real and personal, made up by the assessor and his deputies for taxable purposes, and point
31 out to the assessor any property, real and personal, 
32 which the county assessors may have overlooked or 
33 omitted to place on the tax lists; and call to the attention 
34 of the assessor all real estate and personal property 
35 belonging to churches, lodges, schools or other charitable 
36 institutions which may have been overlooked or omitted 
37 by the assessor or his deputies in making up his lists of 
38 property for entry on the land and personal property 
39 books. 
40 (9) Purchase, lease, rent, control, supervise, inspect, 
41 maintain and erect public parks, playgrounds and recrea-
42 tional facilities and purchase, lease or rent equipment 
43 therefor; and employ qualified recreational directors and 
44 personnel to operate those parks, playgrounds and recrea-
45 tional facilities. 
46 (10) Construct and operate Four-H camps on county 
47 property. 
48 (11) Operate stone quarries and sand deposits on 
49 property owned or leased by the county. 
50 (12) Construct or aid in constructing or equipping 
51 civilian defense buildings on sites approved by the de-
52 partment of civil and defense mobilization. 
53 (13) Operate dog pounds for the county and the mu-
54 nicipalities of such county. 
55 (14) Purchase, lease, rent, control, supervise, inspect, 
56 maintain and erect public markets; purchase, rent or 
57 lease equipment therefor; and employ qualified personnel 
58 to operate those public markets. 
59 (15) Purchase, lease, rent, control, supervise, inspect, 
60 maintain and erect county mental and physical health 
61 clinics and engage in any program designed for the bet-
62 terment of the mental and physical well-being of the 
63 residents of their county and to cooperate with any pub-
64 lic or private agency for these purposes. 
65 (16) Construct fallout shelters and aid individuals, 
66 by furnishing to them available information, to construct 
67 fallout shelters. 
68 (17) Survey all abandoned and dilapidated buildings 
69 or structures within the county and prepare an inventory 
70 thereof which inventory shall be made available to any
71 agency of the state or federal government or to local
72 governmental agencies upon request.
73 (18) Establish and participate in regional councils.
74 (19) Supervise and manage county fiscal affairs and
75 business.
76 In addition to exercising the powers and performing
77 the duties aforementioned, the county commissioners of
78 each county may exercise any other powers and may
79 perform any other duties that are reasonably and neces-
80 sarily implied in the full and proper exercise of the
81 powers and duties conferred upon county commissioners
82 and county courts by the constitution of the state of
83 West Virginia and by general law.

ARTICLE 7. TRAINING PROGRAMS FOR COUNTY EMPLOYEES,
ETC.; COMPENSATION OF ELECTED COUNTY
OFFICIALS; COUNTY ASSISTANTS, DEPUTIES
AND EMPLOYEES, THEIR NUMBER AND COM-
PENSATION.

§7-7-1. Legislative findings and declaration of policy.
§7-7-2. Establishment of county in-service training programs; further
additional duties for prosecuting attorney in any county in
excess of two hundred thousand.
§7-7-3. Classification of counties for purpose of determining compensa-
tion of elected county officials.
§7-7-4. Minimum and maximum compensation limits of elected county
officials for each class of county.
§7-7-5. Compensation of county commissioners.
§7-7-6. Compensation of all elected county officials except county com-
missioners.
§7-7-7. County assistants, deputies and employees; their number and
compensation; county budget.
§7-7-8. Assistant prosecuting attorneys; appointment and compensation;
when court may appoint attorney to prosecute.
§7-7-9. Procedure for payment of compensation.
§7-7-10. Affidavits acknowledging receipt of compensation.
§7-7-11. Illegal orders for compensation.
§7-7-12. Sharing compensation prohibited.
§7-7-13. Allowance for expenses of sheriff.
§7-7-14. Training of sheriffs and deputies; payment of expenses thereof
by county court.
§7-7-15. Allowance for expenses of prosecuting attorney.
§7-7-16. Mileage allowance for county officials, their assistants, deputies
and employees.
§7-7-17. Annual reports by county officers of expenditures for assistants,
deputies and employees.
§7-7-18. Source of compensation paid judges of courts of limited juris-
diction.
§7-7-19. Penalties.
§7-7-20. Severability.
§7-7-1. Legislative findings and declaration of policy.

1 The Legislature hereby finds and declares (1) that the ever increasing demands upon the counties for additional and improved services and the rapid changes in the science of government and technological changes make it necessary to provide training programs for elected county officials and their assistants and employees; (2) that such training programs will do much to improve the processes of local government; (3) that the present system of providing compensation for these offices is antiquated and not conducive to attracting and holding the best qualified people in government service; and (4) that it is in the interest of the public to adopt the provisions as hereinafter set forth for the effective operation of county government.

§7-7-2. Establishment of county in-service training programs; further additional duties for prosecuting attorney in any county in excess of two hundred thousand.

1 There is hereby established county in-service training programs as hereinafter set forth.

3 The attorney general is hereby authorized and directed to establish such in-service training programs as in his opinion will do most to assist the prosecuting attorneys in the performance of their duties. The attorney general is authorized to accept any federal aid which may be made available or any financial assistance which may be available from any private nonprofit organization for the purposes of this section. The prosecuting attorney in any county having a population in excess of two hundred thousand shall also discharge the additional duties imposed upon him by the provisions of section thirteen-a, article five, chapter forty-nine of this code.

15 The state tax commissioner is hereby authorized and directed to establish such in-service training programs for county commissioners, county clerks, circuit clerks, assessors, sheriffs and their assistants and employees as in his opinion will do most to modernize and improve the services of their respective offices. The state tax commissioner is authorized to accept any federal aid which
Ch. 23] COUNTY COURTS AND COUNTY OFFICERS

may be made available or any financial assistance which
may be available from any private nonprofit organization
for the purpose of this article.

Each of the county officials mentioned in this section,
and, at his option, one or more of his assistants, deputies
and employees, shall participate in the programs estab-
lished under this section.

The county court is authorized and directed to expend
funds for the purpose of reimbursing such officials and/or
employees for the actual amount expended by them for
food, lodging and registration while in attendance at
meetings called by the attorney general or the tax com-
missioner for the purpose of this section, not to exceed
thirty-five dollars per day, with mileage not to exceed
the rate of ten cents per mile to be computed according
to the distance by the nearest practicable route for travel
to and from such meetings.

§7-7-3. Classification of counties for purpose of determining
compensation of elected county officials.

For the purpose of determining the compensation of
elected county officials, the counties of the state of West
Virginia are hereby grouped into seven classes based
on their assessed valuation of property, all classes. These
seven classes and the minimum and maximum valu-
ation of property, all classes, established to determine
the classification of each county are as follows:

<table>
<thead>
<tr>
<th>Class</th>
<th>Minimum Assessed Valuation of Property, All Classes</th>
<th>Maximum Assessed Valuation of Property, All Classes</th>
</tr>
</thead>
<tbody>
<tr>
<td>I</td>
<td>$450,000,000</td>
<td>No limit</td>
</tr>
<tr>
<td>II</td>
<td>$200,000,000</td>
<td>$449,999,999</td>
</tr>
<tr>
<td>III</td>
<td>$100,000,000</td>
<td>$199,999,999</td>
</tr>
<tr>
<td>IV</td>
<td>$ 50,000,000</td>
<td>$ 99,999,999</td>
</tr>
<tr>
<td>V</td>
<td>$ 25,000,000</td>
<td>$ 49,999,999</td>
</tr>
<tr>
<td>VI</td>
<td>$ 15,000,000</td>
<td>$ 24,999,999</td>
</tr>
<tr>
<td>VII</td>
<td>$ 0</td>
<td>$ 14,999,999</td>
</tr>
</tbody>
</table>

The assessed valuation of property, all classes, that
shall be used as the base to determine the class of a
county shall be the assessed valuation of property, all classes, of the county as certified by the county assessor, state auditor and county clerk prior to March twenty-ninth of each year.

Prior to March twenty-ninth of each year, the county court of each county shall determine the class of the county based upon the assessed valuation of property, all classes, of the county, as certified by the county assessor, state auditor and county clerk in accordance with the table of classes hereinabove set forth. If the county court determines that such assessed valuation is within the minimum and maximum limits of a class above or below those of the classification then current, it shall record the new classification of the county with the state auditor and state tax commissioner and record its action on its county court record. If a county court fails to record a new classification or fails to determine a new classification, the classification of the county for the current fiscal year shall be and remain its classification for the next fiscal year following except as provided in the next succeeding paragraph.

The classification of each county for the next fiscal year shall be subject to review by the state tax commissioner. He shall determine if the classification of each county is correct based on the final assessed valuation of property, all classes, certified to him by the county assessor, state auditor and county clerk. If the state tax commissioner finds that a county is incorrectly classified he shall notify the county court of that county promptly of his finding and in any case shall notify the county court prior to June thirtieth of that current fiscal year. Any county court so notified shall correct its classification immediately and make any necessary corrections in the salaries of its elected county officials for the next fiscal year.

Notwithstanding any other provision of this chapter, no salary of any member of a county court, sheriff, county clerk, circuit clerk, assessor, prosecuting attorney, or other public officer whose salary is governed by this chapter, shall be reduced during the term for which such public officer is serving.
§7-7-4. Minimum and maximum compensation limits of elected county officials for each class of county.

1. For the purpose of determining the compensation to be paid to the elected county officials of each county, the following minimum and maximum compensation limits for each county office by class are hereby established and shall be used by each county court in determining the compensation of each of their county officials including compensation of members of the county court:

<table>
<thead>
<tr>
<th>Class</th>
<th>County Court</th>
<th>Sheriff</th>
<th>County Clerk</th>
</tr>
</thead>
<tbody>
<tr>
<td>I</td>
<td>$9,600-12,800</td>
<td>$9,000-12,000</td>
<td>$13,800-18,400</td>
</tr>
<tr>
<td>II</td>
<td>$6,000-9,000</td>
<td>$7,800-11,700</td>
<td>$10,000-15,000</td>
</tr>
<tr>
<td>III</td>
<td>$4,400-6,600</td>
<td>$7,800-11,700</td>
<td>$8,000-12,000</td>
</tr>
<tr>
<td>IV</td>
<td>$2,800-4,200</td>
<td>$6,600-9,900</td>
<td>$6,000-9,900</td>
</tr>
<tr>
<td>V</td>
<td>$1,600-2,400</td>
<td>$4,800-7,200</td>
<td>$4,800-7,200</td>
</tr>
<tr>
<td>VI</td>
<td>$1,400-2,100</td>
<td>$4,400-6,600</td>
<td>$4,400-6,600</td>
</tr>
<tr>
<td>VII</td>
<td>$600-900</td>
<td>$3,600-5,400</td>
<td>$2,400-3,600</td>
</tr>
</tbody>
</table>

2. When the classification of a county is changed as provided in this article, the compensation of each elected county official of that county for each fiscal year thereafter shall be set within the minimum and maximum compensation limits established for each elected county official in that class until the classification again changes.

§7-7-5. Compensation of county commissioners.

1. (a) Every county commissioner who attends any session of the county court on which he serves shall receive two dollars per day for every day he attends, which
shall be paid out of the county treasury, as provided for in section twenty-three, article eight of the constitution of the state of West Virginia.

(b) In addition to the payment for services in court as described in subsection (a) of this section, all county commissioners shall be paid compensation out of the county treasury for performing the duties specified in this chapter and elsewhere in the code. The compensation shall be determined by each county court for its own members. The compensation of a county court member shall never be fixed in an amount less than the minimum limit or more than the maximum limit in effect for the class in which that county is for that fiscal year. The compensation shall be reasonable and proper, and due consideration shall be given to the duties, responsibilities and the work required of the individual members of each county court: Provided, however, That as to any county having a tribunal in lieu of a county court, the county commissioners of such county may be paid less than the minimum compensation limits of the county court for the particular class of such county.

(c) Compensation for all county court members shall be fixed by order of the county court before March twenty-ninth of each year and shall take effect on the first day of July following and shall be in effect throughout that fiscal year. Each county court shall enter its order upon its county court record.

(d) The compensation of all members of each county court under subsection (b) of this section shall be the same for any given fiscal year regardless of any given member's tenure or term of office.

§7-7-6. Compensation of all elected county officials except county commissioners.

The county court of each county shall determine the compensation to be paid to the county clerk, circuit clerk, joint clerk of the county and circuit court, if any, sheriff, county assessor and prosecuting attorney for its county. The compensation of an elected county official shall never be fixed in an amount less than the minimum limit or
more than the maximum limit in effect for the class in which that county is for the fiscal year involved. The compensation shall be reasonable and proper and due consideration shall be given to the duties, responsibilities and the work required of these elected county officials:

Provided, That any county clerk, circuit clerk, joint clerk of the county and circuit court, if any, county assessor, sheriff and prosecuting attorney in a Class I county shall devote full time to his public duties to the exclusion of any other employment, and any county clerk, circuit clerk, joint clerk of the county and circuit court, if any, county assessor, sheriff and prosecuting attorney in a Class II county receiving at least eighty percent of the maximum compensation shall devote full time to his public duties to the exclusion of any other employment.

If a county court for any fiscal year fixes the compensation of its members or of any other elected official of such county in any amount in excess of the minimum compensation limit in effect for such county court or such other elected official for the class in which the county is for that fiscal year, then such county court shall fix the compensation of all other elected officials in that county for such fiscal year so that the compensation of such officials will be the same percentage above the minimum as the compensation of the members of such county court or such other official is above the minimum:

Provided, however, That in the case of a county that has a joint clerk of the county and circuit court, the compensation of the joint clerk shall be fixed in an amount not more than fifty percent higher than the compensation that would be fixed for the county clerk of the county if it had separate offices of county clerk and circuit clerk.

Compensation for the county clerk, circuit clerk, joint clerk of the county and circuit court, if any, sheriff, county assessor and prosecuting attorney shall be fixed by order of the county court before March twenty-ninth of each year and shall take effect on the first day of July following and shall remain in effect throughout that fiscal year.

Each county court shall enter its order upon its county court record.
§7-7-7. County assistants, deputies and employees; their number and compensation; county budget.

The county clerk, circuit clerk, joint clerk of the county and circuit court, if any, sheriff, county assessor and prosecuting attorney, by and with the advice and consent of the county court, may appoint and employ to assist them in the discharge of their official duties for and during their respective terms of office assistants, deputies and employees.

The county clerk, circuit clerk, joint clerk of the county and circuit court, if any, sheriff, county assessor and prosecuting attorney shall, prior to March second of each year, file with the county court a detailed request for appropriations for anticipated or expected expenditures for their respective offices, including the compensation for their assistants, deputies and employees, for the ensuing fiscal year.

The county court shall, prior to March twenty-ninth of each year by order fix the total amount of money to be expended by the county for the ensuing fiscal year, which amount shall include the compensation of county assistants, deputies and employees. Each county court shall enter its order upon its county court record.

The county clerk, circuit clerk, joint clerk of the county and circuit court, if any, sheriff, county assessor and prosecuting attorney shall then fix the compensation of their assistants, deputies and employees based on the total amount of money designated for expenditure by their respective offices by the county court, and the amount so expended shall not exceed the total expenditure designated by the county court for each office.

The county officials, in fixing the individual compensation of their assistants, deputies and employees, and the county court in fixing the total amount of money to be expended by the county, shall give due consideration to the duties, responsibilities and work required of the assistants, deputies and employees and their compensation shall be reasonable and proper.
After the county court has fixed the total amount of money to be expended by the county for the ensuing fiscal year and after each county official has fixed the compensation of each of his assistants, deputies and employees, as provided in this section, each county official shall file prior to June thirtieth, with the clerk of the county court a budget statement for the ensuing fiscal year setting forth the name, or the position designation if then vacant, of each of his assistants, deputies and employees, the period of time for which each is employed, or to be employed if the position is then vacant, and his monthly or semimonthly compensation.

All budget statements required to be filed by this section shall be verified by an affidavit by the county official making them. Among other things contained in the affidavit shall be the statement that the amounts shown therein are the amounts actually paid or intended to be paid to the assistants, deputies and employees without rebate, and without any agreement, understanding or expectation that any part thereof shall be repaid to him, and that, prior to the time the affidavit is made, nothing has been paid or promised him on that account, and that if he shall thereafter receive any money, or thing of value, on account thereof, he will account for and pay the same to the county. Until the statements required by this section have been filed, no allowance or payments shall be made to any county official or his assistants, deputies and employees.

Each county official named in this section shall have the authority to discharge any of his assistants, deputies or employees by filing with the clerk of the county court a discharge statement specifying the discharge action.

§7-7-8. Assistant prosecuting attorneys; appointment and compensation; when court may appoint attorney to prosecute.

The prosecuting attorney of each county may, in accordance with and limited by the provisions of section seven of this article, appoint practicing attorneys to assist him in the discharge of his official duties during his term of office. Any attorney so appointed shall be classified
as an assistant prosecuting attorney and shall take the same oath and may perform the same duties as his principal. Each assistant shall serve at the will and pleasure of his principal and may be removed from office by the circuit court of the county in which he is appointed for any cause for which his principal might be removed.

If, in any case, the prosecuting attorney and his assistants are unable to act, or if in the opinion of the court it would be improper for him or his assistants to act, the court shall appoint some competent practicing attorney to act in that case. The court shall certify to the county court the performance of that service when completed and recommend to the county court a reasonable compensation for the attorney for his service, and the compensation, when allowed by the county court, shall be paid out of the county treasury. No provision of this section shall be construed to prohibit the employment by any person of a practicing attorney to assist in the prosecution of any person or corporation charged with a crime.

The compensation to be paid to an assistant prosecuting attorney shall include compensation provided by law for any services he renders as attorney for any administrative board or officer of his county. No assistant prosecuting attorney shall serve as attorney for any other political subdivision of this state.

§7-7-9. Procedure for payment of compensation.

The compensation of the county clerk, circuit clerk, joint clerk of the county and circuit court, if any, sheriff, county assessor, prosecuting attorney, and their assistants, deputies and employees shall be paid monthly or semi-monthly by the county court, which compensation shall be paid out of the county treasury in the manner prescribed by law.

The county court, after the filing of the budget statement specified in section seven of this article, may, by order of record, authorize and order a draft on the county treasurer, payable out of the general county fund, to be drawn in favor of the county official, assistant, deputy
or employee named in this statement, in payment of the compensation to which the person is entitled.

The draft shall not be issued to the county official, assistant, deputy or employee until the proper county official has filed a detailed monthly or semimonthly statement with the county treasurer and has filed with the county clerk a duplicate copy of the monthly or semimonthly statement, together with a receipt from the county treasurer, showing that the person to be paid has paid into the county treasury all moneys belonging to the county that have been collected by him during that pay period as shown by the monthly or semimonthly statement.

When the order for the draft has been entered of record, the president and clerk of the county court shall be authorized to issue and approve by their signature the draft.

§7-7-10. Affidavits acknowledging receipt of compensation.

At the end of each fiscal year, each county official, assistant, deputy and employee shall sign and submit to the clerk of the county court an affidavit which shall be in the following form:

No. __ __ __ __ __ __ __ __ __ __, 19__
Name ______________________________________
Position or job title __________________________ County________________
Description of services rendered:
(Describe service and specify period [dates] of service)

I hereby certify that I have rendered the services herein stated, that I have received the full compensation to which I was entitled for those services rendered for my own use and benefit, and that I have not paid, deposited, assigned, or contracted to pay, deposit or assign, any part of my full compensation for the use of any other person, or in any way, directly or indirectly, paid or given, or contracted to pay or give, any reward or compensation for my position or job or the emoluments thereof to any other person.

(Signed) _________________________________
If the services to the county of a county official, assistant, deputy or employee terminate before the end of a fiscal year, the official, assistant, deputy or employee shall, at the time his services end, sign and submit the above affidavit to the clerk of the county court.

All affidavits submitted shall be filed and preserved by the clerk of the county court.

§7-7-11. Illegal orders for compensation.

If any clerk shall issue and deliver a draft to any county clerk, circuit clerk, joint clerk of the county and circuit court, if any, sheriff, county assessor, prosecuting attorney, or any of their assistants, deputies or employees, in payment of their compensation, without all the applicable requirements of this article being complied with, the draft so issued and delivered shall be illegal and invalid. The clerk and the sureties on his bond shall be liable to the county court of his county for the payment thereof.

§7-7-12. Sharing compensation prohibited.

No county official shall receive or be paid, directly or indirectly, any part of the compensation of any assistant, deputy or employee, or any fee or reward for appointing him to his position. No member of a county court shall receive or be paid, directly or indirectly, any part of the compensation of any other county officer named in this article, or of any county assistant, deputy or employee. If any county commissioner or county official violates the provisions of this section, he shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than five hundred dollars, or imprisoned in the county jail not more than one year, or both fined and imprisoned. Any county commissioner or county official so convicted shall forfeit his office.

§7-7-13. Allowance for expenses of sheriff.

The county court of every county having a population of thirty thousand or less as determined by the latest official census available which, as provided in section two-a, article eight of this chapter, has directed the
sheriff as jailer to feed prisoners shall, in addition to his compensation, allow to the sheriff for keeping and feeding each prisoner, other than federal prisoners or prisoners held under civil process as provided by law, one dollar and twenty-five cents per day for each prisoner.

The limitation per day shall not include cost of personal service, bed or bedding, soaps and disinfectants and items of like kind, the cost of all of which shall be paid out of the allowance fixed by the county court under the provisions of present law.

All supplies of whatever kind for keeping and feeding prisoners shall be purchased upon the requisition of the sheriff under rules and regulations prescribed by the county court. At the end of each month the sheriff shall file with the county court a detailed statement showing the name of each prisoner, date of commitment and date of discharge, the number of days in jail, and shall also file an itemized statement showing each purchase and the cost thereof for keeping and feeding prisoners.

The county court of every county shall allow the actual and necessary expenses incurred or expended by the sheriff in the discharge of his duties, including, but not limited to those incurred in arresting, pursuing or transporting persons accused or convicted of crimes and offenses; in the cost of law enforcement and safety equipment; in conveying or transporting a prisoner from and to jail to participate in court proceedings, and in conveying or transferring any person to or from any state institution where he may be committed from his county, where by law the sheriff is authorized to convey or transfer the person. The county court shall allow the actual and necessary expenses incurred or expended in serving summonses, notices or other official papers in connection with the sheriff's office.

Every sheriff shall file monthly, under oath, a full and accurate account of all the actual and necessary expenses incurred by him, his deputies, assistants and employees in the performance and discharge of their official duties supported by verified accounts before reimbursement thereof shall be allowed by the county.
§7-7-14. Training of sheriffs and deputies; payment of expenses thereof by county court.

The county court of each county is authorized, at its discretion, to expend from the general county fund, upon request and requisition by the sheriff of the county, the necessary and proper travel expenses, per diem allowance of not less than three dollars fifty cents per day and tuition expenses for the training of the sheriff and his deputies of the county in the performance of their duties, as sheriff and deputy, at any training school or academy available therefor located in this state.

§7-7-15. Allowance for expenses of prosecuting attorney.

In addition to his compensation, the prosecuting attorney and his assistants shall be reimbursed for actual traveling expenses within the state in the performance of their official duties, and when out of the state for the purpose of taking depositions in cases in which other counsel is not employed by the court under section one, article three, chapter sixty-two of this code, which expenses shall be duly itemized and verified, and shall, if found correct, be allowed by the county court and be paid monthly out of the general county fund.

§7-7-16. Mileage allowance for county officials, their assistants, deputies and employees.

The county court of each county shall allow to each county official and to their deputies, assistants and employees, when they are required to drive their personally owned car in the actual performance and discharge of their official duties, reimbursement at the rate of ten cents for each mile traveled in their personally owned car.

Every county official shall file monthly, under oath, a full and accurate account of all the actual mileage driven by him, his deputies, assistants and employees, in the performance and discharge of their official duties supported by verified accounts before reimbursement thereof.
shall be allowed by the county court. Reimbursement, properly allowed, shall be made from the general county fund.

§7-7-17. Annual reports by county officers of expenditures for assistants, deputies and employees.

Every county official named in this article shall, on the first day of June of each year, file with the county court and with the state tax commissioner, an itemized sworn statement of the amount expended by him, including compensation, emoluments and other outlay of money or thing of value for the twelve months last preceding the time of filing the report, for the services of all his assistants, deputies and employees.

§7-7-18. Source of compensation paid judges of courts of limited jurisdiction.

The compensation of every judge of a court of record of limited jurisdiction established by the Legislature under section nineteen, article eight of the constitution, and the compensation of every person who serves as judge of any of those courts when the judge of the court cannot act, shall be paid out of the treasury of the county and not out of the treasury of the state.

§7-7-19. Penalties.

If any county clerk, circuit clerk, joint clerk of any county and circuit court, sheriff, county assessor or prosecuting attorney fail to file the detailed request for appropriations or the budget statement as provided in section seven of this article or fail to file the monthly or semimonthly statement as provided in section nine of this article or fail to file the statement of expenditures as provided for in section seventeen of this article, or if any county clerk, circuit clerk, joint clerk, or any county and circuit court, sheriff, county assessor, prosecuting attorney, their assistants, deputies or employees, fail to comply with any of the requirements provided in this article, he shall, except where another penalty is prescribed, be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than fifty dollars nor more than one hundred dollars, or imprisoned in the county
§7-7-20. Severability.

1 If any provision of this article or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the article, and to this end the provisions of this article are declared to be severable.

CHAPTER 11. TAXATION.

ARTICLE 2. ASSESSORS.

§11-2-2. Deputy assessors.

1 The assessor in every county shall select his deputies, assistants and other employees in the same manner as is provided for the selection of deputies, assistants and employees of sheriffs and clerks of courts.

CHAPTER 24

(Com. Sub. for House Bill No. 833—Originating in the House Committee on Political Subdivisions)

[Passed March 13, 1971; in effect July 1, 1971. Approved by the Governor.]

AN ACT to amend article two, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto new sections, designated section five-a and sections five-a-(one) through five-a-(fifty-five), relating to additional compensation for assessors according to county.

Be it enacted by the Legislature of West Virginia:

That article two, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto new sections, designated section five-a and five-a-(one) through five-a-(fifty-five), to read as follows:
ARTICLE 2. ASSESSORS.

§11-2-5a. Additional compensation; additional duties.
§11-2-5a(1). Same—Barbour county.
§11-2-5a(2). Same—Berkeley county.
§11-2-5a(3). Same—Boone county.
§11-2-5a(4). Same—Braxton county.
§11-2-5a(5). Same—Brooke county.
§11-2-5a(6). Same—Cabell county.
§11-2-5a(7). Same—Calhoun county.
§11-2-5a(8). Same—Clay county.
§11-2-5a(9). Same—Doddridge county.
§11-2-5a(10). Same—Fayette county.
§11-2-5a(11). Same—Gilmer county.
§11-2-5a(12). Same—Grant county.
§11-2-5a(13). Same—Greenbrier county.
§11-2-5a(14). Same—Hampshire county.
§11-2-5a(15). Same—Hancock county.
§11-2-5a(16). Same—Hardy county.
§11-2-5a(17). Same—Harrison county.
§11-2-5a(18). Same—Jackson county.
§11-2-5a(20). Same—Kanawha county.
§11-2-5a(21). Same—Lewis county.
§11-2-5a(22). Same—Lincoln county.
§11-2-5a(23). Same—Logan county.
§11-2-5a(24). Same—Marion county.
§11-2-5a(26). Same—Mason county.
§11-2-5a(27). Same—Mcdowell county.
§11-2-5a(28). Same—Mercer county.
§11-2-5a(29). Same—Mineral county.
§11-2-5a(30). Same—Mingo county.
§11-2-5a(31). Same—Monongalia county.
§11-2-5a(32). Same—Monroe county.
§11-2-5a(33). Same—Morgan county.
§11-2-5a(34). Same—Nicholas county.
§11-2-5a(35). Same—Ohio county.
§11-2-5a(36). Same—Pendleton county.
§11-2-5a(37). Same—Pleasants county.
§11-2-5a(38). Same—Pocahontas county.
§11-2-5a(39). Same—Preston county.
§11-2-5a(40). Same—Putnam county.
§11-2-5a(41). Same—Raleigh county.
§11-2-5a(42). Same—Randolph county.
§11-2-5a(43). Same—Ritchie county.
§11-2-5a(44). Same—Roane county.
§11-2-5a(45). Same—Summers county.
§11-2-5a(46). Same—Taylor county.
§11-2-5a(47). Same—Tucker county.
§11-2-5a(48). Same—Tyler county.
§11-2-5a(49). Same—Upshur county.
§11-2-5a(50). Same—Wayne county.
§11-2-5a(51). Same—Webster county.
§11-2-5a(52). Same—Wetzel county.
§11-2-5a(53). Same—Wirt county.
§11-2-5a(54). Same—Wood county.
§11-2-5a(55). Same—Wyoming county.
§11-2-5a. Additional compensation; additional duties.

In addition to the salary or compensation provided elsewhere in this code, the county court of each county shall pay to the assessor, on an annual basis, on and after July one, one thousand nine hundred seventy-one, additional compensation in accordance with the provisions of this section and sections five-a-(one) through five-a-(fifty-five) of this article for such additional duties required of him by this section.

To receive such additional compensation, the following duties are hereby imposed upon every assessor of this state:

1. He shall annually complete a sales ratio analysis in a manner prescribed by the state tax commissioner.
2. He shall present to the tax commissioner a list of real property transfers of the prior assessment year by December first annually.
3. He shall on or before December first of each year supply a list of new construction and improvements exceeding one thousand dollars of the previous assessment year on forms prescribed by the state tax commissioner.
4. He shall on or before December first of each year supply a list of new businesses added to the assessment rolls and businesses that have discontinued operations in the previous assessment year and been removed from the assessment rolls.
5. He shall provide assistance to the tax commissioner to disseminate information with respect to the taxation, classification and valuation of nonutility and public utility property to the end that all property shall be more equally and uniformly assessed throughout the state.
6. He shall annually assist the tax commissioner in determining the current use of such real property in his county as the tax commissioner may require to accomplish a uniform appraisal and assessment of real property.

At the time of substantial completion of the above duties each assessor shall certify to the county court and tax commissioner his performance of the same. When
the work has been so certified and completed to the satisfaction of the tax commissioner, the tax commissioner shall certify to the county court that the assessor has performed these duties and is entitled to the remuneration provided for in sections five-a(one) through five-a-(fifty-five) of this article.

§11-2-5a(1). Same—Barbour county.
1 For the county of Barbour, six hundred ninety dollars.

§11-2-5a(2). Same—Berkeley county.
1 For the county of Berkeley, one thousand six hundred dollars.

§11-2-5a(3). Same—Boone county.
1 For the county of Boone, six hundred twenty-five dollars.

§11-2-5a(4). Same—Braxton county.
1 For the county of Braxton, four hundred seventy dollars.

§11-2-5a(5). Same—Brooke county.
1 For the county of Brooke, six hundred fifty-five dollars.

§11-2-5a(6). Same—Cabell county.
1 For the county of Cabell, six thousand dollars.

§11-2-5a(7). Same—Calhoun county.
1 For the county of Calhoun, one hundred ninety dollars.

§11-2-5a(8). Same—Clay county.
1 For the county of Clay, one hundred ninety dollars.

§11-2-5a(9). Same—Doddridge county.
1 For the county of Doddridge, one hundred ninety dollars.

§11-2-5a(10). Same—Fayette county.
1 For the county of Fayette, one thousand five hundred dollars.

§11-2-5a(11). Same—Gilmer county.
1 For the county of Gilmer, three hundred fifteen dollars.
§11-2-5a(12). Same—Grant county.
  1 For the county of Grant, two hundred fifty dollars.

§11-2-5a(13). Same—Greenbrier county.
  1 For the county of Greenbrier, one thousand dollars.

§11-2-5a(14). Same—Hampshire county.
  1 For the county of Hampshire, five hundred thirty dollars.

§11-2-5a(15). Same—Hancock county.
  1 For the county of Hancock, two thousand two hundred fifty dollars.

§11-2-5a(16). Same—Hardy county.
  1 For the county of Hardy, four hundred seventy dollars.

§11-2-5a(17). Same—Harrison county.
  1 For the county of Harrison, six thousand seven hundred fifty dollars.

§11-2-5a(18). Same—Jackson county.
  1 For the county of Jackson, three hundred seventy-five dollars.

  1 For the county of Jefferson, nine hundred fifty dollars.

§11-2-5a(20). Same—Kanawha county.
  1 For the county of Kanawha, twelve thousand dollars.

§11-2-5a(21). Same—Lewis county.
  1 For the county of Lewis, one thousand dollars.

§11-2-5a(22). Same—Lincoln county.
  1 For the county of Lincoln, two hundred twenty dollars.

§11-2-5a(23). Same—Logan county.
  1 For the county of Logan, nine hundred five dollars.

§11-2-5a(24). Same—Marion county.
  1 For the county of Marion, four thousand eight hundred seventy-five dollars.

  1 For the county of Marshall, three thousand dollars.
§11-2-5a(26). Same—Mason county.
1 For the county of Mason, four hundred forty dollars.

§11-2-5a(27). Same—McDowell county.
1 For the county of McDowell, two thousand one hundred twenty-five dollars.

§11-2-5a(28). Same—Mercer county.
1 For the county of Mercer, one thousand six hundred twenty-five dollars.

§11-2-5a(29). Same—Mineral county.
1 For the county of Mineral, eight hundred seventy-five dollars.

§11-2-5a(30). Same—Mingo county.
1 For the county of Mingo, nine hundred five dollars.

§11-2-5a(31). Same—Monongalia county.
1 For the county of Monongalia, four thousand six hundred twenty-five dollars.

§11-2-5a(32). Same—Monroe county.
1 For the county of Monroe, two hundred eighty dollars.

§11-2-5a(33). Same—Morgan county.
1 For the county of Morgan, four hundred eighty dollars.

§11-2-5a(34). Same—Nicholas county.
1 For the county of Nicholas, one thousand dollars.

§11-2-5a(35). Same—Ohio county.
1 For the county of Ohio, five thousand seven hundred fifty dollars.

§11-2-5a(36). Same—Pendleton county.
1 For the county of Pendleton, two hundred fifty dollars.

§11-2-5a(37). Same—Pleasants county.
1 For the county of Pleasants, one hundred twenty-five dollars.

§11-2-5a(38). Same—Pocahontas county.
1 For the county of Pocahontas, four hundred seventy dollars.
§11-2-5a(39). Same—Preston county.
1 For the county of Preston, one thousand three hundred seventy-five dollars.

§11-2-5a(40). Same—Putnam county.
1 For the county of Putnam, six hundred twenty-five dollars.

§11-2-5a(41). Same—Raleigh county.
1 For the county of Raleigh, six hundred twenty-five dollars.

§11-2-5a(42). Same—Randolph county.
1 For the county of Randolph, seven hundred fifty dollars.

§11-2-5a(43). Same—Ritchie county.
1 For the county of Ritchie, four hundred forty dollars.

§11-2-5a(44). Same—Roane county.
1 For the county of Roane, five hundred dollars.

§11-2-5a(45). Same—Summers county.
1 For the county of Summers, six hundred dollars.

§11-2-5a(46). Same—Taylor county.
1 For the county of Taylor, five hundred thirty dollars.

§11-2-5a(47). Same—Tucker county.
1 For the county of Tucker, two hundred fifty dollars.

§11-2-5a(48). Same—Tyler county.
1 For the county of Tyler, three hundred fifteen dollars.

§11-2-5a(49). Same—Upshur county.
1 For the county of Upshur, nine hundred five dollars.

§11-2-5a(50). Same—Wayne county.
1 For the county of Wayne, nine hundred forty dollars.

§11-2-5a(51). Same—Webster county.
1 For the county of Webster, three hundred fifteen dollars.

§11-2-5a(52). Same—Wetzel county.
1 For the county of Wetzel, one thousand six hundred twenty-five dollars.
§11-2-5a(53). Same—Wirt county.
1 For the county of Wirt, one hundred fifty-five dollars.

§11-2-5a(54). Same—Wood county.
1 For the county of Wood, four thousand eight hundred seventy-five dollars.

§11-2-5a(55). Same—Wyoming county.
1 For the county of Wyoming, five hundred dollars.

CHAPTER 25
(House Bill No. 1130—By Mr. Daugherty and Mr. Romine)

[Passed March 13, 1971; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article three, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to permit closing county courthouses at times other than legal holidays.

Be it enacted by the Legislature of West Virginia:

That section two, 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.
§7-3-2. Courthouse, jail and offices.
1 The county court of every county, at the expense of the county, shall provide at the county seat thereof a suitable courthouse and jail, together with suitable offices for the judge of the circuit court and judges of courts of limited jurisdiction, clerks of such courts and of the county court, assessor, sheriff, prosecuting attorney, county superintendent of schools, and surveyor, and such other offices as are or may be required by law: Provided,
9 That such courthouse, including any annex or other facility housing the courts and offices herein set out, (excepting such facilities as are on a twenty-four-hour basis),
shall be open to the public Monday through Saturday during the hours prescribed by the county court by an order duly recorded in the order book of such court, excluding Sundays and national or state holidays, and may, with the consent of the county court in counties having a population in excess of one hundred thousand be closed on Saturday: Provided, however, That the county court of every county having a population in excess of two hundred thousand may provide at the county seat or elsewhere in the county, as the county court shall determine, a suitable jail or jails. The county court shall keep the courthouse, jail and such other offices in constant and adequate repair, and supplied with the necessary heat, light, furniture, record books, and janitor service, and, except as to the office for the judge of the circuit court, with the necessary stationery and postage, and such other things as shall be necessary; but all of the public records, books and papers belonging or appertaining to the county surveyor's office shall be delivered to the clerk of the county court and retained by him in his official possession and under his control and shall constitute a part of the public records, books and papers of his office. Such courthouses, jails and offices hereafter erected shall be built of stone and brick, or stone or brick, or other equally fireproof materials, and such offices shall be fireproof or be furnished with fireproof vaults or safes. The jails shall be well secured, and sufficient for the convenient accommodation of those who may be confined therein, and so that the convicts may be in apartments separate from each other, and from the other prisoners; every apartment shall be so constructed that it can be kept comfortable. The county court may also provide other necessary offices and buildings, and may, by purchase or otherwise, acquire so much land as may be requisite or desirable for county purposes, and may suitably inclose, improve and embellish the lands so acquired.

Subject to the conditions hereinabove set forth with respect to the site of the courthouse, jail, and other offices, the court may, from time to time, as may seem to it proper, provide, at the expense of the county, a
new or other building or buildings to be used for the
courthouse and jail, or for either, together with suit-
able offices, as aforesaid, and for that purpose may ac-
quire, by purchase or otherwise, and hold any lands, or
lands and buildings, which may be necessary, and may
inclose, improve and embellish the same. When such
new or other building or buildings shall be ready for
occupancy, the county court shall make an order de-
clar ing that, on a day to be therein named, such new
or other building or buildings shall become the court-
house and/or jail of the county, and shall cause copies
of the order to be posted at the front door of the new
as well as of the old courthouse, at least twenty days
before the day named in the order; and on and after
the day so named such new or other building or build-
ings shall be and become, respectively, the courthouse
and/or jail of such county in all respects and for all
purposes. After such change shall have been made the
county court may sell or otherwise dispose of, as may
seem to it proper, the building or buildings previously
used as a courthouse and jail, or either, and the land
on which the same are, or either is, situated, and of
the interest of the county therein.

CHAPTER 26
(House Bill No. 527—By Mr. Steptoe)

[Passed February 12, 1971; in effect ninety days from passage. Approved by the
Governor.]

AN ACT to amend and reenact section one, article four, chap-
ter seven of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, relating to the duties of
the prosecuting attorney on election days.

Be it enacted by the Legislature of West Virginia:

That section one, article four, chapter seven of the code of
West Virginia, one thousand nine hundred thirty-one, as
amended, be amended and reenacted to read as follows:
ARTICLE 4. PROSECUTING ATTORNEY, REWARDS AND LEGAL ADVICE.

§7-4-1. Duties of prosecuting attorney; further duties upon request of attorney general.

It shall be the duty of the prosecuting attorney to attend to the criminal business of the state in the county in which he is elected and qualified, and when he has information of the violation of any penal law committed within such county, he shall institute and prosecute all necessary and proper proceedings against the offender, and may in such case issue or cause to be issued a summons for any witness he may deem material. Every public officer shall give him information of the violation of any penal law committed within his county. It shall also be the duty of the prosecuting attorney to attend to civil suits in such county in which the state, or any department, commission or board thereof, is interested, and to advise, attend to, bring, prosecute or defend, as the case may be, all matters, actions, suits and proceedings in which such county or any county board of education is interested.

It shall be the duty of the prosecuting attorney to keep his office open in the charge of a responsible person during the hours polls are open on general, primary and special county-wide election days, and the prosecuting attorney, or his assistant, if any, shall be available for the purpose of advising election officials. It shall be the further duty of the prosecuting attorney, when requested by the attorney general, to perform or to assist the attorney general in performing, in the county in which he is elected, any legal duties required to be performed by the attorney general, and which are not inconsistent with the duties of the prosecuting attorney as the legal representative of such county. It shall also be the duty of the prosecuting attorney, when requested by the attorney general, to perform or to assist the attorney general in performing, any legal duties required to be performed by the attorney general, in any county other than that in which such prosecuting attorney is elected, and for the performance of any such duties in any county other than that in which such prose-
The prosecuting attorney of any county, with the approval of the county court, or of the governor, or of the court of the county vested with authority to try criminal offenses, or of the judge thereof in vacation, may, within his discretion, offer rewards for the apprehension of persons charged with crime, or may expend money for the detection of crime. Any money expended under this section shall, when approved by the prosecuting attorney, be paid out of the county fund, in the same manner as other county expenses are paid. The county court may also offer reasonable bounties and rewards for the destruction of noxious animals, birds of prey, or weeds in the county, payable out of the county treasury: Provided, however, That nothing herein shall
permit or give to the prosecuting attorney of any county, 
having a population according to the last official census 
of forty-five thousand or less, the right to appoint a full-
time investigator or detector of crime, or to expend any 
money for the investigation of any crime committed in his 
county beyond the actual expenses of the investigation 
of said crime, except in the county of Wyoming, the 
prosecuting attorney may appoint an investigator of 
crime to be paid an annual salary of not less than one 
thousand two hundred dollars nor more than twenty-four 
hundred dollars, and actual expenses, the salary to be 
fixed within these limits by the county court; except 
further in the county of Wayne, the prosecuting attor-
ney may appoint an investigator of crime to be paid an 
annual salary of not less than thirty-six hundred dollars 
nor more than six thousand dollars, and actual expenses, 
the salary within these limits to be fixed by the county 
court; except further in the county of Lincoln, the prose-
cuting attorney may appoint an investigator of crime 
to be paid an annual salary of not less than one thou-
sand two hundred dollars nor more than two thousand 
four hundred dollars, and actual expenses, the salary 
within these limits to be fixed by the prosecuting attor-
ney; except further in the county of Mason, the prose-
cuting attorney may appoint an investigator of crime 
to be paid a salary of not less than one hundred dollars 
nor more than two thousand four hundred dollars and 
actual expenses, the salary to be fixed within these limits 
by the county court; except further in the county of Mar-
shall, the prosecuting attorney may appoint an investiga-
tor of crime to be paid an annual salary to be fixed by 
the county court and actual expenses.

CHAPTER 28

(Senate Bill No. 211—By Mr. Ward)

[Passed March 3, 1971; in effect July 1, 1971. Approved by the Governor.]

AN ACT to amend and reenact section six-(thirty), 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 Mingo county.

Be it enacted by the Legislature of West Virginia:

That section six-(thirty), 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(30). Assistants, stenographers and clerks for prosecuting attorney—Mingo county.

1 For the county of Mingo, one assistant attorney, not more than six thousand dollars; one stenographer, five thousand one hundred dollars.

CHAPTER 29

(Com. Sub. for House Bill No. 676—Originating in the House Committee on Political Subdivisions)

[Passed March 9, 1971; in effect July 1, 1971. Approved by the Governor.]

AN ACT to amend chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article fourteen, relating to mandatory civil service coverage for certain deputy sheriffs in certain counties and permissive civil service coverage for certain deputy sheriffs in other counties on or after the effective date of said article fourteen; relating to appointment, promotion, reinstatement, removal, discharge, suspension and reduction of deputy sheriffs covered by civil service; relating to chief deputy in any county covered by civil service for deputy sheriffs; providing definitions; relating to population determination; relating to a county civil service commission for civil service for deputy sheriffs, the appointment of its members and the removal of such members; relating to the clerk of
and an office and supplies for any such civil service commission; requiring appropriations to carry out provisions of said article fourteen; relating to the powers and duties of any such civil service commission; relating to rules and regulations of any such civil service commission and notice and distribution of such rules and regulations; providing for probationary appointments of deputy sheriffs covered by civil service; relating to application for competitive examination, age requirements and exceptions; relating to competitive and medical examinations for appointment or promotion as a deputy sheriff, and notice of competitive examinations; requiring the state civil service commission to prepare and prescribe competitive examinations for deputy sheriffs; specifying circumstances under which competitive and medical examination shall not be required; relating to training, examination and age of persons employed as deputy sheriffs on the effective date of said article fourteen; relating to the refusal to examine or certify and review of such refusal; relating to eligible lists from which appointments are made; specifying procedures for appointments from an eligible list and procedures for objecting to and removing any name from any such list; relating to filling a vacancy when there is no eligible list; relating to filling vacancies by promotion, and eligibility for promotion; relating to the rights of a chief deputy who was a member of the civil service system for deputy sheriffs at the time he became chief deputy; prohibiting any inquiry as to political or religious opinion or affiliation and prohibiting discrimination on the basis thereof; prohibiting certain political activity of deputy sheriffs and authorizing a petition for vacating an appointment because of political activity; relating to action on such petition and judicial review with respect thereto; requiring training and retraining programs for and satisfactory completion thereof by deputy sheriffs; relating to the removal, discharge, suspension or reduction in rank or pay of deputy sheriffs and judicial review with respect thereto; relating to reduction in number of deputy sheriffs; specifying that deputy sheriffs subject to said article fourteen may not serve as deputy sheriffs after attaining age sixty; establishing various criminal offenses and providing crimi-
nal penalties; establishing procedures for optional civil service coverage of deputy sheriffs; providing a repealer clause; and providing a severability clause.

Be it enacted by the Legislature of West Virginia:

That chapter 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 fourteen, to read as follows:

ARTICLE 14. CIVIL SERVICE FOR DEPUTY SHERIFFS.

§7-14-1. Appointments and promotions of deputy sheriffs.

§7-14-2. Definitions; population.

§7-14-3. Civil service commission.

§7-14-4. Clerk of the commission.

§7-14-5. Office and supplies for commission; appropriations required.

§7-14-6. Powers and duties of commission.

§7-14-7. Rules and regulations of commission; notice and distribution thereof; probationary period for appointees.

§7-14-8. Form of application; age requirements; exceptions.

§7-14-9. Character and notice of competitive examinations; qualifications of applicants; competitive examinations to be prescribed by state civil service commission; press representatives; posting eligible list; medical examinations; exceptions as to and training of deputies serving on effective date of article.

§7-14-10. Refusal to examine or certify; review thereof.

§7-14-11. Appointments from eligible list.

§7-14-12. Noncompetitive examination for filling vacancy; provisional appointment.

§7-14-13. Vacancies filled by promotions; eligibility for promotion; rights of chief deputy.

§7-14-14. No inquiry shall be made concerning political or religious opinions or affiliations of applicants, etc.

§7-14-15. Political activity of deputy sheriffs prohibited; petition for vacating appointment; action on petition; appeal.

§7-14-16. Training and retraining programs for all deputies required.

§7-14-17. Removal, discharge, suspension or reduction in rank or pay; appeal; reduction in number of deputies; no person subject to article may serve as deputy after age sixty.

§7-14-18. Offenses and penalties.

§7-14-19. County courts of counties with a population of less than twenty-five thousand may place deputy sheriffs under civil service; protest and election with respect thereto.

§7-14-20. Inconsistent acts repealed; once established civil service remains mandatory.

§7-14-21. Severability.

§7-14-1. Appointments and promotions of deputy sheriffs.

1 Notwithstanding the provisions of article three, chapter six, and article seven, chapter seven of this code, all appointments and promotions of full-time deputy sheriffs,
as defined in section two of this article, in the offices of
sheriffs of counties of twenty-five thousand population or
more, shall be made only according to qualifications and
fitness to be ascertained by examinations, which, so
far as practicable, shall be competitive, as hereinafter
provided. On and after the effective date of this article,
no person except the chief deputy shall be appointed,
promoted, reinstated, removed, discharged, suspended or
reduced in rank or pay as a full-time deputy sheriff, as
defined in said section two, of any county in the state
of West Virginia subject to the provisions hereof, in
any manner or by any means other than those prescribed
in this article.

§7-14-2. Definitions; population.

(a) For the purpose of this article:
(1) “Appointing officer” or “appointing sheriff” shall
mean the sheriff of the county in which the appointment
of a deputy sheriff shall be made pursuant to this article;
and
(2) “Deputy sheriffs” or “deputies” shall mean per-
sons appointed by a sheriff as his deputies whose sole
duties as such deputies are within the scope of active,
general law enforcement and as such are authorized to
carry deadly weapons, patrol the highways, perform
police functions, make arrests or safeguard prisoners.
(b) For the purpose of this article, population shall
be determined by reference to the last preceding census
taken under the authority of the United States or of the
Legislature of West Virginia.

§7-14-3. Civil service commission.

There shall be a civil service commission in each county
having a population of twenty-five thousand or more.
Each such civil service commission shall consist of three
commissioners, one of whom shall be appointed by the
bar association of such county, one of whom shall be
appointed by the deputy sheriff’s association of such
county, and one of whom shall be appointed by the
county court of such county. In the event the bar as-
sociation or deputy sheriff’s association shall fail to make
an appointment within the time prescribed in this sec-
tion therefor, then such appointment shall be made by
the county court. The persons appointed commissioners
shall be qualified voters of the county for which they are
appointed, and at least two of the commissioners shall
be persons in full sympathy with the purposes of this
article. Not more than two of the commissioners, at any
one time, shall be members of the same political party.
The commissioners in each county shall be appointed as
follows: Within sixty days from the effective date of this
article, the authorities having the power to appoint mem-
ers to the civil service commission shall appoint the
three commissioners, the first to be appointed by the
bar association of the county shall serve for six years
from the date of his appointment, the second to be ap-
pointed by the deputy sheriff's association of the county
shall serve for four years from the date of his appoint-
ment, and the third to be appointed by the county court
of the county shall serve for a term of two years from
the date of his appointment. All subsequent appoint-
ments shall be made for terms of four years. In the
event that any commissioner of the civil service com-
mission shall cease to be a member thereof by virtue
of death, final removal or other cause, a new commis-
sioner shall be appointed to fill the unexpired term of
that commissioner within ten days after said ex-com-
missioner shall have ceased to be a member of the com-
mission. Such appointment shall be made by the authority
who appointed the commissioner who is no longer a
member of the commission. Each year the three mem-
ers of the commission shall, together, elect one of their
number to act as president of the commission for a term
of one year. The county court may at any time remove a
commissioner for good cause, which shall be stated in
writing and made a part of the records of the commission:
Provided, That once the county court has removed any
commissioner, such county court shall within ten days
thereafter file in the office of the clerk of the circuit
court of the county a petition setting forth in full the
reason for the removal and praying for the confirmation
of the circuit court of the action of the county court in
removing the said commissioner. A copy of the petition shall be served upon the commissioner so removed simultaneously with its filing in the office of the clerk of the circuit court and shall have precedence on the docket of the circuit court and shall be heard by the court as soon as practicable upon the request of the removed commissioner. All rights hereby vested in the circuit court may be exercised by the judge thereof in vacation. In the event that no term of the circuit court is being held at the time of the filing of the petition, and the judge thereof cannot be reached in the county wherein the petition was filed, the petition shall be heard at the next succeeding term of the circuit court, whether regular or special, and the commissioner so removed shall remain removed until a hearing is had upon the petition of the county court. The circuit court, or the judge thereof in vacation, shall hear and decide the issues presented by the petition. The county court or commissioner, as the case may be, against whom the decision of the circuit court or judge thereof in vacation shall be rendered shall have the right to petition the supreme court of appeals for a review of the decision of the circuit court or the judge thereof in vacation as in other civil cases. In the event that the county court shall fail to file its petition in the office of the clerk of the circuit court, as hereinbefore provided, within ten days after the removal of the commissioner, such commissioner shall immediately resume his position as a member of the civil service commission.

Any resident of the county shall have the right at any time to file charges against and seek the removal of any member of the civil service commission. The charges shall be filed in the form of a petition in the office of the clerk of the circuit court of the county. A copy of the petition shall be served upon the commissioner sought to be removed. The petition shall be matured for hearing and heard as a civil action by the circuit court of the county for which the commissioner serves as a member of the civil service commission or by the judge thereof in vacation. The party against whom the decision of the circuit court or judge thereof in vacation shall be rendered shall have the right to petition the supreme court of appeals
for a review of the decision of the circuit court or judge thereof in vacation as in other civil cases.

No commissioner shall hold any other office (other than the office of notary public) under the United States, this state, or any municipality, county or other political subdivision thereof; nor shall any commissioner serve on any political party committee or take any active part in the management of any political campaign.

§7-14-4. Clerk of the commission.

1 The clerk of the county court shall be ex officio clerk of the civil service commission and shall supply to the commission all necessary clerical and stenographic services for the work of the civil service commission.

§7-14-5. Office and supplies for commission; appropriations required.

1 It shall be the duty of the county court of every such county to cause suitable and convenient rooms and accommodations to be assigned and provided, furnished, heated and lighted for carrying on the work and examinations of the civil service commission. The civil service commission may order from the proper authorities the necessary stationery, postage stamps, official seal and other articles to be supplied, and the necessary printing to be done, for its official use. It shall be the duty of the county court and other county officials of every such county to aid the civil service commission in all proper ways in carrying out the provisions of this article, and to allow the reasonable use of public buildings, and to heat and light the same, for holding examinations and investigations and in all proper ways to facilitate the same.

17 The county court of each such county is hereby required to appropriate sufficient funds for the purpose of carrying out the provisions of this article.

§7-14-6. Powers and duties of commission.

1 The civil service commission in each such county shall:

1 (1) Prescribe and enforce rules and regulations for carrying into effect the provisions of this article. All
rules and regulations so prescribed may, from time to
time, be added to, amended or rescinded.

(2) Keep minutes of its own proceedings and records
of its examinations and other official actions. All rec-
ommendations of applicants for the position of deputy
sheriff received by the commission or by the sheriff
shall be kept and preserved for a period of ten years,
and all such records, recommendations of former em-
ployees excepted, and all written causes of removal, filed
with the commission, shall, subject to reasonable rule
and regulation, be open to public inspection.

(3) Make investigations, either sitting as a body or
through a single commissioner, concerning all matters
touching the enforcement and effect of the provisions
of this article and the rules and regulations prescribed
hereunder or concerning the action of any examiner or
subordinate of the commission or any person in the
public service with respect to the execution of this article;
and, in the course of such investigations, each commis-
ioner shall have the power to administer oaths and
affirmations and to take testimony.

(4) Have power to subpoena and require the atten-
dance of witnesses and the production of books and papers
pertinent to the investigations and inquiries herein au-
thorized, and examine them and such public records as
it shall require, in relation to any matter which it has
the authority to investigate. The fee of such witnesses
for attendance and travel shall be the same as for wit-
nesses before the circuit courts of this state and shall
be paid from the appropriation for the incidental ex-
penses of the commission. All officers in the public
service and their deputies, clerks, subordinates and em-
ployees shall attend and testify when required to do
so by the commission. Any disobedience to, or neglect
of, any subpoena issued by the commissioners, or any
one of them, to any person, shall be held a contempt
of court, and shall be punished by the circuit court of
the county in which the civil service commission is
located, or the judge thereof in vacation, as if such sub-
poena had been issued by the court. The judge of the
circuit court shall, upon the application of any one com-
missioner, in any such case, cause the process of that
court to issue to compel any person or persons, disobeying
or neglecting any such subpoena to appear and to give
testimony and produce evidence before the commis-
sioners, or any one of them, and shall have power to
punish any such contempt.

(5) Prepare a position classification and promotion
plan.

(6) Make an annual report to the county court and
sheriff showing its own actions, its rules and regulations,
including all exceptions thereto in force, and the prac-
tical effects thereof, and any suggestions it may have
for the more effectual accomplishment of the purposes
of this article. Such report shall be available for public
inspection five days after it shall have been delivered to
the county court and sheriff.

§7-14-7. Rules and regulations of commission; notice and dis-
tribution thereof; probationary period for appoin-
tees.

1 The civil service commission in each such county shall
make rules and regulations providing for both competi-
tive and medical examinations for the position of deputy
sheriff in each such county subject to the provisions of
this article, for appointments to the position of deputy
sheriff and for promotions and for such other matters as
are necessary to carry out the purposes of this article.
Any such commission shall have the power and authority
9 to require by rules and regulations a physical fitness
10 examination as a part of its competitive examination or
11 as a part of its medical examination. Due notice of the
12 contents of all rules and regulations and of any modifica-
13 tions thereof shall be given, by mail, in due season to the
14 appointing officer; and said rules and regulations and
15 any modifications thereof shall also be printed for public
distribution. All original appointments on and after the
17 effective date of this article, to any position of deputy
18 sheriff in any county subject to the provisions of this
19 article shall be for a probationary period of six months:
Provided, That at any time during the probationary period the probationer may be discharged for just cause, in the manner provided in section seventeen of this article. If, at the close of this probationary period, the conduct or capacity of the probationer has not been satisfactory to the appointing sheriff, the probationer shall be notified, in writing, that he will not receive absolute appointment, whereupon his employment shall cease; otherwise, his retention in the position of deputy sheriff beyond the probationary term shall be equivalent to his absolute appointment.

§7-14-8. Form of application; age requirements; exceptions.

The civil service commission in each such county shall require persons applying for admission to any competitive examination provided for under this article or under the rules and regulations of the commission to file in its office, within a reasonable time prior to the proposed competitive examination, a formal application in which the applicant shall state under oath or affirmation:

1. His full name, residence and post-office address;
2. His United States citizenship, age and the place and date of his birth;
3. His health and his physical capacity for the position of deputy sheriff;
4. His business, employments and residences for at least three previous years; and
5. Such other information as may reasonably be required, relative to the applicant's qualifications and fitness for the position of deputy sheriff.

Blank forms for such applications shall be furnished by the commission, without charge, to all persons requesting the same. The commission may require, in connection with the application, such certificates of citizens, physicians or others, having pertinent knowledge concerning the applicant, as the good of the service may require.

No application for original appointment shall be received on and after the effective date of this article, if the person applying is less than twenty-one years of age or more than forty-five years of age at the
date of his application: *Provided,* That in the event any applicant formerly served as a deputy sheriff for a period of more than six months in the county to which he makes application, and resigned as a deputy sheriff at a time when there were no charges of misconduct or other misfeasance pending against him, within a period of two years next preceding the date of his application, and at the time of his application resides within the county in which he seeks appointment by reinstatement, then such applicant shall be eligible for appointment by reinstatement in the discretion of the civil service commission, even though such applicant shall be over the age of forty-five years, provided he is not sixty years of age or over, and such applicant, providing his former term of service as a deputy sheriff so justifies, may be reappointed by reinstatement without a competitive examination, but such applicant shall undergo a medical examination; and if such applicant shall be so appointed by reinstatement as aforesaid, he shall be the lowest in rank in the sheriff's office next above the probationers of the office.

§7-14-9. Character and notice of competitive examinations; qualifications of applicants; competitive examinations to be prescribed by state civil service commission; press representatives; posting eligible list; medical examinations; exceptions as to and training of deputies serving on effective date of article.

All competitive examinations for appointments or promotions to all positions of deputy sheriff shall be practical in their character, and shall relate to such matters, and include such inquiries, as will fairly and fully test the comparative merit and fitness of the person or persons examined to discharge the duties of the position sought by him or them. The state civil service commission shall prepare and prescribe, from time to time, the competitive examination to be given by the civil service commission of each such county. All competitive examinations shall be open to all applicants who have fulfilled the preliminary requirements specified in other sections of this article.
Adequate public notice of the date, time and place of every competitive examination held under the provisions of this article, together with information as to the position to be filled, shall be given at least two weeks prior to such competitive examination. The commission shall adopt reasonable rules and regulations for permitting the presence of representatives of the press at any such competitive examination. The commission shall post, in a public place at its office, the eligible list, containing the names and grades of those who have passed such competitive examinations for positions as deputy sheriffs, under this article, and shall indicate thereon such appointments as may be made from said list.

All applicants for appointment or promotion to any position as a deputy sheriff in any such county who have passed the competitive examination specified above shall, before being appointed or promoted, undergo a medical examination which shall be conducted under the supervision of a board composed of two doctors of medicine appointed for such purpose by the sheriff of the county. Such board must certify that an applicant is free from any bodily or mental defects, deformity or diseases which might incapacitate him from the performance of the duties of the position desired and is physically fit to perform such duties before said applicant shall be appointed or promoted to any position. Notwithstanding the first sentence of this paragraph, in the event the commission deems it expedient, the medical examination may be given prior to the competitive examination, and if the medical examination is not passed as aforesaid, the applicant shall not be admitted to the competitive examination.

All deputies who are employed as deputies on the effective date of this article shall be considered to have been appointed under the provisions of this article, without regard to their age, provided they are not on said date sixty years of age or older, and without competitive examination or medical examination, and shall hold their positions in accordance therewith for one year from the effective date of this article. The civil service commission shall, however, establish or prescribe a training pro-
gram for deputies who are employed as such on the
effective date of this article, giving due consideration to
available training personnel and programs. Such deput-
ties must complete such training program and must
score a minimum of sixty points on a written examina-
tion in which one hundred points would be the highest
possible score. The examination shall be given in ac-
cordance with rules and regulations to be promulgated
by the civil service commission of the county. A deputy
failing to qualify under the provisions of this paragraph
may be continued in his position at the discretion of
the sheriff but in no event for a period of more than
one year. Such person may be reexamined at the dis-
cretion of the civil service commission of the county and
may qualify as provided in this paragraph.

§7-14-10. Refusal to examine or certify; review thereof.

1 The commission may refuse to examine an applicant,
or after examination to certify as eligible one, who is
found to lack any of the established preliminary require-
ments for the examination or position of deputy sheriff
for which he applies; or who is physically so disabled as
to be rendered unfit for the performance of the duties of
the position of deputy sheriff desired; or who is addicted
to the habitual use of intoxicating liquors or drugs; or
who has been convicted of a felony; or who has been
guilty of infamous or notoriously disgraceful conduct;
or who has been dismissed from public service for de-
delinquency or misconduct; or who has made a false state-
ment of any material fact, or practiced or attempted to
practice any deception or fraud in his application, in
any such examination, or in securing his eligibility; or
who refuses to comply with the rules and regulations
of the commission.

18 If any applicant feels aggrieved by the action of the
commission in refusing to examine him, or after examina-
tion in refusing to certify him as eligible, the commission
shall, at the request of such applicant, appoint a date,
time and place for a public hearing, at which time the
applicant may appear, by himself or by counsel or in
person and with counsel, and the commission shall then
review its refusal to make such examination or certification, and testimony shall be taken. The commission shall subpoena, at the expense of the applicant, any competent witnesses requested by him. After such review, the commission shall file in its records the testimony taken and shall again make a decision, which decision shall be final and not subject to judicial review, but under no circumstances shall the provisions of this article be construed, in the case of a refusal to examine an applicant for promotion or to certify an applicant as eligible for promotion, as depriving such applicant of his right to seek a writ of mandamus, if the application for such writ is made within twenty days from the date of the decision (made after hearing as aforesaid) refusing to examine or to certify him as eligible for promotion.

§7-14-11. Appointments from eligible list.

1 On and after the effective date of this article, every position of deputy sheriff, unless filled by promotion, reinstatement or reduction, shall be filled only in the manner specified in this section. The appointing sheriff shall notify the civil service commission of any vacancy in a position of deputy sheriff which he desires to fill, and shall request the certification of eligibles. The commission shall forthwith certify, from the eligible list, the names of the three persons thereon who received the highest averages at preceding competitive examinations held under the provisions of this article within a period of three years next preceding the date of the prospective appointment. The appointing sheriff shall, thereupon, with sole reference to the relative merit and fitness of the candidates, make an appointment from the three names so certified: Provided, That should he make objection to the commission to one or more of these persons for any of the reasons stated in section ten of this article, and should such objection be sustained by the commission after a public hearing along the lines of the hearing provided for in said section ten, if any such hearing is requested, the commission shall thereupon strike the name of that person from the eligible list, and certify the next highest name for each person so stricken. As each
25 subsequent vacancy occurs, in the same or another posi-
26 tion, precisely the same procedure shall be followed:
27 Provided, however, That after any name has been three
28 times rejected for the same or another position in favor
29 of a name or names below it on the same list, the name
30 shall be stricken from the list. When there are a number
31 of positions of the same kind to be filled at the same
32 time, each appointment shall, nevertheless, be made
33 separately and in accordance with the foregoing pro-
34 visions. When an appointment is made under the pro-
35 visions of this section, it shall be, in the first instance, for
36 the probationary period of six months, as provided in
37 section seven of this article.

§7-14-12. Noncompetitive examination for filling vacancy; pro-
visional appointment.

1 Whenever there are urgent reasons for filling a vacancy
2 in any position of deputy sheriff and there is no list of
3 persons eligible for appointment after a competitive ex-
4 amination, the appointing sheriff may nominate a person
5 to the civil service commission for noncompetitive ex-
6 amination; and if such nominee shall be certified by the
7 commission as qualified, after such noncompetitive ex-
8 amination and a medical examination, he may be appoint-
9 ed provisionally to fill such vacancy until a selection and
10 appointment can be made after competitive examination
11 in the manner prescribed in section eleven of this
12 article; but the provisional appointment shall not con-
13 tinue for a longer period than three months, nor shall
14 successive provisional appointments be made to the same
15 position, under the provisions of this section.

§7-14-13. Vacancies filled by promotions; eligibility for pro-
motion; rights of chief deputy.

1 Vacancies in positions of deputy sheriff on and after
2 the effective date of this article, shall be filled, so far
3 as practicable, by promotion from among persons hold-
4 ing positions in the next lower grade. Promotions shall
5 be based upon merit and fitness to be ascertained by
6 competitive examinations to be provided by the civil
7 service commission and upon the superior qualifications
of the persons promoted, as shown by their previous
service and experience: Provided, That, except for the
chief deputy, no person shall be eligible for promotion
from the lower grade to the next higher grade until
such person shall have completed at least two years'
service in the next lower grade: Provided, however,
That notwithstanding the provisions of section one of
this article, any person occupying the office of chief
deputy in any such county on the effective date of this
article, or thereafter appointed to such office, shall, except
as hereinafter provided in this section, be and shall con-
tinue to be entitled to all of the rights and benefits of
the provisions of this article, except that he may be re-
moved from such office of chief deputy without cause
and the time spent by such person in the office of such
chief deputy shall be added to the time, if any, served
by such person during the entire time he was a deputy
sheriff of such county prior to his appointment as chief
deputy, and shall in all cases of removal, except for
removal for just cause, retain the regular rank within
said sheriff's office which he held, if any, at the time
of his appointment to the office of chief deputy or which
he has attained, if any, during his term of service as chief
deputy. The provisions of this section shall be construed
to apply and to inure to the benefit of all persons who
have ever been subject to the provisions of this article.
The commission shall have the power to determine in
each instance whether an increase in salary constitutes
a promotion.

§7-14-14. No inquiry shall be made concerning political or
religious opinions or affiliations of applicants, etc.

No question in any form of application or in or during
any examination shall be so framed as to elicit informa-
tion concerning the political or religious opinions or
affiliations of any applicant; nor shall inquiry be made
concerning such opinions or affiliations; and all disclosures
thereof shall be discountenanced. No discrimination shall
be exercised, threatened, or promised by any person in
the sheriff's office against, or in favor of, an applicant,
eligible or deputy in the office of any sheriff of any county
subject to the provisions of this article because of his political or religious opinions or affiliations.

§7-14-15. Political activity of deputy sheriffs prohibited; petition for vacating appointment; action on petition; appeal.

(a) On and after the effective date of this article, no deputy sheriff covered by the provisions of this article shall engage in any political activity of any kind, character or nature whatsoever, except to cast his vote at any election or shall act as an election official in any municipal, county or state election. Any deputy sheriff violating the provisions of this section shall have his appointment vacated and he shall be removed, in accordance with the pertinent provisions of this section.

(b) Any three residents of the county may file their written petition with the civil service commission thereof setting out therein the grounds upon which a deputy sheriff of such county should be removed for a violation of subsection (a) of this section. Notice of the filing of such petition shall be given by the commission to the accused deputy, which notice shall require him to file a written answer to the charges set out in the petition within thirty days of the date of such notice. The petition and answer thereto, if any, shall be entered upon the records of the civil service commission. If the answer is not filed within the time stated, or any extension thereof for cause which in the discretion of the civil service commission may be granted, an order shall be entered by the commission declaring the appointment of the deputy vacated. If such answer is filed within the time stated, or any extension thereof for cause which in the discretion of the civil service commission may be granted, the accused deputy may demand within such period a public hearing on the charges, or the civil service commission may, in its discretion and without demand therefor, set a date and time for a public hearing on the charges, which hearing shall be within thirty days of the filing of said answer, subject, however, to any continuances which may in the discretion of the civil service commission be granted. A
written record of all testimony taken at such hearing shall be kept and preserved by the civil service commission, which record shall be sealed and not be open to public inspection if no appeal be taken from the action of the commission. The commission at the conclusion of the hearing, or as soon thereafter as possible, shall enter an order sustaining in whole or in part the charges made, or shall dismiss the charges as unfounded. In the event the charges are sustained in whole or in part, the order shall also declare the appointment of such deputy to be vacated and thereupon the sheriff shall immediately remove the deputy from his office and from the payroll of the county. Notice of the action of the commission shall be given by registered letter to the county court and the sheriff. If the sheriff fails to immediately comply with the order of the commission, he shall be punished for contempt, upon application of the commission to the circuit court of the county.

(c) An appeal from the ruling of the commission may be had in the same manner and within the same time as specified in section seventeen of this article for an appeal from a ruling of a commission after hearing held in accordance with the provisions of said section seventeen.

§7-14-16. Training and retraining programs for all deputies required.

(a) The civil service commission of any such county shall establish or prescribe a training program which every deputy first appointed a deputy of such county on or after the effective date of this article, must satisfactorily complete during his probationary period.

(b) The civil service commission of any such county shall also establish or prescribe retraining programs which every deputy, whether first appointed such deputy before or after the effective date of this article, must satisfactorily complete from time to time after the effective date of this article, in order to continue as a deputy sheriff of such county or to be eligible for promotion. Any training or retraining program established or prescribed by the civil service commission of any such
§7-14-17. Removal, discharge, suspension or reduction in rank or pay; appeal; reduction in number of deputies; no person subject to article may serve as deputy after age sixty.

(a) On and after the effective date of this article, no deputy sheriff of any county subject to the provisions of this article shall be removed, discharged, suspended or reduced in rank or pay except for just cause, which shall not be religious or political, except as provided in section fifteen of this article; and no such deputy shall on and after the effective date of this article, be removed, discharged, suspended or reduced except as provided in this article and in no event until he shall have been furnished with a written statement of the reasons for such action. For the purpose of the remainder of this subsection and subsections (b) and (c) of this section, the term "suspension" shall mean only (1) a suspension in excess of fifteen days, or (2) a suspension in any calendar year which when added to any previous suspension or suspensions within the same calendar year results in a total period of suspension in excess of fifteen days within such same calendar year, and for the purpose of the remainder of this subsection and said subsections (b) and (c), a member shall not be considered to be suspended or sought to be suspended unless his suspension meets the foregoing definition of said term. In every case of such removal, discharge, suspension or reduction, a copy of the statement of reasons therefor and of the written answer thereto, if the deputy sought to be removed, discharged, suspended or reduced desires to file such written answer, shall be furnished to the civil service commission and entered upon its records. If the deputy sought to be removed, discharged, suspended or reduced shall demand it, the civil service commission shall grant him a public hearing, which hearing shall be held within a period of ten days from the filing
of the charges in writing or the written answer thereto, whichever shall last occur. At such hearing the burden shall be upon the removing, discharging, suspending or reducing sheriff, hereinafter in this section referred to as "removing sheriff," to justify his action, and in the event the removing sheriff fails to justify his action before the commission, then the deputy removed, discharged, suspended or reduced shall be reinstated with full pay, forthwith and without any additional order, for the entire period during which he may have been prevented from performing his usual employment, and no charges shall be officially recorded against his record. A written record of all testimony taken at such hearing shall be kept and preserved by the civil service commission, which record shall be sealed and not be open to public inspection, if no appeal be taken from the action of the commission.

(b) In the event that the civil service commission shall sustain the action of the removing sheriff, the deputy removed, discharged, suspended or reduced on or after the effective date of this article, shall have an immediate right of appeal to the circuit court of the county. In the event that the commission shall reinstate the deputy removed, discharged, suspended or reduced, the removing sheriff shall have an immediate right of appeal to said circuit court. Any appeal must be taken within ninety days from the date of entry by the civil service commission of its final order. Upon an appeal being taken and docketed with the clerk of the circuit court of said county, the circuit court shall proceed to hear the appeal upon the original record made before the commission and no additional proof shall be permitted to be introduced. The circuit court's decision shall be final, but the deputy or removing sheriff, as the case may be, against whom the decision of the circuit court is rendered shall have the right to petition the supreme court of appeals for a review of the circuit court's decision as in other civil cases. Such deputy or removing sheriff shall also have the right, where appropriate, to seek in lieu of an appeal, a writ of mandamus.

(c) The removing sheriff and the deputy sought to be removed, discharged, suspended or reduced shall at
all times, both before the civil service commission and
upon appeal, be given the right to employ counsel to
represent them.
(d) If for reasons of economy or other reasons it
shall, on and after the effective date of this article,
be deemed necessary by any appointing sheriff to re-
duce the number of his deputies, he shall follow the
procedure set forth in this subsection (d). The reduction
in the numbers of the deputy sheriffs of the county shall
be effected by suspending the last man or men, including
probationers, who have been appointed as deputies.
Such removal shall be accomplished by suspending the
number desired in the inverse order of their appointment:
Provided, That in the event the number of deputies
shall again be increased in numbers to the strength
existing prior to such reduction of deputies, the deputies
suspended under the terms of this subsection (d) shall
be reinstated in the inverse order of their suspension
before any new appointments of deputy sheriffs in the
county shall be made.
(e) Notwithstanding any other provision of this ar-
ticle, no deputy sheriff in any county subject to the pro-
visions of this article shall, on or after the effective date
of this article, serve as a deputy sheriff in any county sub-
ject to the provisions of this article after he attains the
age of sixty.
§7-14-18. Offenses and penalties.
1 Any person who makes an appointment or promotion
to any position, or selects a person for employment, con-
trary to the provisions of this article, or wilfully refuses
or neglects otherwise to comply with, or to conform to,
any of the provisions of this article, or violates any of
such provisions, shall be deemed guilty of a misdemeanor.
2 Any commissioner or examiner, or any other person,
who shall wilfully, by himself or in cooperation with
one or more persons, defeat, deceive or obstruct any per-
son with respect to his right of examination or registra-
tion according to this article, or to any rules and regula-
tions prescribed pursuant thereto, or who shall wilfully
or corruptly, falsely mark, grade, estimate or report
upon such examination or proper standing of any person
so examined, registered, or certified, pursuant to the
provisions of this article, or aid in so doing, or who shall
wilfully or corruptly furnish to any person any special
or secret information, for the purpose of either improving
or injuring the prospects or chances of appointment or
promotion to any position of any person so examined,
registered or certified, or to be so examined, registered, or
certified; or who shall impersonate any other person, or
permit or aid in any manner any other person to im-
personate him, in connection with any examination or
registration, or application or request to be examined or
registered, shall, for each offense, be deemed guilty of a
misdemeanor.

Any person convicted of any such misdemeanor offense
shall be fined not less than fifty nor more than one
thousand dollars, or imprisoned in the county jail not
more than one year, or both fined and imprisoned, in the
discretion of the court.

§7-14-19. County courts of counties with a population of less
than twenty-five thousand may place deputy
sheriffs under civil service; protest and election
with respect thereto.

The county court of any county having a population
of less than twenty-five thousand may by order entered of
record provide that the provisions of this article pro-
viding civil service for deputy sheriffs shall apply to
such county on and after the effective date of this article.
A copy of such order, together with a notice advising
the qualified voters of such county of their right to
protest the placing of deputy sheriffs of such county
under civil service, shall be published as a Class II-O
legal advertisement in compliance with the provisions
of article three, chapter fifty-nine of this code and the
publication area for such publication shall be the county.

In the event fifteen percent of the qualified voters of
such county protest such order, by petition duly signed
by them in their own handwriting (which petition may
be signed in any number of counterparts) and filed with
the county clerk of such county within sixty days after
publication of such copy and notice, such order shall not
become effective unless and until it is ratified by a
majority of the legal votes cast with respect to the ques-
tion of civil service coverage for the deputy sheriffs of
such county by the qualified voters of such county at
a regular or special election. Any such election shall
be conducted and superintended and the results thereof
ascertained as provided by law for regular or special
elections, as the case may be.

Whenever the deputy sheriffs of any county are placed
under civil service pursuant to the provisions of this
section, such civil service system for the deputy sheriffs
of such county shall thereupon become mandatory and
all of the provisions of this article shall apply to the
deputy sheriffs of such county with like effect as if said
county had a population of twenty-five thousand or more.

§7-14-20. Inconsistent acts repealed; once established civil
service remains mandatory.

All acts and parts of acts of the Legislature, whether
general, special or local, in relation to deputy sheriffs in-
consistent with the provisions of this article shall be,
and the same are, hereby repealed to the extent of such
inconsistency.

Any civil service system for deputy sheriffs in any
county with a population of twenty-five thousand or more
shall remain mandatory and shall be governed by the
provisions of this article even if the population of such
county shall at any time decrease below twenty-five thou-
sand.

§7-14-21. Severability.

If any provision of this article or its application to any
person or circumstance is held unconstitutional or in-
valid, such unconstitutionality or invalidity shall not
affect other provisions or applications of this article, and
to this end the provisions of this article are hereby
declared to be severable.
CHAPTER 30

(Com. Sub. for House Bill No. 700—Originating in the House Committee on the Judiciary)

[Passed March 13, 1971; in effect July 1, 1971. Approved by the Governor.]

AN ACT to amend and reenact section one, article two, chapter fifty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article two by adding thereto two new sections, designated sections one-ff and one-gg, relating to judicial circuits; creating two replica judicial circuits; relating to the appointment, election and terms of the judges of such two replica judicial circuits; and relating to the terms of court of such replica judicial circuits.

Be it enacted by the Legislature of West Virginia:

That section one, article two, chapter fifty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article two be further amended by adding thereto two new sections, designated sections one-ff and one-gg, all to read as follows:

ARTICLE 2. CIRCUIT COURTS; CIRCUIT, CRIMINAL AND INTERMEDIATE JUDGES.

§51-2-1. Judicial circuits; election and terms of judges; terms of court.
§51-2-1ff. Thirty-second circuit.
§51-2-1gg. Thirty-third circuit.

§51-2-1. Judicial circuits; election and terms of judges; terms of court.

1 The state shall be divided into judicial circuits as follows: The counties of Brooke, Hancock and Ohio shall constitute the first circuit; the counties of Marshall, Tyler and Wetzel shall constitute the second circuit; the counties of Doddridge, Pleasants and Ritchie shall constitute the third circuit; the counties of Wood and Wirt shall constitute the fourth circuit; the counties of Calhoun, Jackson and Roane shall constitute the fifth circuit; the county of Cabell shall constitute the sixth cir-
circuit; the county of Logan shall constitute the seventh
circuit; the county of McDowell shall constitute the
eighth circuit; the county of Mercer shall constitute the
ninth circuit; the county of Raleigh shall constitute the
tenth circuit; the counties of Greenbrier, Monroe, Pocahontas and Summers shall constitute the eleventh circuit;
the county of Fayette shall constitute the twelfth circuit;
the county of Kanawha shall constitute the thirteenth
circuit; the counties of Braxton, Clay, Gilmer and Webster shall constitute the fourteenth circuit; the county of
Harrison shall constitute the fifteenth circuit; the county
of Marion shall constitute the sixteenth circuit; the county
of Monongalia shall constitute the seventeenth circuit;
the county of Preston shall constitute the eighteenth
circuit; the counties of Barbour and Taylor shall consti-
tute the nineteenth circuit; the county of Randolph
shall constitute the twentieth circuit; the counties of
Grant, Mineral and Tucker shall constitute the twenty-
first circuit; the counties of Hampshire, Hardy and Pendleton shall constitute the twenty-second circuit; the
counties of Berkeley, Jefferson and Morgan shall con-
stitute the twenty-third circuit; the county of Wayne
shall constitute the twenty-fourth circuit; the counties
of Lincoln and Boone shall constitute the twenty-fifth
circuit; the counties of Lewis and Upshur shall constitute
the twenty-sixth circuit; the county of Wyoming shall
constitute the twenty-seventh circuit; the county of
Nicholas shall constitute the twenty-eighth circuit; the
counties of Mason and Putnam shall constitute the
twenty-ninth circuit; the county of Mingo shall constitute
the thirtieth circuit; the counties of Berkeley, Jefferson
and Morgan shall constitute the thirty-first circuit; the counties of Braxton, Clay, Gilmer and Webster shall
constitute the thirty-second circuit; and the counties
of Mineral, Grant and Tucker shall constitute the thirty-
third circuit.

There shall be elected on the Tuesday next after the
first Monday in November, one thousand nine hundred
sixty-eight, and every eighth year thereafter, one judge
in each of the circuits herein constituted, except for the
first circuit there shall be two judges elected: Provided,
That the judge of the thirty-second circuit and the judge
of the thirty-third circuit shall be elected on the Tues-
day next after the first Monday in November, one
thousand nine hundred seventy-two, and every eighth
year thereafter.

Within thirty days after the provisions of this section
become effective the governor shall appoint a judge for
the thirty-second circuit and a judge for the thirty-
third circuit in the same manner as appointments are
made to fill vacancies in such offices. Such judge
shall serve until his successor is elected and qualified.
The terms of the several circuit judges of the counties
aforesaid shall commence and be held each year as here-
inafter provided.

§51-2-1ff. Thirty-second circuit.
1 For the county of Braxton on the first Monday in
2 February, June and October.
3 For the county of Clay on the third Monday in March,
4 July and November.
5 For the county of Gilmer on the first Monday in March,
6 July and November.
7 For the county of Webster on the first Monday in
8 January, May and September.

§51-2-1gg. Thirty-third circuit.
1 For the county of Mineral on the first Monday in
2 February, June and October.
3 For the county of Grant on the third Monday in
4 March, July and November.
5 For the county of Tucker on the first Monday in Jan-
6 uary, May and September.

CHAPTER 31
(House Bill No. 554—By Mr. Myles)

[Passed February 9, 1971; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article seven,
chapter six of the code of West Virginia, one thousand nine
CHAPTER 32

(House Bill No. 857—By Mr. Sparacino)

[Passed February 27, 1971; in effect July 1, 1971. Approved by the Governor.]

AN ACT to amend and reenact section six, article seven, chapter six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to allowances to circuit judges for stationery, postage and stenographic help.
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7. COMPENSATION AND ALLOWANCES.

§6-7-6. Allowances to circuit judges for stationery, postage and stenographic help; additional stenographic compensation from counties; payments therefor.

1 Each judge of the circuit court shall be allowed an amount not to exceed four hundred and twenty-five dollars per month for the payment of stenographic help necessary in the discharge of the duties of his office, and each judge shall be allowed an amount not to exceed six hundred dollars annually for the procurement of necessary stationery, payment of postage, and necessary supplies of his office. The judge shall be reimbursed for the actual amounts expended by him for stationery, supplies and postage. Payment for stenographic help shall be made directly to the person performing the stenographic work. Such amounts shall be paid monthly out of the state treasury, but not until the judge submits an itemized statement covering the same.

Any county court or the board of county commissioners of Ohio county may pay such additional compensation for stenographic help for the judge of any circuit which may be necessary in the discharge of the duties of the office of the judge of such circuit, or any combination of counties in any circuit may contribute to such additional stenographic help. Such additional compensation shall be paid from county funds directly to the person or persons performing such work.
hundred sixty-nine, relating to the authorization of the thirteenth judicial circuit of West Virginia to appoint a law assistant; fixing his qualifications and salary limits; and requiring the county court of Kanawha county to fix within said limits and provide the manner of payment of such salary.

Be it enacted by the Legislature of West Virginia:

That chapter one hundred fifty-six, acts of the Legislature, regular session, one thousand nine hundred sixty-nine, be amended and reenacted to read as follows:

CIRCUIT COURT OF KANAWHA COUNTY.

§1. Law assistant; appointment; qualifications; salary.

1 On or after the effective date of this act, the judge of the circuit court of Kanawha county, West Virginia (thirteenth judicial circuit), may appoint a law assistant, who shall be a person duly licensed to practice law in this state, and who shall discharge such secretarial duties as may be assigned to him by the judge; said law assistant, while acting as such, shall not engage in the practice of law, but shall devote his time to the duties of his office, and may be removed and his successor appointed at any time by the judge. Said law assistant shall receive a salary of not less than fifteen thousand nor more than eighteen thousand dollars per year payable monthly, and the county court of Kanawha county shall annually, at its levy session, fix within said limits and provide for the payment out of general county funds the amount of the salary so fixed.

CHAPTER 34

(House Bill No. 1049—By Mr. Romine and Mr. White, of Cabell)

[Passed March 12, 1971; in effect July 1, 1971. 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 thirty-four, acts of the Legislature, regular session, one thousand nine hundred seventy, relating to the jurisdiction of the domestic relations court of Cabell county; relating to such court generally; and relating to the salaries of the chief probation officer and probation officer of such court.

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 thirty-four, acts of the Legislature, regular session, one thousand nine hundred seventy, be amended and reenacted to read as follows:

DOMESTIC RELATIONS COURT OF CABELL COUNTY.

§2. Jurisdiction.

1 The said domestic relations court shall have jurisdiction within the said county of Cabell, concurrent with the circuit court, of all matters and causes arising out of or pertaining to annulment of marriages, separate maintenance suits, divorce, alimony, the custody and maintenance of children of litigants and the adjudication of property rights arising out of the same, and all other matters and causes coming within the purview of chapter forty-eight of the code of West Virginia, one thousand three hundred thirty-one, and all amendments and reenactments thereof concerning domestic relations, habeas corpus proceedings; of all matters and causes coming within the purview of chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as enacted by chapter one, acts of the Legislature of West Virginia, one thousand nine hundred thirty-six, and of all amendments and reenactments thereof, commonly known as the child welfare law; of all matters and causes coming within the purview of chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, and all amendments and reenactments thereof, commonly called the general school law; of all matters and causes coming within the purview of chapter forty-eight of the code of West Virginia, one thousand three hundred thirty-one, and all amendments and reenactments thereof, commonly known as the child welfare law; of all matters and causes coming within the purview of chapter four-
eight of the code of West Virginia, one thousand nine hundred thirty-one, and of all amendments and reenactments thereof, commonly known as the reciprocal dependency law; of all matters and causes coming within the purview of chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, and all amendments and reenactments thereof, commonly known as the adoption law; 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 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 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 sub-
ject matter of any and all said laws and acts, and the
amendments and reenactments thereof, and of the com-
mon law of said state relating to the subject matter
thereof. Independently of any of the foregoing matters,
the said domestic relations court shall also have and is
hereby given what was heretofore recognized as general
equity jurisdiction concurrent with the circuit court, ex-
cepting in cases involving the enforcement of criminal
laws and labor disputes, and excepting cases where it
shall appear from the pleadings that the matter or thing
in controversy exceeds in value the sum of three hun-
dred fifty thousand dollars. The proceedings and modes
of procedure and power and jurisdiction conferred by law
upon the circuit court or the common pleas court in any
and all of said matters and causes are hereby conferred
upon and shall be exercised by said domestic relations
court.

The court is authorized and empowered to appoint and
discharge one chief probation officer at a yearly salary of
nine thousand seven hundred fifty dollars and a proba-
tion officer at a yearly salary of nine thousand five hun-
dred dollars, which said salaries shall be paid by the
county court monthly, and in addition thereto the said
county court shall reimburse the said probation officers
of their necessary expenses actually incurred monthly
in the performance of official duties including an allow-
ance of ten cents per mile for their automobile driven
in the performance of official duties. The court is further
authorized and empowered to appoint and discharge such
medical, clerical and secretarial assistance as shall enable
it to discharge all of the duties required of it under the
provisions of this act and the general laws of the state
and such person or persons shall be paid by the county
court monthly upon the written approval of the judge
of the said court.
CHAPTER 35

(Senate Bill No. 237—By Mr. Poffenbarger)

[Passed February 15, 1971; in effect July 1, 1971. Approved by the Governor.]

AN ACT to amend and reenact section two, chapter one hundred eighty-five, acts of the Legislature, regular session, one thousand nine hundred fifty-nine; and to amend and reenact section four of said chapter one hundred eighty-five, as last amended and reenacted by chapter two hundred seventeen, acts of the Legislature, regular session, one thousand nine hundred sixty-seven, all relating to the jurisdiction and judge’s salary of the juvenile court of Kanawha county.

Be it enacted by the Legislature of West Virginia:

That section two, chapter one hundred eighty-five, acts of the Legislature, regular session, one thousand nine hundred fifty-nine, be amended and reenacted; and that section four of said chapter one hundred eighty-five, as last amended and reenacted by chapter two hundred seventeen, acts of the Legislature, regular session, one thousand nine hundred sixty-seven, be amended and reenacted, all to read as follows:

JUVENILE COURT OF KANAWHA COUNTY.

§2. Jurisdiction.


§2. Jurisdiction.

1 The court shall have jurisdiction, within Kanawha county, in all proceedings affecting delinquent, neglected, defective and state dependent children as set forth and enumerated in chapter forty-nine of the code of West Virginia; the adoption of adults and children; the care, custody, control and disposition of delinquent, mentally or physically disabled and neglected children under the age of eighteen years; to take, in the name of the state, all manner of recognizance, bonds and obligations heretofore or hereafter permitted to be taken in all cases where the person charged with delinquency is under
the age of eighteen years and to continue or discharge
such recognizance, bonds and obligations.

The court shall have general equity jurisdiction in any
causes or proceedings before it, with full power to grant
injunctions and make monetary awards in matters in-
volving the care, custody, maintenance, preservation and
protection of infants under the age of eighteen years,
who are delinquent, dependent or neglected.

The manner and modes of procedure, power and juris-
diction conferred by law upon the circuit court of Ka-
awha county in any and all of the foregoing matters
and causes are hereby conferred upon and shall be exer-
cised by the juvenile court of Kanawha county.

The said court shall also have and exercise such other
jurisdiction and powers, not herein enumerated, as may
have been heretofore or may be hereafter given to the
juvenile courts within the several counties of this state,
and proceedings affecting the treatment and control of
dependent, neglected, defective and delinquent children
under the age of eighteen years, and all general laws
relating to jurisdiction and powers of any court sitting
as a juvenile court are hereby made applicable to said
juvenile court.

The court shall also have jurisdiction within Kanaw-
ha county concurrent with the circuit court of said
county of statutory summary proceedings of the sale,
lease, or mortgage upon the estate of minors, insane per-
sons and convicts.


The judge of the juvenile court of Kanawha county
shall for his services receive the sum of twenty thou-
sand dollars per annum, to be paid in monthly install-
ments out of the county treasury of Kanawha county.
The county court of Kanawha county shall annually
make provisions by appropriate levy and appropriation
for the payment of said salary.
AN ACT to amend and reenact chapter twenty-eight, acts of the Legislature, regular session, one thousand nine hundred seven, as last amended by chapter one hundred seventy-three, acts of the Legislature, regular session, one thousand nine hundred sixty-five, relating to the criminal court for the county of McDowell, changing the name of said court, enlarging its jurisdiction, fixing the salary of the judge thereof, and as so changed and enlarged to continue its existence.

Be it enacted by the Legislature of West Virginia:

That chapter twenty-eight, acts of the Legislature, regular session, one thousand nine hundred seven, as last amended by chapter one hundred seventy-three, acts of the Legislature, regular session, one thousand nine hundred sixty-five, be amended and reenacted so as to read as follows:

THE INTERMEDIATE COURT OF McDOWELL COUNTY.

§1. Court established.
§2. Jurisdiction concurrent with circuit court.
§3. Judge; election; term; qualifications; removal from office; filling vacancy.
§4. Salary of judge; payment thereof.
§5. General powers and jurisdiction.
§6. Presumption of jurisdiction.
§7. Power to punish for contempt.
§8. Terms of court; when and where held.
§9. Grand juries; regular and special; offenses which may be considered; applicability of general law; choosing and impaneling grand and petit jurors; compensation of jurors.
§10. Clerk of court; fees, signing of process, etc., of court and execution thereof.
§11. Sheriffs to execute process, duties of sheriff of McDowell county; powers, liabilities and fees of sheriffs and other officers.
§12. Indictments, civil actions and domestic relations cases in circuit court may be certified to intermediate court.
§13. Change of venue.
§14. County court to provide record books, etc., office space and secretarial assistance to judge; effect of certificates of judge or clerk.
§15. Appeals may be allowed and writs of error awarded to judgments, etc., of judge of intermediate court; appeals in cases relating to public revenue.

§16. Petitions for appeal, writ of error, etc.; who may present and to whom; laws governing; time limitation.

§17. Appeals, etc., docketed in circuit court of McDowell county; expeditious proceeding.

§18. Application to supreme court of appeals for writ of error on rejection of petition for appeal by the circuit court.

§19. Proceedings on appeals, writs of error, etc., allowed by the circuit court.

§20. Authority to grant writs of habeas corpus, requirements for issuance.

§21. Prosecuting attorney to attend terms of court and perform duties required by law.

§22. General laws applicable to court and judge.

§1. Court established.

A court of record of limited jurisdiction is hereby established and continued in and for the county of McDowell, to be held and presided over by a judge elected or to be elected or appointed as provided by this act, which court shall be designated and known as "The Intermediate Court of McDowell County."

§2. Jurisdiction concurrent with circuit court.

The court, which is the same court originally established by chapter thirty-six, acts of the Legislature, regular session, one thousand eight hundred ninety-three, but with its name and jurisdiction changed as in this act provided, shall continue to have jurisdiction within the county of McDowell, concurrent with the circuit court of the county, of all felonies, misdemeanors and offenses committed or which may be committed within the county of McDowell, and shall also have, concurrent with the circuit court of the county, jurisdiction, supervision and control by appeal, mandamus, prohibition and certiorari of all proceedings before justices of the peace of the county or the police court, mayor or other constituted tribunal, board or commission of any city, town or village in the county. The court shall likewise have jurisdiction within the county of McDowell concurrent with the circuit court of the county, of all civil actions or proceedings at law, except where it shall appear from the pleadings that the matter or thing in controversy in any such civil action or proceeding at law, exclusive of interests and
costs, exceeds in value the sum of fifty thousand dollars, 
and all summary proceedings at law and any other man-
ner of action or proceedings at law authorized by the 
general laws of West Virginia, as well as of appeals 
from judgments of the justices of the county when such 
appeals shall lie to the court in the same manner and 
under the same regulations as provided in the general 
laws for appeals from justices. The court shall likewise 
have jurisdiction within the county of McDowell, con-
current with the circuit court of the county, of suits for 
divorce, annulment of marriage and separate mainten-
ance, of bastardy proceedings and actions for maintenance 
of illegitimate children as provided by the general laws 
of West Virginia, and the court shall have jurisdiction 
within the county of McDowell, concurrent with the cir-
cuit court of the county, of proceedings for adoption, 
and all juvenile and other matters of which the aforesaid 
criminal court of McDowell county was given jurisdiction 
by the general laws of West Virginia or of which the 
court hereby established may be given jurisdiction by 
such general laws.

§3. Judge; election; term; qualifications; removal from office; filling vacancy.

The judge of the foresaid criminal court of McDowell 
county elected at the general election held in this state 
on the Tuesday after the first Monday in November, 
one thousand nine hundred sixty-eight, to fill a vacancy 
then existing, shall hold his office as judge of the court 
and of the court hereby established for the unexpired 
term of six years from the first day of January, one thou-
sand nine hundred sixty-six, which term expires on the 
last day of December, one thousand nine hundred seventy-
two, and until his successor is duly elected and qualified; 
and at the general election in this state to be held on the 
Tuesday after the first Monday in November, one thou-
sand nine hundred seventy-two, and every eight years 
thereafter, there shall be elected by the legal voters of 
the county a judge of the intermediate court of Mc-
Dowell county, who shall be a resident member of the 
bar of the county, and shall be disqualified from prac-
ticing law in all the courts of this state during his con-
tinuance in office, who shall preside over the court for
the term of eight years from the first day of January
succeeding the election, and shall be, except as to juris-
diction, subject to the laws in force governing circuit
judges. The judge of the court may be removed from
office for the same reasons, and in the same manner,
as judges of circuit courts. And 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 the circuit court.

§4. Salary of judge; payment thereof.

1 The judge of the intermediate court shall receive for
2 his services the sum of nineteen thousand dollars per
3 annum to be paid out of the county treasury of the county
4 of McDowell.

§5. General powers and jurisdiction.

1 To the extent of the jurisdiction conferred by this act
2 upon the intermediate court, all powers, jurisdiction and
3 authority conferred by law upon circuit courts in the
4 trial of cases and in respect to proceedings and modes
5 of procedure authorized or required therein within the
6 county of McDowell are hereby conferred upon and
7 shall be exercised by the intermediate court. And the
8 judge of the intermediate court shall have the same
9 powers in vacation as to all matters within the juris-
10 diction of the court that are now or may hereafter be
11 conferred by law upon the judge of the circuit court of
12 the county.

§6. Presumption of jurisdiction.

1 It shall not be necessary in any cause or proceeding
2 in the intermediate court that the facts authorizing it
3 to take jurisdiction of the cause or proceeding be set
4 forth upon the record, but jurisdiction shall be presumed
5 unless the contrary plainly appears from the record.

§7. Power to punish for contempt.

1 The intermediate court shall have the same powers to
2 punish for contempt as are conferred by law upon the
3 circuit court.
§8. Terms of court; when and where held.
1 There shall be held four terms of the intermediate
2 court in each year, which terms shall commence on the
3 Tuesday following the second Monday in the months of
4 January, April, July and October of each year. The
5 terms of the court shall be held at the courthouse in the
6 county or in the annex to the courthouse in the county.

§9. Grand juries; regular and special; offenses which may be
considered; applicability of general law; choosing and
impaneling grand and petit jurors; compensation of
jurors.
1 The intermediate court shall impanel a grand jury at
2 each term thereof. The intermediate court, at a special
3 or adjourned term thereof, whenever it shall be proper
4 to do so, may order a grand jury to be drawn or sum-
5 moned to attend such term. All of the provisions of
6 article two, chapter fifty-two of the code of West Vir-
7 ginia, one thousand nine hundred thirty-one, as amended,
8 in regard to grand juries in the circuit court shall apply,
9 as far as applicable, to grand juries in the intermediate
10 court. The grand and petit jurors serving in the court,
11 shall be chosen and impaneled in the same manner as
12 they are chosen and impaneled by law in the circuit
13 court, and shall receive the same compensation as the
14 jurors in the circuit court.

§10. Clerk of court; fees, signing of process, etc., of court and
execution thereof.
1 The clerk of the circuit court of McDowell county shall
2 act as and perform the duties of the clerk of the inter-
3 mediate court, and shall collect the same fees as the clerk
4 of the circuit court for similar services, and exercise the
5 same powers and duties arising within the jurisdiction
6 of the intermediate court. All processes, rules and orders
7 of the court in the exercise of its jurisdiction, shall be
8 signed by the clerk thereof and be directed to the sheriffs
9 of the proper counties wherein the same are to be exe-
10 cuted; and they shall be executed in like manner and with
11 the same effect as processes issuing from the circuit
12 court of the county.
§11. Sheriffs to execute process, duties of sheriff of McDowell county; powers, liabilities and fees of sheriffs and other officers.

The sheriff of McDowell county and the sheriffs of the several counties in the state shall by themselves or their deputies execute all processes of the intermediate court, and those issued by the clerk thereof, directed to them respectively; and all processes emanating from the intermediate court heretofore or hereafter issued by the clerk thereof shall be directed to and executed by them in the same manner as is provided by law as to processes issuing from the circuit court or the clerk thereof. And the sheriff of McDowell county shall perform the same duties and services for the intermediate court of McDowell county, as he is now by law required to perform for the circuit court of the county; and in the execution of processes, rules and orders of the intermediate court, the officer, and other officers of this state, this county, the several counties of this state, and municipal corporations in this state situate, shall have the same powers and rights, be subject to the same liabilities, govern themselves by the same rules and principles of law and the statutes of the state, and be entitled to the same fees as though the processes, rules and orders issued from the circuit court of the county.

§12. Indictments, civil actions and domestic relations cases in circuit court may be certified to intermediate court.

The judge of the circuit court of the county may in his discretion certify to the intermediate court for trial any indictment for any felony or misdemeanor which may hereafter be found by a grand jury impaneled in the circuit court, as well as any civil action or other proceeding at law within the jurisdiction of the intermediate court or suit for divorce, annulment of marriage or separate maintenance which may now be pending or hereafter instituted in the circuit court, and thereupon the original papers filed in the circuit court together with a copy of any order entered in the cause by the court, including any order or judgment theretofore entered therein, shall be transferred to the intermediate court,
14 and the cause shall be docketed therein and proceeded
15 with as though the indictment had been returned or the
16 cause originally brought and all prior proceedings had
17 in the intermediate court; and the intermediate court
18 shall likewise proceed with all indictments for misde-
19 meanor or felony heretofore found by a grand jury in
20 the criminal court of McDowell county and all appeals
21 to the court and other proceedings pending therein as
22 though the indictment had been returned or the cause
23 originally brought and all prior proceedings had in the
24 intermediate court.

§13. Change of venue.
1 A change of venue of any cause pending in the inter-
2 mediate court may be ordered as provided in section
3 thirteen, article three, chapter sixty-two of the code of
4 West Virginia, one thousand nine hundred thirty-one, as
5 amended.

§14. County court to provide record books, etc., office space
1 and secretarial assistance to judge; effect of certificates
2 of judge or clerk.
1 It shall be the duty of the county court of McDowell
2 county to provide all record books, other books, stationery
3 and postage, as well as office room and such stenographic
4 or secretarial assistance to the judge of the intermediate
5 court as may be necessary, and likewise a seal for the
6 court but full faith and credit shall be given to the record
7 of the court, and the certificates of its judge or clerk
8 whether the seal of the court be affixed thereto or not,
9 in like manner and with the same effect as if the same
10 were records of the circuit court similarly authenticated.

§15. Appeals may be allowed and writs of error awarded to
1 judgments, etc., of judge of intermediate court; ap-
2 peals in cases relating to public revenue.
1 Appeals may be allowed, and writs of error and super-
2 sedees awarded to the judgments, decrees and orders of
3 the intermediate court by the circuit court of McDowell
4 county, or the judge thereof, in all cases or proceedings
5 as provided in article four, chapter fifty-eight of the code
6 of West Virginia, one thousand nine hundred thirty-one,
as amended, or elsewhere in the general laws of this state; and in cases relating to the public revenues the right of appeal shall belong to the state as well as the defendant.

§16. Petitions for appeal, writ of error, etc.; who may present and to whom; laws governing; time limitation.

Any person who is a party to any such cause wishing to obtain a writ of error, appeal or supersedeas from any judgment, decree, or order of the intermediate court may present to the circuit court of McDowell county, or the judge thereof in vacation, a petition therefor and the provisions of article four, chapter fifty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, concerning appeals to the circuit courts shall govern the proceedings on such appeal, writ of error or supersedeas from the intermediate court as to the duties of the petitioner, the courts or judges and clerks thereof:

Provided, That no such appeal, writ of error or supersedeas from the intermediate court shall be allowed unless the petition therefor be presented within four months from the date of such judgment or order.

§17. Appeals, etc., docketed in circuit court of McDowell county; expeditious proceeding.

Every appeal, writ of error or supersedeas from the intermediate court shall be docketed in the circuit court of McDowell county, and shall be proceeded in as expeditiously as may be practicable.

§18. Application to supreme court of appeals for writ of error on rejection of petition for appeal by the circuit court.

In a case wherein the appeal, writ of error or supersedeas is to the circuit court, and the court or judge thereof deems the judgment, decree or order plainly right and rejects it on that ground, if the order of rejection so states, no further petition shall afterwards be presented for the same purpose; but the same petition with any brief in support thereof and the order of rejection with the transcript of the record may be presented to the supreme court of appeals, or a judge thereof in vacation, for an appeal, writ of error or super-
Ch. 36] COURTS AND THEIR OFFICERS 235

11 sedeas, from said order of rejection; and if allowed the
12 same proceeding may be had thereon as if the same were
13 a petition originally from the circuit court of the county
14 to the court of appeals.

§19. Proceedings on appeals, writs of error, etc., allowed by
the circuit court.

1 The circuit court where an appeal, writ of error or
2 supersedeas has been allowed by such court, or the judge
3 thereof in vacation, shall upon the hearing thereof, affirm
4 the judgment, decree or order, if there be no error therein
5 prejudicial to the appellant, or reverse the same in whole
6 or in part if erroneous, and remand the same to the in-
7 termediate court to be further proceeded in and finally
determined. And the clerk of the circuit court shall as
9 soon as practicable after the adjournment of the court,
10 transmit the decision of the circuit court to the clerk of
11 the intermediate court.

§20. Authority to grant writs of habeas corpus, requirements
for issuance.

1 The intermediate court of McDowell county, or the
2 judge thereof in vacation, concurrent with the supreme
3 court of appeals and the circuit court of the county, shall
4 have jurisdiction and authority to grant writs of habeas
5 corpus, as provided in article four, chapter fifty-three of
6 the code of West Virginia, one thousand nine hundred
7 thirty-one, as amended, and all provisions of the article
8 shall be applicable to the granting of such writs by the
9 intermediate court; but in no case shall such writ be
10 issued by the intermediate court, or the judge thereof in
11 vacation, on the application of any person unless such
12 person by himself or by someone in his behalf shall
13 apply for such writ by petition and show by affidavit or
14 other evidence probable cause to believe that such person
15 is detained in the county of McDowell without lawful
16 authority.

§21. Prosecuting attorney to attend terms of court and per-
form duties required by law.

1 The prosecuting attorney of McDowell county shall
2 attend the terms of court of the intermediate court,
either by himself or his assistant, and shall perform the
duties of his office in respect to the court and all causes
and proceedings pending therein as required by the gen-
eral laws of this state.

§22. General laws applicable to court and judge.
To the extent of the jurisdiction and authority hereby
conferred upon the intermediate court, the provisions of
sections three and four, article eight, chapter seven of
the code of West Virginia, one thousand nine hundred
thirty-one, as amended, as well as other provisions of
the general laws of this state to the extent applicable,
shall apply to the intermediate court of McDowell coun-
ty, and the judge thereof in the same manner and to the
same extent as to the circuit court of McDowell county
and the judge thereof.

CHAPTER 37
(Senate Bill No. 174—By Mr. Barnett)

[Passed February 15, 1971; in effect July 1, 1971. Approved by the Governor.]

AN ACT to amend and reenact section two, chapter thirty-
eight, acts of the Legislature, regular session, one thou-
sand nine hundred sixty-four, as last amended and re-
enacted by chapter two hundred twenty, acts of the Legis-
lature, regular session, one thousand nine hundred sixty-
seven; and to amend and reenact section four of said chap-
ter thirty-eight, as last amended and reenacted by chapter
sixty-four, acts of the Legislature, regular session, one
thousand nine hundred sixty-eight, all relating to the
jurisdiction and judge's salary of the intermediate court of
Mercer county.

Be it enacted by the Legislature of West Virginia:

That section two, chapter thirty-eight, acts of the Legisla-
ture, regular session, one thousand nine hundred sixty-four,
as last amended and reenacted by chapter two hundred twen-
ty, acts of the Legislature, regular session, one thousand nine hundred sixty-seven, be amended and reenacted; and that section four of said chapter thirty-eight, as last amended and reenacted by chapter sixty-four, acts of the Legislature, regular session, one thousand nine hundred sixty-eight, be amended and reenacted, all to read as follows:

**INTERMEDIATE COURT OF MERCER COUNTY.**

§2. Jurisdiction concurrent with circuit court.

§4. Salary of judge.

§2. Jurisdiction concurrent with circuit court.

1 The said court, which is the same court originally established by chapter eighteen, acts of the Legislature, regular session, one thousand eight hundred ninety-three, but with its name and jurisdiction changed as in this act provided, shall continue to have jurisdiction within the county of Mercer, concurrent with the circuit court of said county, of all felonies, misdemeanors and offenses committed or which may be committed within the said county of Mercer, and shall also have, concurrent with the circuit court of said county, jurisdiction, supervision and control by appeal, mandamus, prohibition and certiorari of all proceedings before justices of the peace of said county or the police court, mayor or other constituted tribunal, board or commission of any city, town or village in said county. The said court shall likewise have jurisdiction within said county of Mercer, concurrent with the circuit court of said county, of all suits and proceedings in equity, in all actions of ejectment, and in all civil actions or proceedings at law, except where it shall appear from the pleadings that the matter or thing in controversy in any such suit, proceeding or action, exclusive of interest and costs, exceeds in value the sum of seventy-five thousand dollars, and all summary proceedings at law and any other manner of action or proceeding at law authorized by the general laws of West Virginia, as well as of appeals from judgments of the justices of said county when such appeals shall lie to the said court in the same manner and under the same regulations as provided in the general laws for appeals from justices. The said court shall likewise have
jurisdiction within said county of Mercer, concurrent
with the circuit court of said county, of suits for divorce,
annulment of marriage and separate maintenance, of
bastardy proceedings and actions for maintenance of
illegitimate children as provided by the general laws
of West Virginia, and the said court shall continue to
have jurisdiction within said county of proceedings for
adoption and all juvenile and other matters of which
the aforesaid criminal court of Mercer county was given
jurisdiction by the general laws of West Virginia or of
which the court hereby established may be given juris-
diction by such general laws.

§4. Salary of judge.

1 The judge of said intermediate court shall receive for
2 his services the sum of twenty thousand dollars per
3 annum to be paid out of the county treasury of said
4 county of Mercer.

CHAPTER 38

(House Bill No. 1175—By Mr. Seibert and Miss Herndon)

[Passed March 11, 1971; in effect July 1, 1971. Approved by the Governor.]

AN ACT to amend and reenact section nine, chapter one hun-
dred twenty, acts of the Legislature, regular session, one
thousand nine hundred twenty-five, as last amended and
reenacted by chapter forty-one, acts of the Legislature,
regular session, one thousand nine hundred seventy, re-
lating 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 forty-
one, acts of the Legislature, regular session, one thousand nine
hundred seventy, be amended and reenacted to read as follows:

The judge shall, from and after the first day of January, one thousand nine hundred seventy-three, for his services receive twenty thousand dollars per annum, to be paid out of the county treasury of the county of Ohio. Until the first day of January, one thousand nine hundred seventy-three, the judge shall receive fifteen thousand dollars per annum for his services, payable as hereinbefore provided.

CHAPTER 39

(House Bill No. 1117—By Mr. Calendine and Mr. Farley)

[Passed March 11, 1971; in effect July 1, 1971. Approved by the Governor.]

AN ACT to amend and reenact sections two and five, chapter one hundred ninety-nine, acts of the Legislature, regular session, one thousand nine hundred fifty-nine, relating to the jurisdiction of the intermediate court of Wood county and the salary of the judge thereof.

Be it enacted by the Legislature of West Virginia:

That sections two and five, chapter one hundred ninety-nine, acts of the Legislature, regular session, one thousand nine hundred fifty-nine, be amended and reenacted to read as follows:

INTERMEDIATE COURT OF WOOD COUNTY.

§2. Jurisdiction.

§5. Salary of judge.

§2. Jurisdiction.

The court shall have jurisdiction within Wood county, concurrent with the circuit court of said county, of actions, causes, matters, proceedings and suits relating to (a) those matters within the purview of article one, chapter forty-eight of the official code of West Virginia, and of all amendments and reenactments thereof, of
which the circuit court now has exclusive jurisdiction, including the issuance of a marriage license in an emergency or under extraordinary circumstances as now provided in section six-c of said article and chapter; (b) affirmation of marriages, annulment of marriages, separate maintenance, divorce, alimony, the care, custody, maintenance and education of children of litigants and the adjudication of property rights arising out of same, and all other causes and matters arising within the provisions of article two, chapter forty-eight of the official code of West Virginia, commonly known as "the divorce law;" and of all amendments and reenactments thereof; (c) adoption proceedings arising out of article four of the chapter last aforesaid, and of all amendments and reenactments thereof; (d) proceedings for a change of name arising out of article five of the chapter last aforesaid, and of all amendments and reenactments thereof; (e) the enforcement of support of dependents arising out of article nine of the chapter last aforesaid, and of all amendments and reenactments thereof; (f) the care and disposition of delinquent, defective, neglected and dependent children and juvenile offenders arising out of articles five, six and seven, chapter forty-nine of the official code of West Virginia, and of all amendments and reenactments thereof; (g) all proceedings arising out of article eight, chapter forty-nine of the official code of West Virginia, known as the "Interstate Compact on Juveniles," and of all amendments and reenactments thereof; (h) compulsory school attendance and truancy arising out of article eight, chapter eighteen of the official code of West Virginia, and of all amendments and reenactments thereof; (i) habeas corpus proceedings involving the award and custody of children under the age of twenty-one years; (j) the collection of recognizances and bonds taken by said court, or of bonds taken by the clerk thereof in vacation, to secure the payment of judgments for fines and costs rendered by said court; (k) the approval of compromise by fiduciaries of liabilities where acting as guardian for an infant in accordance with the provisions of section seven, article five, chapter forty-four of the official code of West Vir-
ginia, and of all amendments and reenactments thereof; (l) concerning the transfer of securities the property of an infant in the name of a fiduciary in accordance with the provisions of section eight, article five, chapter forty-four of the official code of West Virginia, and of all amendments and reenactments thereof; (m) direction to fiduciaries concerning moneys belonging to a minor in accordance with the provisions of section one, article six, chapter forty-four of the official code of West Virginia, and of all amendments and reenactments thereof; (n) direction to fiduciaries concerning moneys belonging to a minor in accordance with the provisions of section one, article six, chapter forty-four of the official code of West Virginia, and of all amendments and reenactments thereof; (o) direction to fiduciaries concerning moneys belonging to a minor in accordance with the provisions of section one, article six, chapter forty-four of the official code of West Virginia, and of all amendments and reenactments thereof; (p) direction to fiduciaries concerning moneys belonging to a minor in accordance with the provisions of section one, article six, chapter forty-four of the official code of West Virginia, and of all amendments and reenactments thereof; (q) sale of personal estate by guardian in accordance with the provisions of section nine, article ten, chapter forty-four of the official code of West Virginia, and of all amendments and reenactments thereof; (r) proceedings between guardians and wards in accordance with the provisions of section thirteen, article ten, chapter forty-four of the official code of West Virginia, and of all amendments and reenactments thereof; (s) the approval of compromising an infant's claim for damages in accordance with the provisions of section fourteen, article ten, chapter forty-four of the official code of West Virginia, and of all amendments and reenactments thereof; (t) the transfer of property of nonresident infant to foreign guardian in accordance with the provisions of section three, article eleven, chapter forty-four of the official code of West Virginia, and of all amendments and reenactments thereof; (u) the transfer of proceeds of sale belonging to nonresident
infant to foreign guardian in accordance with section four, article eleven, chapter forty-four of the official code of West Virginia, and of all amendments and reenactments thereof; (v) the approval of the sale, lease, mortgage or deeding in trust of infants' lands in accordance with the provisions of article one, chapter thirty-seven of the official code of West Virginia, and of all amendments and reenactments thereof; (w) release of dower of an infant in accordance with the provisions of section nine, article one, chapter thirty-seven of the official code of West Virginia, and of all amendments and reenactments thereof; (x) all matters coming within the purview of section one, article one, chapter forty-eight of the official code of West Virginia, relating to the age of consent, and of all amendments and reenactments thereof; (y) all matters and causes coming within the purview of section two, article seven, chapter sixty-one of the official code of West Virginia, commonly known as "license to carry weapons," and of all amendments and reenactments thereto; and (z) any and all other matters arising under the present and future laws of the state of West Virginia, common or statutory, incidental to the foregoing, including, but not limited to, the disposition of property and property interests involved in any such matters, and, as well, the adjudication of any and all rights, titles and interests necessary or incidental to a full determination of all such matters pending in said court.

Said court shall have general equity jurisdiction in actions, causes, matters, proceedings and suits before it within its jurisdiction with power to grant injunctions and to require and take recognizances.

The proceedings, modes of procedures, power and jurisdiction conferred by law upon the circuit court of Wood county in any and all said actions, causes, matters, proceedings and suits, are hereby conferred upon and shall be exercised by said court.

The judge of said court shall have the same powers in vacation as to any and all of said actions, causes, matters, proceedings and suits that are conferred upon the judge of the circuit court of said county.
130 It shall not be necessary in any such actions, causes,
131 matters, proceedings or suits to set forth upon the record
132 the facts authorizing said court to take jurisdiction there-
133 of, but jurisdiction shall be presumed unless the contrary
134 plainly appears from the record.

§5. Salary of judge.

1 The judge of said court shall, for his services, receive
2 the sum of eighteen thousand six hundred dollars per
3 annum, payable in monthly installments, beginning on
4 the first day of July, one thousand nine hundred seventy-
5 one, which amount shall be provided for and paid by the
6 county court, out of the treasury of Wood 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-one. The county court shall annually
10 make provision by appropriate levy and appropriation
11 for the payment of said salary.

CHAPTER 40
(Com. Sub. for House Bill No. 586—Originating in the House
Committee on the Judiciary)

[Passed March 13, 1971; in effect ninety days from passage. Approved by the
Governor.]

AN ACT to amend and reenact section forty-nine, article three,
chapter sixty-one of the code of West Virginia, one thou-
sand nine hundred thirty-one, as amended, relating to the
purchase of copper wires, cables, copper trolley wire,
aluminum wire, brass bearings or fittings, mercury or lead
by junk dealers; requiring the keeping of records in con-
nection therewith; requiring proof of ownership in con-
nection therewith; and providing criminal penalties.

Be it enacted by the Legislature of West Virginia:

That section forty-nine, article three, chapter sixty-one of
the code of West Virginia, one thousand nine hundred thirty-
one, as amended, be amended and reenacted to read as follows:
ARTICLE 3. CRIMES AGAINST PROPERTY.

§ 61-3-49. Purchase of copper wire, etc., by junk dealers; penalty.

Any junk dealer purchasing copper wires, cables, copper trolley wire, aluminum wire, brass bearings or fittings, mercury or lead from any person, firm or corporation, shall accurately list such purchase in a permanent record showing the kind and character of junk purchased, date of purchase and from whom purchased, which record shall be open to the inspection of all law-enforcement officers.

It shall be unlawful for any junk dealer to purchase any of the items hereinbefore mentioned without securing from the seller a bill of sale, receipt or other proof of lawful ownership, which shall be retained by such dealer, and such dealer shall list in a record book the full name and address of the seller, a complete description of the kind and character of the junk or material purchased, the hour and day purchased, and the license number of any automobile or truck which may be used in making delivery of such junk or materials, which record shall be open to the inspection of all law-enforcement officers, and be preserved for a period of not less than one year.

Every nonresident junk dealer, before transporting from the state any of the items hereinbefore mentioned, shall file with the sheriff of the county where such purchase was made a complete description of the property he proposes to transport from the state, showing the date of purchase, the names of the buyer and seller, the party to whom consigned, and the license number of any automobile or truck which may be employed in transporting such junk or materials hereinbefore mentioned.

Any person who shall violate any of the provisions of this section shall be guilty of a misdemeanor, and, upon conviction before any justice of the peace or court of competent jurisdiction, shall be fined not less than one hundred nor more than five hundred dollars.
CHAPTER 41

(Senate Bill No. 35—By Mr. Hubbard)

[Passed February 16, 1971; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article six, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section nineteen, making it a misdemeanor for any person to wilfully interrupt, molest, disturb, disrupt or interfere with the orderly and peaceful process of any department, division, agency or branch of state government or of its political subdivisions, and providing penalties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. CRIMES AGAINST THE PEACE.


1 If any person wilfully interrupt or molest the orderly and peaceful process of any department, division, agency or branch of state government or of its political subdivisions, he shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one hundred dollars, or imprisoned in the county jail not more than six months, or both fined and imprisoned:

Provided, That any assembly in a peaceable, lawful and orderly manner for a redress of grievances shall not be a violation of this section.

CHAPTER 42

(House Bill No. 518—By Mr. McManus and Mr. Burke)

[Passed March 1, 1971; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article seven, chapter sixty-one of the code
of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto two new sections, designated sections fourteen and fifteen, relating to the purchase, sale, transportation and receipt of rifles, shotguns and other legal firearms or any part thereof.

Be it enacted by the Legislature of West Virginia:

That article seven, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto two new sections, designated sections fourteen and fifteen, all to read as follows:

ARTICLE 7. DANGEROUS WEAPONS.

§61-7-14. Purchase of firearms in contiguous state.

§61-7-15. Sale of firearms to residents of contiguous states.

§61-7-14. Purchase of firearms in contiguous state.

1 Any resident of this state, including a corporation or other business entity maintaining a place of business in this state, who may lawfully purchase and receive delivery of a rifle, shotgun or any other legal firearm, or any part thereof, in this state, may purchase the same in a state contiguous to this state and transport or receive the same into this state provided the sale meets the lawful requirements of any federal statute, and is made by a licensed importer, licensed manufacturer, licensed dealer or private collector.

§61-7-15. Sale of firearms to residents of contiguous states.

1 Any importer, manufacturer, dealer or collector who may lawfully sell rifles, shotguns or other legal firearms, or any part thereof, in this state, may sell the same to a resident of a state contiguous to this state, including a corporation or other business entity, maintaining a place of business in such state, provided the sale meets the lawful requirements of this state and the lawful requirements of the state of residence of the purchaser, as well as the lawful requirements of any federal statute.
AN ACT to amend article eight, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-nine, prohibiting the lewd or licentious touching or fondling or the sexual molesting of any child under the age of twelve years; and providing criminal penalties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 8. CRIMES AGAINST CHASTITY, MORALITY AND DECENCY.

§61-8-29. Child molesting; penalties.

1 No person over the age of eighteen years shall in a lewd or licentious manner touch or fondle or sexually molest any child under the age of twelve years. Any person who violates any provision of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than five hundred dollars, or imprisoned in the county jail not more than one year, or both fined and imprisoned. A person convicted for any second or subsequent offense under this section shall be guilty of a felony and shall be punished by imprisonment in the penitentiary for not less than one nor more than five years.
CHAPTER 44
(Senate Bill No. 317—By Mr. Brotherton and Mr. Carrigan)

(Passed March 4, 1971; in effect ninety days from passage. Approved by the Governor.)

AN ACT to amend and reenact section twenty-three, article ten, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to debt pooling; penalties.

Be it enacted by the Legislature of West Virginia:

That section twenty-three, 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.
§61-10-23. Debt pooling; definition; offenses; penalty; jurisdiction; pleading and proof.

1 "Debt pooling" shall mean the rendering in any manner of advice or services of any and every kind in the establishment or operation of a plan pursuant to which a debtor would deposit or does deposit funds for the purpose of distributing such funds among his creditors. It shall be unlawful for any person to solicit in any manner a debt pooling. It shall further be unlawful for any person, except licensed attorneys, to make any charge for a debt pooling by way of fee, reimbursement of costs, or otherwise, in excess of an amount equal to two percent of the total amount of money actually deposited pursuant to a debt pooling: Provided, That any nonprofit firm, corporation or voluntary association may make an additional charge not exceeding five percent of the total amount of money actually deposited pursuant to a debt pooling, to defray costs of counseling services furnished for the benefit of its clientele of debtors generally with respect to personal money management. Any person, whether acting as agent or otherwise, who violates any provision of this section shall be guilty of a misdemeanor, and, upon conviction, shall be fined not less than one
It shall be unlawful for two or more persons to conspire (1) to commit any offense against the state or (2) to defraud the state, the state or any county board of education, or any county or municipality of the state, if, in the trial of an offense subject thereto it shall be the duty of the state to negative such exceptions and provisos.

(CH. 45] CRIMES AND THEIR PUNISHMENT 249

22 hundred nor more than two hundred fifty dollars or
23 confined in jail not less than thirty nor more than sixty
days or both. Justices of the peace and other competent
courts shall have concurrent jurisdiction of offenses under
this section. It shall not be necessary in any warrant
issued or indictment returned under this section to
allege exceptions or provisos contained in this section but
in the trial of an offense subject thereto it shall be the
duty of the state to negative such exceptions and provisos.

CHAPTER 45

(Senate Bill No. 352—By Mr. Brotherton and Mr. Carrigan)

[Passed March 11, 1971; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article ten, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section thirty-one, relating to criminal conspiracy; prohibiting any conspiracy to commit an offense against the state of West Virginia or to defraud the state of West Virginia, the state or any county board of education, or any county or municipality of the state; providing that other provisions of the code shall not be superseded, limited, repealed or affected by said section thirty-one; prohibiting certain defense; and providing criminal penalties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10. CRIMES AGAINST PUBLIC POLICY.

1 It shall be unlawful for two or more persons to conspire
2 (1) to commit any offense against the state or (2) to
3 defraud the state, the state or any county board of
4 education, or any county or municipality of the state, if,
in either case, one or more of such persons does any act
to effect the object of the conspiracy.

Nothing in this section shall be construed to supersede,
limit, repeal or affect the provisions of section eight,
article nine, chapter three; section two, article one,
chapter five; section thirty-eight, article three, chapter
five-a; section seven, article seven, chapter twenty; sec-
tion sixteen, article six, chapter sixty; sections seven,
eight, nine and ten, article six, chapter sixty-one; or sec-
tion one, article eight, chapter sixty-two; all of this code.

It shall not be a defense to any prosecution under this
section thirty-one that the conduct charged or proven is
also a crime under any other provision or provisions of
this code or the common law.

Any person who violates the provisions of this section
by conspiring to commit an offense against the state
which is a felony, or by conspiring to defraud the state,
the state or any county board of education, or any county
or municipality of the state, shall be guilty of a felony,
and, upon conviction thereof, shall be punished by im-
prisonment in the penitentiary for not less than one nor
more than five years or by a fine of not more than ten
thousand dollars, or, in the discretion of the court, by both
such imprisonment and fine. Any person who violates the
provisions of this section by conspiring to commit an
offense against the state which is a misdemeanor shall
be guilty of a misdemeanor, and, upon conviction thereof,
shall be punished by confinement in the county jail for
not more than one year or by a fine of not more than
one thousand dollars, or, in the discretion of the court,
by both such confinement and fine.

CHAPTER 46

(House Bill No. 612—By Mr. Huffman and Mr. Jones, of Roane)

[Passed March 13, 1971; in effect July 1, 1971. Approved by the Governor.]

AN ACT to amend and reenact section one, article three, chap-
ter sixty-two of the code of West Virginia, one thousand
nine hundred thirty-one, as amended, relating to procedures in the trial of criminal cases; appointment and remuneration of appointed counsel.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. TRIAL OF CRIMINAL CASES.

§62-3-1. Time for trial; depositions of witnesses for accused; counsel, copy of indictment, and list of jurors for accused; remuneration of appointed counsel.

1 When an indictment is found in a court having jurisdiction, in any county, against a person for a felony, the accused, if in custody, or if he appear in discharge of his recognizance, or voluntarily, shall, unless good cause be shown for a continuance, be tried at the same term.  
2 If any witness for the accused be a nonresident of the state, or absent therefrom in any service or employment, so that service of a subpoena cannot be had upon him in this state, or is aged or infirm so that he cannot attend upon the court at the trial, the accused may present to the court in which the case is pending, or to the judge thereof in vacation, an affidavit showing such facts, and stating therein what he expects to prove by any such witness, his name, residence, or place of service or employment; and if such court or judge be of the opinion that the evidence of any such witness, as stated in such affidavit, is necessary and material to the defense of the accused on his trial, an order may be made by such court or judge for the taking of the deposition of any such witness upon such notice to the prosecuting attorney, of the time and place of taking the same, as the court or judge may prescribe; and in such order the court or judge may authorize the employment of counsel, practicing at or near the place where the deposition is to be taken, to cross-examine the witness on behalf of the state, the reasonable expense whereof shall be paid out of the treasury of the state, upon certificate of the court wherein the case is
pending. Every deposition so taken may, on the motion of the defendant, so far as the evidence therein contained is competent and proper, be read to the jury on the trial of the case as evidence therein. A court of record having criminal jurisdiction may appoint counsel to assist an accused in criminal cases, except traffic violations and violations of municipal ordinances, at any time upon request. A copy of the indictment and of the list of the jurors selected or summoned for his trial, as provided in section three of this article, shall be furnished him, upon his request, at any time before the jury is impaneled. In every case where the court appoints counsel for the accused and the accused presents an affidavit showing that he cannot pay therefor, the court shall, by order entered of record allow an attorney so appointed a fee of not to exceed one hundred dollars in any misdemeanor case, and a fee of not to exceed two hundred dollars in any felony case. In misdemeanor cases, the fee so allowed shall be paid out of the general county fund, and in felony cases shall be paid by the state auditor as other fees in felony cases are paid. The amount so paid, in the event the accused shall not prevail, shall be and constitute a judgment of said court against the accused to be recovered as any other judgment for costs.

CHAPTER 47

(Senate Bill No. 26—By Mr. Harman)

[Passed January 29, 1971; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section six-a, article thirteen, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the division of correction, public institutions, and the payment of jail fees to county courts for juvenile escapees.
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 13. DIVISION OF CORRECTION.
§62-13-6a. Payment of jail fees to county courts.

1 The commissioner of public institutions is hereby authorized and directed to pay to the county court of any county, jail fees incurred by escapees of any West Virginia forestry camp for boys, the West Virginia industrial home for girls or the West Virginia industrial school for boys, when said escapees are confined in said county jails. Said jail fee shall not exceed the sum of two dollars per diem per prisoner.

CHAPTER 48
(Senate Bill No. 65—By Mr. Holliday and Mr. Sharpe)

[Passed March 4, 1971; in effect ninety days from passage. Approved by the Governor.]
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 14. AGREEMENT ON DETAINERS.
§62-14-1. Enactment of compact.
§62-14-5. Escape of prisoner while in temporary custody.

§62-14-1. Enactment of compact.

1 The agreement on detainers is hereby enacted into law and entered into by this state with all other jurisdictions legally joining therein in the form substantially as follows:

AGREEMENT ON DETAINERS

6 The contracting states solemnly agree that:

ARTICLE I

1 The party states find that charges outstanding against a prisoner, detainers based on untried indictments, informations or complaints, and difficulties in securing speedy trial of persons already incarcerated in other jurisdictions, produce uncertainties which obstruct programs of prisoner treatment and rehabilitation. Accordingly, it is the policy of the party states and the purpose of this agreement to encourage the expeditious and orderly disposition of such charges and determination of the proper status of any and all detainers based on untried indictments, informations or complaints. The party states also find that proceedings with reference to such charges and detainers, when emanating from another jurisdiction, cannot properly be had in the absence of cooperative procedures. It is the further purpose of this agreement to provide such cooperative procedures.

ARTICLE II

1 As used in this agreement:
(a) "State" shall mean a state of the United States; the United States of America; a territory or possession of the United States; the District of Columbia; the Commonwealth of Puerto Rico.

(b) "Sending state" shall mean a state in which a prisoner is incarcerated at the time that he initiates a request for final disposition pursuant to Article III hereof or at the time that a request for custody or availability is initiated pursuant to Article IV hereof.

(c) "Receiving state" shall mean the state in which trial is to be had on an indictment, information or complaint pursuant to Article III or Article IV hereof.

ARTICLE III

(a) Whenever a person has entered upon a term of imprisonment in a penal or correctional institution of a party state, and whenever during the continuance of the term of imprisonment there is pending in any other party state any untried indictment, information or complaint on the basis of which a detainer has been lodged against the prisoner, he shall be brought to trial within one hundred eighty days after he shall have caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officer's jurisdiction written notice of the place of his imprisonment and his request for a final disposition to be made of the indictment, information or complaint: Provided, That for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance. The request of the prisoner shall be accompanied by a certificate of the appropriate official having custody of the prisoner, stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the state parole agency relating to the prisoner.

(b) The written notice and request for final disposition referred to in paragraph (a) hereof shall be given or
sent by the prisoner to the warden, superintendent or other official having custody of him, who shall promptly forward it together with the certificate to the appropriate prosecuting official and court by registered or certified mail, return receipt requested.

(c) The warden, superintendent or other official having custody of the prisoner shall promptly inform him of the source and contents of any detainer lodged against him and shall also inform him of his right to make a request for final disposition of the indictment, information or complaint on which the detainer is based.

(d) Any request for final disposition made by a prisoner pursuant to paragraph (a) hereof shall operate as a request for final disposition of all untried indictments, informations or complaints on the basis of which detainers have been lodged against the prisoner from the state to whose prosecuting official the request for final disposition is specifically directed. The warden, superintendent or other official having custody of the prisoner shall forthwith notify all appropriate prosecuting officers and courts in the several jurisdictions within the state to which the prisoner's request for final disposition is being sent of the proceeding being initiated by the prisoner. Any notification sent pursuant to this paragraph shall be accompanied by copies of the prisoner's written notice, request, and the certificate. If trial is not had on any indictment, information or complaint contemplated hereby prior to the return of the prisoner to the original place of imprisonment, such indictment, information or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

(e) Any request for final disposition made by a prisoner pursuant to paragraph (a) hereof shall also be deemed to be a waiver of extradition with respect to any charge or proceeding contemplated thereby or included therein by reason of paragraph (d) hereof, and a waiver of extradition to the receiving state to serve any sentence there imposed upon him, after completion of his term of imprisonment in the sending state. The
request for final disposition shall also constitute a consent by the prisoner to the production of his body in any court where his presence may be required in order to effectuate the purposes of this agreement and a further consent voluntarily to be returned to the original place of imprisonment in accordance with the provisions of this agreement. Nothing in this paragraph shall prevent the imposition of a concurrent sentence if otherwise permitted by law.

(f) Escape from custody by the prisoner subsequent to his execution of the request for final disposition referred to in paragraph (a) hereof shall void the request.

ARTICLE IV

(a) The appropriate officer of the jurisdiction in which an untried indictment, information or complaint is pending shall be entitled to have a prisoner against whom he has lodged a detainer and who is serving a term of imprisonment in any party state made available in accordance with Article V (a) hereof upon presentation of a written request for temporary custody or availability to the appropriate authorities of the state in which the prisoner is incarcerated: Provided, That the court having jurisdiction of such indictment, information or complaint shall have duly approved, recorded and transmitted the request: Provided further, That there shall be a period of thirty days after receipt by the appropriate authorities before the request be honored, within which period the governor of the sending state may disapprove the request for temporary custody or availability, either upon his own motion or upon motion of the prisoner.

(b) Upon receipt of the officer's written request as provided in paragraph (a) hereof, the appropriate authorities having the prisoner in custody shall furnish the officer with a certificate stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the state parole agency relating to the prisoner. Said authorities simultane-
ousely shall furnish all other officers and appropriate courts
in the receiving state who have lodged detainers against
the prisoner with similar certificates and with notices in-
forming them of the request for custody or availability
and of the reasons therefor.

(c) In respect of any proceeding made possible by this
Article, trial shall be commenced within one hundred
twenty days of the arrival of the prisoner in the receiving
state, but for good cause shown in open court, the prisoner
or his counsel being present, the court having jurisdiction
of the matter may grant any necessary or reasonable
continuance.

(d) Nothing contained in this Article shall be con-
strued to deprive any prisoner of any right which he may
have to contest the legality of his delivery as provided
in paragraph (a) hereof, but such delivery may not be
opposed or denied on the ground that the executive
authority of the sending state has not affirmatively con-

sent to or ordered such delivery.

(e) If trial is not had on any indictment, information
or complaint contemplated hereby prior to the prisoner's
being returned to the original place of imprisonment
pursuant to Article V (e) hereof, such indictment, in-
formation or complaint shall not be of any further
force or effect, and the court shall enter an order dis-
missing the same with prejudice.

ARTICLE V

(a) In response to a request made under Article III
or Article IV hereof, the appropriate authority in a send-
ing state shall offer to deliver temporary custody of such
prisoner to the appropriate authority in the state where
such indictment, information or complaint is pending
against such person in order that speedy and efficient
prosecution may be had. If the request for final disposition
is made by the prisoner, the offer of temporary custody
shall accompany the written notice provided for in Article
III of this agreement. In the case of a federal prisoner, the
appropriate authority in the receiving state shall be en-
titled to temporary custody as provided by this agreement
or to the prisoner's presence in federal custody at the
place for trial, whichever custodial arrangement may be
approved by the custodian.

(b) The officer or other representative of a state ac-
cepting an offer of temporary custody shall present the
following upon demand:

(1) Proper identification and evidence of his authority
to act for the state into whose temporary custody the
prisoner is to be given.

(2) A duly certified copy of the indictment, informa-
tion or complaint on the basis of which the detainer has
been lodged and on the basis of which the request for
temporary custody of the prisoner has been made.

(c) If the appropriate authority shall refuse or fail to
accept temporary custody of said person, or in the event
that an action on the indictment, information or complaint
on the basis of which the detainer has been lodged is not
brought to trial within the period provided in Article III
or Article IV hereof, the appropriate court of the juris-
diction where the indictment, information or complaint
has been pending shall enter an order dismissing the same
with prejudice, and any detainer based thereon shall
cease to be of any force or effect.

(d) The temporary custody referred to in this agree-
ment shall be only for the purpose of permitting prose-
cution on the charge or charges contained in one or more
untried indictments, informations or complaints which
form the basis of the detainer or detainers or for prose-
cution on any other charge or charges arising out of the
same transaction. Except for his attendance at court and
while being transported to or from any place at which
his presence may be required, the prisoner shall be held
in a suitable jail or other facility regularly used for
persons awaiting prosecution.

(e) At the earliest practicable time consonant with
the purposes of this agreement, the prisoner shall be re-
turned to the sending state.

(f) During the continuance of temporary custody or
while the prisoner is otherwise being made available for
trial as required by this agreement, time being served on
the sentence shall continue to run but good time shall
be earned by the prisoner only if, and to the extent that,
the law and practice of the jurisdiction which imposed
the sentence may allow.

(g) For all purposes other than that for which tempo-
rary custody as provided in this agreement is exercised,
the prisoner shall be deemed to remain in the custody of
and subject to the jurisdiction of the sending state and any
escape from temporary custody may be dealt with in the
same manner as an escape from the original place of im-
prisonment or in any other manner permitted by law.

(h) From the time that a party state receives custody of
a prisoner pursuant to this agreement until such prisoner
is returned to the territory and custody of the sending
state, the state in which the one or more untried indict-
ments, informations or complaints are pending or in
which trial is being had shall be responsible for the
prisoner and shall also pay all costs of transporting, caring
for, keeping and returning the prisoner. The provisions
of this paragraph shall govern unless the states concerned
shall have entered into a supplementary agreement pro-
viding for a different allocation of costs and responsi-
bilities as between or among themselves. Nothing herein
contained shall be construed to alter or affect any internal
relationship among the departments, agencies and officers
of and in the government of a party state, or between a
party state and its subdivisions, as to the payment of costs,
or responsibilities therefor.

ARTICLE VI

(a) In determining the duration and expiration dates
of the time periods provided in Articles III and IV of
this agreement, the running of said time periods shall be
tolled whenever and for as long as the prisoner is unable
to stand trial, as determined by the court having juris-
diction of the matter.

(b) No provision of this agreement, and no remedy
made available by this agreement, shall apply to any
person who is adjudged to be mentally ill.
ARTICLE VII

Each state party to this agreement shall designate an officer who, acting jointly with like officers of other party states, shall promulgate rules and regulations to carry out more effectively the terms and provisions of this agreement, and who shall provide, within and without the state, information necessary to the effective operation of this agreement.

ARTICLE VIII

This agreement shall enter into full force and effect as to a party state when such state has enacted the same into law. A state party to this agreement may withdraw herefrom by enacting a statute repealing the same. However, the withdrawal of any state shall not affect the status of any proceedings already initiated by inmates or by state officers at the time such withdrawal takes effect, nor shall it affect their rights in respect thereof.

ARTICLE IX

This agreement shall be liberally construed so as to effectuate its purposes. The provisions of this agreement shall be severable and if any phrase, clause, sentence or provision of this agreement is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this agreement and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this agreement shall be held contrary to the constitution of any state party hereto, the agreement shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.


The phrase “appropriate court” as used in the agreement on detainers shall, with reference to the courts of this state, mean a court of record with criminal jurisdiction.
1 All courts, departments, agencies, officers and em-
2 ployees of this state and its political subdivisions are
3 hereby directed to enforce the agreement on detainers
4 and to cooperate with one another and with other party
5 states in enforcing the agreement and effectuating its
6 purpose.

1 Nothing in this article or in the agreement on detainers
2 shall be construed to require the application of sections
3 eighteen and nineteen of article eleven, chapter sixty-one
4 of the code of West Virginia to any person on account of
5 any conviction had in a proceeding brought to final dis-
6 position by reason of the use of said agreement.

§62-14-5. Escape of prisoner while in temporary custody.
1 Escape or attempt to escape from custody, whether
2 within or without this state, while in the temporary
3 custody of an authority of another state acting pursuant
4 to the agreement on detainers shall constitute an offense
5 against the laws of this state to the same extent and
6 degree as an escape from the institution in which the
7 prisoner was confined immediately prior to having been
8 released to temporary custody and shall be punishable
9 in the same manner as an escape or attempt to escape
10 from said institution.

1 It shall be lawful and mandatory upon the warden,
2 superintendent or other state official in charge of a penal
3 or correctional institution in this state to give over the
4 person of any inmate thereof whenever so required by
5 the operation of the agreement on detainers.

1 The commissioner of public institutions shall serve as
2 the central administrator and chief information officer
3 for the agreement on detainers, pursuant to the provi-
4 sions of Article VII of the agreement.
AN ACT to amend and reenact section two, article one, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the department of finance and administration and the commissioner thereof; abolishing the office of commissioner and creating a new office of commissioner; and relating to his term and the compensation of such commissioner.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. DEPARTMENT OF FINANCE AND ADMINISTRATION.

§5A-1-2. Department of finance and administration continued; commissioner; office of commissioner of finance and administration; divisions; directors.

1 The department of finance and administration is hereby continued in the executive branch of state government.
2 The office of commissioner of finance and administration is hereby abolished and a new office of commissioner of finance and administration is hereby created. The commissioner shall be the chief executive officer of the department and director of the budget and shall be appointed by the governor, by and with the advice and consent of the Senate, for a term not exceeding the term of the governor. The commissioner shall serve at the will and pleasure of the governor. On and after July one, one thousand nine hundred seventy-one, the annual compensation of the commissioner shall be twenty thousand dollars. There shall be in the department of finance and administration a budget division, a purchasing division and a general services division. Each division shall
be headed by a director who shall be appointed by the commissioner to serve at his will and pleasure.

CHAPTER 50

(House Bill No. 597—By Mr. Speaker, Mr. Boiarsky, and Mr. McManus)

[Passed February 9, 1971; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirteen, article two, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the estimate of revenues to be collected by each classification of tax during a fiscal year and the collection of revenues by each classification of tax each month during a fiscal year and the time for certifying said estimate of revenues to the governor and legislative auditor.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. BUDGET DIVISION.


1 At the beginning of each fiscal year the commissioner shall estimate the revenue to be collected month by month by each classification of tax for the fiscal year as it relates to the official estimate of each tax for the fiscal year and the commissioner shall certify this estimate to the governor and the legislative auditor.

7 The commissioner shall ascertain the collection of the revenue of the state, and shall determine each month of the fiscal year the proportion which the amount actually collected bears to the collection estimated for that period. The commissioner shall certify to the governor and the legislative auditor, as soon as possible after the
close of each month, and not later than the fifteenth day of each month, and at such other times as the governor or legislative auditor may request, the condition of the state revenues and of the several funds of the state. For the purposes of this section, the commissioner shall have the authority to require all necessary estimates and reports from any spending unit of the state government. The first report shall be due not later than the fifteenth day of August, one thousand nine hundred seventy-one.

CHAPTER 51

(House Bill No. 662—By Mr. Speaker, Mr. Boiarisky, and Mr. Potter)

[Passed February 5, 1971; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article five, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the power of the commissioner of the department of finance and administration to lease certain space at a price not to exceed fair rental value.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. LEASING OF GROUNDS, BUILDINGS, OFFICE OR OTHER SPACE BY STATE GOVERNMENT.

§5A-5-3. Selection of grounds, etc.; acquisition by contract or lease.

1 The commissioner shall have sole authority to select and to acquire by contract or lease, in the name of the state, all grounds, buildings, office space or other space, the rental of which is necessarily required by any spending unit, upon a certificate from the chief executive officer of said spending unit that the grounds, buildings, office space or other space requested is necessarily required for the proper function of said spending unit and that
satisfactory grounds, buildings, office space or other space is not available on grounds and in buildings now owned or leased by the state. The commissioner shall, before executing any rental contract or lease, determine the fair rental value for the rental of the requested grounds, buildings, office space or other space, in the condition in which they exist, and shall contract for or lease said premises at a price not to exceed the fair rental value thereof.

CHAPTER 52
(House Bill No. 844—By Mr. Seibert)

[Passed February 20, 1971; in effect July 1, 1971. Approved by the Governor.]

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

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7. INFORMATION SYSTEM SERVICES DIVISION.
§5A-7-6. Powers and duties of division generally; review of findings by governor; authority of governor to order transfer of equipment and personnel; professional staff.

1 The division shall be responsible for the planning of an informational and analytical system for use by all branches of state government. The division shall also evaluate the economic justification, system design and suitability of equipment and systems used in state government. The director shall report to the commissioner.

2 The governor shall review such findings and recommendations and is hereby authorized to order the trans-
fer, in whole or in part, to the division from any other
department or agency of state government, except the
Legislature, the judiciary and the West Virginia board
of regents, of all data-processing activities, equipment,
and personnel utilized for data-processing purposes:
Provided, That any such transfer shall not be effective
until ninety days following the entry of the transfer
order by the governor. The director shall be responsible
for the development of a professional staff to supervise
and train personnel to carry out the technical work of
the division.

CHAPTER 53
(Senate Bill No. 39—By Mr. Brotherton)

[Passed February 4, 1971; in effect ninety days from passage. Approved by the
Governor.]

AN ACT to amend and reenact sections twelve, twelve-a and
twelve-c, article one, chapter forty-eight of the code of
West Virginia, one thousand nine hundred thirty-one, as
amended, relating to persons authorized to perform marri­
ages, the qualifications and bonding of those so autho­
rized, the performance of marriage ceremonies and records
with respect thereto.

Be it enacted by the Legislature of West Virginia:

That sections twelve, twelve-a and twelve-c, article one,
chapter forty-eight of the code of West Virginia, one thou­
sand nine hundred thirty-one, as amended, be amended and
reenacted to read as follows:

ARTICLE 1. MARRIAGE.

§48-1-12. Persons authorized to celebrate marriages.
§48-1-12a. Qualifications of minister, priest or rabbi for celebrating
marriages.
§48-1-12c. Ritual for ceremony of marriage by minister, rabbi or
priest; record of marriage.

§48-1-12. Persons authorized to celebrate marriages.
1 Any minister, priest or rabbi, over the age of twenty-
2 one years, who has complied with the provisions of section
twelve-a of this article, or a judge of any court of record in this state, is authorized to celebrate the rites of marriage in all the counties of the state. No person, other than a minister, priest or rabbi, who has complied with the provisions of section twelve-a of this article, or a judge of any court of record in this state, shall hereafter celebrate the rites of marriage in this state, anything in any act of the Legislature or of any court to the contrary, notwithstanding.

Wherever in this article the terms “minister,” “priest” or “rabbi” shall appear, the same shall be understood and held in all respects to include, without being limited to, a leader or representative of a generally recognized spiritual assembly, church or religious organization which does not formally designate or recognize persons as ministers, priests or rabbis.

§48-1-12a. Qualifications of minister, priest or rabbi for celebrating marriages.

1 When any minister, priest or rabbi shall, before the county court of any county in this state, or the clerk of any such court in vacation, produce proof that he is over the age of twenty-one, duly licensed by, and being in regular communion with, the religious society of which he is a member, and give bond in the penalty of fifteen hundred dollars, with surety approved by such court or clerk thereof in vacation, such court or clerk may make an order authorizing him to celebrate the rites of marriage in all the counties of the state: *Provided, however,*

That any minister, priest or rabbi who gives proof before the county court of any county in this state, or the clerk of any such court in vacation, of his ordination or authorization by his respective church, denomination, synagogue or religious society, shall be exempted from the giving of such bond.

§48-1-12c. Ritual for ceremony of marriage by minister, rabbi or priest; record of marriage.

1 A minister, priest or rabbi authorized to celebrate the rites of marriage shall perform the ceremony of marriage according to the rites and ceremonies of his
4 religious denomination, church, synagogue or religious
5 society and the laws of the state of West Virginia.
6 A record of each marriage performed, with the names
7 of the parties, their respective places of residence prior to
8 marriage, and the date of marriage, shall be kept by the
9 officiating minister, priest or rabbi in the permanent
10 record of the church, synagogue or religious society which
11 he serves.

CHAPTER 54
(Com. Sub. for Senate Bill No. 38—Originating in the Senate
Committee on the Judiciary)

[Passed March 12, 1971; in effect ninety days from passage. Approved by the
Governor.]

AN ACT to repeal articles eight, eight-a and eight-b, chapter
sixteen of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, and to enact in lieu
thereof a new chapter of said code, designated chapter
sixty-a, relating to narcotics, marihuana and drugs gen-
erally; providing for the adoption of the uniform controlled
substances act; establishing criminal offenses; and provid-
ing criminal penalties.

Be it enacted by the Legislature of West Virginia:

That articles eight, eight-a and eight-b, chapter sixteen of
the code of West Virginia, one thousand nine hundred thirty-
one, as amended, be repealed and a new chapter of said code
enacted in lieu thereof, designated chapter sixty-a, to read
as follows:

CHAPTER 60A. UNIFORM CONTROLLED
SUBSTANCES ACT.

Article
1. Definitions.
2. Standards and Schedules.
3. Regulation of Manufacture, Distribution and Dispensing of Con-
trolled Substances.
4. Offenses and Penalties.
5. Enforcement and Administrative Provisions.
ARTICLE 1. DEFINITIONS.


1 As used in this act:
2 (a) “Administer” means the direct application of a
3 controlled substance, whether by injection, inhalation,
4 ingestion, or any other means, to the body of a patient
5 or research subject by:
6 (1) a practitioner (or, in his presence, by his authorized
7 agent), or
8 (2) the patient or research subject at the direction and
9 in the presence of the practitioner.
10 (b) “Agent” means an authorized person who acts on
11 behalf of or at the direction of a manufacturer, distribu-
12 tor, or dispenser. It does not include a common or con-
13 tract carrier, public warehouseman, or employee of the
14 carrier or warehouseman.
15 (c) “Bureau” means the “Bureau of Narcotics and
16 Dangerous Drugs, United States Department of Justice,”
17 or its successor agency.
18 (d) “Controlled substance” means a drug, substance,
19 or immediate precursor in Schedules I through V of article
20 two.
21 (e) “Counterfeit substance” means a controlled sub-
22 stance which, or the container or labeling of which, 23
24 without authorization, bears the trademark, trade name,
25 or other identifying mark, imprint, number or device,
26 or any likeness thereof, of a manufacturer, distributor, or
27 dispenser other than the person who in fact manufactured,
28 distributed, or dispensed the substance.
29 (f) “Deliver” or “delivery” means the actual, con-
30 structive, or attempted transfer from one person to an-
31 other of a controlled substance, whether or not there is
32 an agency relationship.
33 (g) “Dispense” means to deliver a controlled substance
34 to an ultimate user or research subject by or pursuant to
35 the lawful order of a practitioner, including the prescrib-
36 ing, administering, packaging, labeling, or compounding
37 necessary to prepare the substance for that delivery.
38 (h) “Dispenser” means a practitioner who dispenses.
(i) "Distribute" means to deliver other than by administering or dispensing a controlled substance.

(j) "Distributor" means a person who distributes.

(k) "Drug" means (1) substances recognized as drugs in the official "United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary," or any supplement to any of them; (2) substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or animals; (3) substances (other than food) intended to affect the structure or any function of the body of man or animals; and (4) substances intended for use as a component of any article specified in clause (1), (2) or (3) of this subdivision. It does not include devices or their components, parts, or accessories.

(l) "Immediate precursor" means a substitute which the "West Virginia Board of Pharmacy" (hereinafter in this act referred to as the state board of pharmacy) has found to be and by rule designates as being the principal compound commonly used or produced primarily for use, and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail, or limit manufacture.

(m) "Manufacture" means the production, preparation, propagation, compounding, conversion, or processing of a controlled substance, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container, except that this term does not include the preparation or compounding of a controlled substance by an individual for his own use or the preparation, compounding, packaging, or labeling of a controlled substance:

(1) by a practitioner as an incident to his administering or dispensing of a controlled substance in the course of his professional practice, or
(2) by a practitioner, or by his authorized agent under his supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale.

(n) "Marihuana" means all parts of the plant "Cannabis sativa L.," whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil or cake, or the sterilized seed of the plant which is incapable of germination.

(o) "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(1) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate.

(2) Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in clause (1) of this subdivision, but not including the isoquinoline alkaloids of opium.

(3) Opium poppy and poppy straw.

(4) Coca leaves and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions of coca leaves which do not contain cocaine or ecgonine.

(p) "Opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having
addiction-forming or addiction-sustaining liability. It does not include, unless specifically designated as controlled under section 201, article two of this act, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). It does include its racemic and levorotatory forms.

(q) "Opium poppy" means the plant of the species "Papaver somniferum L.," except its seeds.

(r) "Person" means individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

(s) "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.

(t) "Practitioner" means:

(1) A physician, dentist, veterinarian, scientific investigator, or other person licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to, or to administer a controlled substance in the course of professional practice or research in this state.

(2) A pharmacy, hospital, or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to, or to administer a controlled substance in the course of professional practice or research in this state.

(u) "Production" includes the manufacture, planting, cultivation, growing or harvesting of a controlled substance.

(v) "State," when applied to a part of the United States, includes any state, district, commonwealth, territory, insular possession thereof, and any area subject to the legal authority of the United States of America.

(w) "Ultimate user" means a person who lawfully possesses a controlled substance for his own use or for the use of a member of his household or for administering to an animal owned by him or by a member of his household.
ARTICLE 2. STANDARDS AND SCHEDULES.

§60A-2-201. Authority to control.

1. (a) The state board of pharmacy shall administer this act and may add substances to or delete or reschedule all substances enumerated in the schedule in sections 204, 206, 208, 210 or 212, pursuant to the provisions of article three, chapter twenty-nine-a of this code. In making a determination regarding a substance, the state board of pharmacy shall consider the following:

2. (1) the actual or relative potential for abuse;
3. (2) the scientific evidence of its pharmacological effect, if known;
4. (3) the state of current scientific knowledge regarding the substance;
5. (4) the history and current pattern of abuse;
6. (5) the scope, duration, and significance of abuse;
7. (6) the risk to the public health;
8. (7) the potential of the substance to produce psychic or physiological dependence liability; and
9. (8) whether the substance is an immediate precursor of a substance already controlled under this article.

(b) After considering the factors enumerated in subsection (a), the state board of pharmacy shall make findings with respect thereto and issue a rule controlling the substance if it finds the substance has a potential for abuse.

(c) If the state board of pharmacy designates a substance as an immediate precursor, substances which are precursors of the controlled precursor shall not be subject to control solely because they are precursors of the controlled precursor.
(d) If any substance is designated, rescheduled, or deleted as a controlled substance under federal law and notice thereof is given to the state board of pharmacy, the said board shall similarly control the substance under this act after the expiration of thirty days from publication in the "Federal Register" of a final order designating a substance as a controlled substance or rescheduling or deleting a substance, unless within that thirty-day period, the state board of pharmacy objects to inclusion, rescheduling, or deletion. In that case, the state board of pharmacy shall publish the reasons for objection and afford all interested parties an opportunity to be heard. At the conclusion of the hearing, the state board of pharmacy shall publish its decision, which shall be final unless altered by statute. Upon publication of objection to inclusion, rescheduling, or deletion under this act by the state board of pharmacy, control under this act is stayed until the state board of pharmacy publishes its decision. Each such publication shall be published as a Class I-O legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be each county of the state.

(e) Authority to control under this section does not extend to distilled spirits, wine, malt beverages, or tobacco as those terms are defined or used in other chapters of this code nor to any nonnarcotic substance if such substance may under the "Federal Food, Drug and Cosmetic Act" and the law of this state be lawfully sold over the counter without a prescription.


1 The controlled substances listed or to be listed in the schedules in sections 204, 206, 208, 210, and 212 are included by whatever official, common, usual, chemical, or trade name designated.

§60A-2-203. Schedule I tests.

1 The state board of pharmacy shall place a substance in Schedule I if it finds that the substance:

3 (1) has high potential for abuse; and
(2) has no accepted medical use in treatment in the United States or lacks accepted safety for use in treatment under medical supervision.

§60A-2-204. Schedule I.

(a) The controlled substances listed in this section are included in Schedule I.

(b) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation:

1. Acetylmethadol;
2. Allylprodine;
3. Alphacetylmethadol;
4. Alphameprodine;
5. Alphamethadol;
6. Benzethidine;
7. Betacetylmethadol;
8. Betameprodine;
9. Betamethadol;
10. Betaprodine;
11. Clonitazene;
12. Dextromoramide;
13. Dextrophan;
14. Diampropamide;
15. Diethylthiambutene;
16. Dimenoxadol;
17. Dimephentanol;
18. Dimethylthiambutene;
19. Dioxaphetyl butyrate;
20. Dipipanone;
21. Ethymethylthiambutene;
22. Etonitazene;
23. Etoxeridine;
24. Furethidine;
25. Hydroxypethidine;
(c) Any of the following opium derivatives, their salts, isomers and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Acetorphine;
(2) Acetyldihydrocodeine;
(3) Benzylmorphine;
(4) Codeine methylbromide;
(5) Codeine-N-Oxide;
(6) Cyprenorphine;
(7) Desomorphine;
(8) Dihydromorphone;
(9) Etorphine;
(10) Heroin;
(11) Hydromorphinol;
(12) Methyldesorphine;
(13) Methyldihydromorphone;
(14) Morphine methylbromide;
(15) Morphine methylsulfonate;
(16) Morphine-N-Oxide;
(17) Myrophine;
(18) Nicocodeine;
(19) Nicomorphine;
(20) Normorphine;
(21) Phoclodine;
(22) Thebacon.

(d) Any material, compound, mixture, or preparation which contains any quantity of the following hallucinogenic substances, their salts, isomers, and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) 3,4-methylenedioxy amphetamine;
(2) 5-methoxy-3,4-methylenedioxy amphetamine;
(3) 3,4,5-trimethoxy amphetamine;
(4) Bufotenine;
(5) Diethyltryptamine;
(6) Dimethyltryptamine;
(7) 4-methyl-2,5-dimethoxylamphetamine;
(8) Ibogaine;
(9) Lysergic acid diethylamide;
(10) Marihuana;
(11) Mescaline;
(12) Peyote;
(13) N-ethyl-3-piperidyl benzilate;
(14) N-methyl-3-piperidyl benzilate;
(15) Psilocybin;
(16) Psilocyn;
(17) Tetrahydrocannabinols.

§60A-2-205. Schedule II tests.

1 The state board of pharmacy shall place a substance in Schedule II if it finds that:
2 (1) the substance has high potential for abuse;
3 (2) the substance has currently accepted medical use
in treatment in the United States, or currently accepted
medical use with severe restrictions; and
(3) the abuse of the substance may lead to severe
psychic or physical dependence.

§60A-2-206. Schedule II.

(a) The controlled substances listed in this section
are included in Schedule II.

(b) Any of the following substances, except those
narcotic drugs listed in other schedules, whether pro-
duced directly or indirectly by extraction from sub-
stances of vegetable origin, or independently by means
of chemical synthesis, or by combination of extraction
and chemical synthesis:

(1) Opium and opiate, and any salt, compound, de-
rivative, or preparation of opium or opiate.

(2) Any salt, compound, isomer, derivative, or prepara-
tion thereof which is chemically equivalent or identi-
cal with any of the substances referred to in subdivision
(1), but not including the isoquinoline alkaloids of opium.

(3) Opium poppy and poppy straw.

(4) Coca leaves and any salt, compound, derivative, or
preparation of coca leaves, and any salt, compound, de-
rivative, or preparation thereof which is chemically equivalent or identical with any of these substances, but
not including decocainized coca leaves or extractions
which do not contain cocaine or ecgonine.

(c) Any of the following opiates, including their
isomers, esters, ethers, salts, and salts of isomers, when-
ever the existence of these isomers, esters, ethers, and
salts is possible within the specific chemical designation:

(1) Alphaprodine;

(2) Anileridine;

(3) Bezitramide;

(4) Dihydrocodeine;

(5) Diphenoxylate;

(6) Fentanyl;

(7) Isomethadone;

(8) Levomethorphan;
34  (9) Levorphanol;
35  (10) Metazocine;
36  (11) Methadone;
37  (12) Methadone—Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane;
38  (13) Moramide—Intermediate, 2-methyl-3-morpholino-1, 1-diphenyl-propane-carboxylic acid;
39  (14) Pethidine;
40  (15) Pethidine—Intermediate—A, 4-cyano-1-methyl-4-phenylpiperidine;
41  (16) Pethidine—Intermediate—B, ethyl-4-phenylpiperidine-4-carboxylate;
42  (17) Pethidine—Intermediate—C, 1-methyl-4-phenylpiperidine-4-carboxylic acid;
43  (18) Phenazocine;
44  (19) Piminodine;
45  (20) Racemethorphan;
46  (21) Racemorphan.

§60A-2-207. Schedule III tests.
1 The state board of pharmacy shall place a substance in Schedule III if it finds that:
2 (1) the substance has a potential for abuse less than the substances listed in Schedules I and II;
3 (2) the substance has currently accepted medical use in treatment in the United States; and
4 (3) abuse of the substance may lead to moderate or low physical dependence or high psychological dependence.

§60A-2-208. Schedule III.
1 (a) The controlled substances listed in this section are included in Schedule III.
2 (b) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a stimulant effect on the central nervous system:
3 (1) Amphetamine, its salts, optical isomers, and salts of its optical isomers;
4 (2) Phenmetrazine and its salts;
(3) Any substance which contains any quantity of methamphetamine, including its salts, isomers, and salts of isomers;

(4) Methylphenidate.

(c) Unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system:

(1) Any substance which contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid, except those substances which are specifically listed in other schedules;

(2) Chlorhexadol;

(3) Glutethimide;

(4) Lysergic acid;

(5) Lysergic acid amide;

(6) Methyprylon;

(7) Phencyclidine;

(8) Sulfondiethylmethane;

(9) Sulfonethylmethane;

(10) Sulfonmethane.

(d) Nalorphine.

(e) Any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof:

(1) Not more than 1.8 grams of codeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;

(2) Not more than 1.8 grams of codeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(3) Not more than 300 milligrams of dihydrocodeinone, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium;
(4) Not more than 300 milligrams of dihydrocodeine, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(5) Not more than 1.8 grams of dihydrocodeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, non-narcotic ingredients in recognized therapeutic amounts;

(6) Not more than 300 milligrams of ethylmorphine, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more ingredients in recognized therapeutic amounts;

(7) Not more than 500 milligrams of opium per 100 milliliters or per 100 grams, or not more than 25 milligrams per dosage unit, with one or more active, non-narcotic ingredients in recognized therapeutic amounts;

(8) Not more than 50 milligrams of morphine, or any of its salts, per 100 milliliters or per 100 grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(f) The state board of pharmacy may except by rule any compound, mixture, or preparation containing any stimulant or depressant substance listed in subsections (b) and (c) from the application of all or any part of this act if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a stimulant or depressant effect on the central nervous system, and if the admixtures are included therein in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances which have a stimulant or depressant effect on the central nervous system.

§60A-2-209. Schedule IV tests.

1 The state board of pharmacy shall place a substance in Schedule IV if it finds that:

2 (1) the substance has a low potential for abuse relative to substances in Schedule III;
(2) the substance has currently accepted medical use in treatment in the United States; and
(3) abuse of the substance may lead to limited physical dependence or psychological dependence relative to the substances in Schedule III.

§60A-2-210. Schedule IV.
(a) The controlled substances listed in this section are included in Schedule IV.
(b) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system:
(1) Barbital;
(2) Chloral betaine;
(3) Chloral hydrate;
(4) Ethchlorvynol;
(5) Ethinamate;
(6) Methohexital;
(7) Meprobamate;
(8) Methylphenobarbital;
(9) Paraldehyde;
(10) Petrichloral;
(11) Phenobarbital.
(c) The state board of pharmacy may except by rule any compound, mixture, or preparation containing any depressant substances listed in subsection (b) from the application of all or any part of this act if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a depressant effect on the central nervous system, and if the admixtures are included therein in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances which have a depressant effect on the central nervous system.

§60A-2-211. Schedule V tests.
The state board of pharmacy shall place a substance in Schedule V if it finds that:
§60A-2-212. Schedule V.

(a) The controlled substances listed in this section are included in Schedule V.

(b) Any compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, which also contains one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation, valuable medicinal qualities other than those possessed by the narcotic drug alone:

(1) Not more than 200 milligrams of codeine, or any of its salts, per 100 milliliters or per 100 grams;

(2) Not more than 100 milligrams of dihydrocodeine, or any of its salts, per 100 milliliters or per 100 grams;

(3) Not more than 100 milligrams of ethylmorphine, or any of its salts, per 100 milliliters or per 100 grams;

(4) Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit;

(5) Not more than 100 milligrams of opium per 100 milliliters or per 100 grams.

§60A-2-213. Republishing of schedules.

The state board of pharmacy shall review and cause to be printed the schedules semiannually for two years from the effective date of this act, and thereafter annually; which schedules shall be made available to the public.

ARTICLE 3. REGULATION OF MANUFACTURE, DISTRIBUTION AND DISPENSING OF CONTROLLED SUBSTANCES.

§60A-3-301. Rules; fees.

§60A-3-302. Registration required; effect of registration; exemptions; waiver; inspections.
§60A-3-303. What applicants to be registered; determination of public interest; rights of registrants.

§60A-3-304. Suspension or revocation of registration generally.

§60A-3-305. Order to show cause before denying, suspending, etc., registration; proceedings thereon; when order not required.

§60A-3-306. Records of registrants.

§60A-3-307. Order forms.

§60A-3-308. Prescriptions.

§60A-3-301. Rules; fees.

The state board of pharmacy shall promulgate rules and charge reasonable fees relating to the registration and control of the manufacture and distribution of controlled substances within this state, and each department, board, or agency of this state which licenses or registers practitioners authorized to dispense any controlled substance shall promulgate rules and charge reasonable fees relating to the registration and control of the dispensing of controlled substances within this state by those practitioners licensed or registered by such department, board, or agency.

§60A-3-302. Registration required; effect of registration; exemptions; waiver; inspections.

(a) Every person who manufactures, distributes, or dispenses any controlled substance within this state or who proposes to engage in the manufacture, distribution, or dispensing of any controlled substance within this state, must obtain annually a registration issued by the state board of pharmacy or the appropriate department, board, or agency, as the case may be, as specified in section 301, in accordance with its rules.

(b) Persons registered by said state board of pharmacy or said appropriate department, board, or agency, as the case may be, under this act to manufacture, distribute, dispense, or conduct research with controlled substances may possess, manufacture, distribute, dispense, or conduct research with those substances to the extent authorized by their registration and in conformity with the other provisions of this article.

(c) The following persons need not register and may lawfully possess controlled substances under this act:

(1) an agent or employee of any registered manufacturer, distributor, or dispenser of any controlled sub-
stance if he is acting in the usual course of his business or employment;

(2) a common or contract carrier or warehouseman, or an employee thereof, whose possession of any controlled substance is in the usual course of business or employment;

(3) an ultimate user or a person in possession of any controlled substance pursuant to a lawful order of a practitioner or in lawful possession of a Schedule V substance.

(d) The said state board of pharmacy or said appropriate department, board, or agency, as the case may be, may waive by rule the requirement for registration of certain manufacturers, distributors, or dispensers if it finds it consistent with the public health and safety.

(e) A separate registration is required at each principal place of business or professional practice where the applicant manufactures, distributes, or dispenses controlled substances.

(f) The said state board of pharmacy or said appropriate department, board, or agency, as the case may be, may inspect the establishment of a registrant or applicant for registration in accordance with the rule of said state board of pharmacy or said appropriate department, board, or agency, as the case may be.

§60A-3-303. What applicants to be registered; determination of public interest; rights of registrants.

(a) The state board of pharmacy shall register an applicant to manufacture or distribute controlled substances included in Schedules I, II, III, IV and V unless it determines that the issuance of that registration would be inconsistent with the public interest. In determining the public interest, the state board of pharmacy shall consider the following factors:

(1) maintenance of effective controls against diversion of controlled substances into other than legitimate medical, scientific, or industrial channels;

(2) compliance with applicable state and local law;
any convictions of the applicant under any federal
or state laws relating to any controlled substance;
(4) past experience in the manufacture or distribution
of controlled substances, and the existence in the ap-
licant's establishment of effective controls against diver-
sion;
(5) furnishing by the applicant of false or fraudulent
material in any application filed under this act;
(6) suspension or revocation of the applicant's federal
registration to manufacture, distribute, or dispense con-
trolled substances as authorized by federal law; and
(7) any other factors relevant to and consistent with
the public health and safety.
(b) Registration under subsection (a) does not entitle
a registrant to manufacture and distribute controlled
substances in Schedule I or II other than those specified
in the registration.
(c) Practitioners must be registered to dispense any
controlled substances or to conduct research with con-
trolled substances in Schedules II through V if they are
authorized to dispense or conduct research under the law
of this state. The appropriate department, board, or agen-
cy, as specified in section 301, need not require separate
registration under this article for practitioners engaging
in research with nonnarcotic controlled substances in
Schedules II through V where the registrant is already
registered under this article in another capacity. Prac-
titioners registered under federal law to conduct research
with Schedule I substances may conduct research with
Schedule I substances within this state upon furnishing
the appropriate department, board, or agency evidence
of that federal registration.
(d) Compliance by manufacturers and distributors with
the provisions of the federal law respecting registration
(excluding fees) entitles them to be registered under
this act.
§60A-3-304. Suspension or revocation of registration generally.
(a) A registration under section 303 to manufacture,
distribute, or dispense a controlled substance may be sus-
3 pended or revoked by the said state board of pharmacy
4 or said appropriate department, board, or agency, as the
5 case may be, upon a finding that the registrant:
6 (1) has furnished false or fraudulent material infor-
7 mation in any application filed under this act;
8 (2) has been convicted of a felony under any state or
9 federal law relating to any controlled substance; or
10 (3) has had his federal registration suspended or re-
11 voked to manufacture, distribute, or dispense controlled
12 substances.
13 (b) The said state board of pharmacy or said appro-
14 priate department, board, or agency, as the case may be,
15 may limit suspension or revocation of a registration to
16 the particular controlled substance with respect to which
17 grounds for suspension or revocation exist.
18 (c) If the said state board of pharmacy or said appro-
19 priate department, board, or agency, as the case may be,
20 suspends or revokes a registration, all controlled sub-
21 stances owned or possessed by the registrant at the time
22 of suspension or the effective date of the revocation order
23 may be placed under seal. No disposition may be made
24 of substances under seal until the time for taking an
25 appeal has elapsed or until all appeals have been con-
26 cluded unless a court, upon application therefor, orders
27 the sale of perishable substances and the deposit of the
28 proceeds of the sale with the court. Upon a revocation
29 order becoming final, all controlled substances may be
30 forfeited to the state.
31 (d) The said state board of pharmacy or said appro-
32 priate department, board, or agency, as the case may
33 be, shall promptly notify the bureau of all orders suspend-
34 ing or revoking registration and all forfeitures of con-
35 trolled substances.

§60A-3-305. Order to show cause before denying, suspending,
3 etc., registration; proceedings thereon; when
3 order not required.
1 (a) Before denying, suspending, or revoking a regis-
2 tration, or refusing a renewal of registration, the said
3 state board of pharmacy or said appropriate department,
4 board, or agency, as the case may be, shall serve upon
the applicant or registrant an order to show cause why
registration should not be denied, suspended, or revoked,
or why the renewal should not be refused. The order to
show cause shall contain a statement of the basis there-
for and shall call upon the applicant or registrant to
appear before the said state board of pharmacy or said
appropriate department, board, or agency, as the case
may be, at a time and place not less than thirty days
after the date of service of the order, but in the case of a
denial or renewal of registration the show cause order
shall be served not later than thirty days before the
expiration of the registration. These proceedings shall
be conducted in accordance with article five, chapter
twenty-nine-a of this code without regard to any criminal
prosecution or other proceeding. Proceedings to refuse
renewal of registration shall not abate the existing regis-
tration which shall remain in effect pending the out-
come of the administrative hearing.

(b) The said state board of pharmacy or said appro-
priate department, board, or agency, as the case may be,
may suspend, without an order to show cause, any regis-
tration simultaneously with the institution of proceedings
under section 304, or where renewal of registration is
refused, if it finds that there is an imminent danger
to the public health or safety which warrants this action.
The suspension shall continue in effect until the conclu-
sion of the proceedings, including judicial review thereof,
unless sooner withdrawn by the said state board of phar-
macy or said appropriate department, board, or agency,
as the case may be, or dissolved by a court of competent
jurisdiction.

§60A-3-306. Records of registrants.

1 Persons registered to manufacture, distribute, or dis-
pense controlled substances under this act shall keep
records and maintain inventories in conformance with
the record-keeping and inventory requirements of federal
law and with any additional rules the said state board of
pharmacy or said appropriate department, board or
agency, as the case may be, issues.
§60A-3-307. Order forms.
1 Controlled substances in Schedules I and II shall be distributed by a registrant to another registrant only pursuant to an order form. Compliance with the provisions of federal law respecting order forms shall be deemed compliance with this section.

§60A-3-308. Prescriptions.
1 (a) Except when dispensed directly by a practitioner, other than a pharmacy, to an ultimate user, no controlled substance in Schedule II may be dispensed without the written prescription of a practitioner.
2 (b) In emergency situations, as defined by rule of the said appropriate department, board, or agency, Schedule II drugs may be dispensed upon oral prescription of a practitioner, reduced promptly to writing and filed by the pharmacy. Prescription shall be retained in conformity with the requirements of section 306. No prescription for a Schedule II substance may be refilled.
3 (c) Except when dispensed directly by a practitioner, other than a pharmacy, to an ultimate user, a controlled substance included in Schedule III or IV, which is a prescription drug as determined under appropriate state or federal statute, shall not be dispensed without a written or oral prescription of a practitioner. The prescription shall not be filled or refilled more than six months after the date thereof or be refilled more than five times, unless renewed by the practitioner.
4 (d) A controlled substance included in Schedule V shall not be distributed or dispensed other than for a medical purpose.

ARTICLE 4. OFFENSES AND PENALTIES.
§60A-4-401. Prohibited acts A—Penalties.
§60A-4-402. Prohibited acts B—Penalties.
§60A-4-403. Prohibited acts C—Penalties.
§60A-4-404. Penalties under other laws.
§60A-4-405. Bar to prosecution.
§60A-4-406. Distribution to persons under age eighteen.
§60A-4-407. Conditional discharge for first offense of possession.
§60A-4-408. Second or subsequent offenses.
§60A-4-401. Prohibited acts A—Penalties.

(a) Except as authorized by this act, it is unlawful for any person to manufacture, deliver, or possess with intent to manufacture or deliver, a controlled substance.

(1) Any person who violates this subsection with respect to:

(i) a controlled substance classified in Schedule I or II which is a narcotic drug, is guilty if a felony, and, upon conviction, may be imprisoned in the penitentiary for not less than one year nor more than fifteen years, or fined not more than twenty-five thousand dollars, or both;

(ii) Any other controlled substance classified in Schedule I, II or III, is guilty of a felony, and, upon conviction, may be imprisoned in the penitentiary for not less than one year nor more than five years, or fined not more than fifteen thousand dollars, or both;

(iii) a substance classified in Schedule IV, is guilty of a felony, and, upon conviction, may be imprisoned in the penitentiary for not less than one year nor more than three years, or fined not more than ten thousand dollars, or both;

(iv) a substance classified in Schedule V, is guilty of a misdemeanor, and, upon conviction, may be confined in the county jail for not less than six months nor more than one year, or fined not more than five thousand dollars, or both.

(b) Except as authorized by this act, it is unlawful for any person to create, deliver, or possess with intent to deliver, a counterfeit substance.

(1) Any person who violates this subsection with respect to:

(i) a counterfeit substance classified in Schedule I or II which is a narcotic drug, is guilty of a felony, and, upon conviction, may be imprisoned in the penitentiary for not less than one year nor more than fifteen years, or fined not more than twenty-five thousand dollars, or both;

(ii) any other counterfeit substance classified in Schedule I, II or III, is guilty of a felony, and, upon conviction, may be imprisoned in the penitentiary for not
less than one year nor more than five years, or fined not
more than fifteen thousand dollars, or both;

(iii) a counterfeit substance classified in Schedule IV,
is guilty of a felony, and, upon conviction, may be im-
prisoned in the penitentiary for not less than one year
nor more than three years, or fined not more than ten
thousand dollars, or both;

(iv) a counterfeit substance classified in Schedule V,
is guilty of a misdemeanor, and, upon conviction, may
be confined in the county jail for not less than six months
nor more than one year, or fined not more than five
thousand dollars, or both.

(c) It is unlawful for any person knowingly or inten-
tionally to possess a controlled substance unless the sub-
stance was obtained directly from, or pursuant to, a valid
prescription or order of a practitioner while acting in
the course of his professional practice, or except as oth-
erwise authorized by this act. Any person who violates
this subsection is guilty of a misdemeanor, and dispo-
sition may be made under section 407, subject to the
limitations specified in said section 407, or upon convic-
tion, such person may be confined in the county jail not
less than ninety days nor more than six months, or fined
not more than one thousand dollars, or both: Provided,
That notwithstanding any other provision of this act
to the contrary, any first offense for possession of less
than 15 grams of marihuana shall be disposed of under
said section 407.

§60A-4-402. Prohibited acts B—Penalties.

(a) It is unlawful for any person:

(1) who is subject to article 3 to distribute or dispense
a controlled substance in violation of section 308;

(2) who is a registrant, to manufacture a controlled
substance not authorized by his registration, or to dis-
tribute or dispense a controlled substance not authorized
by his registration to another registrant or other autho-
rized person;

(3) to refuse or fail to make, keep, or furnish any rec-
10 ord, notification, order form, statement, invoice, or in-
11 formation required under this act;
12 (4) to refuse an entry into any premises for any in-
13 spection authorized by this act; or
14 (5) knowingly to keep or maintain any store, shop,
15 warehouse, dwelling, building, vehicle, boat, aircraft, or
16 other structure or place, which is resorted to by persons
17 using controlled substances in violation of this act for the
18 purpose of using these substances, or which is used for
19 keeping or selling them in violation of this act.
20 (b) Any person who violates this section is guilty of
21 a misdemeanor, and, upon conviction, may be confined in
22 the county jail for not less than six months nor more
23 than one year, or fined not more than twenty-five thou-
24 sand dollars, or both.
25 (c) Notwithstanding any other provision of this act
26 to the contrary, any first offense for distributing less than
27 15 grams of marihuana without any remuneration shall
28 be disposed of under section 407.

§60A-4-403. Prohibited acts C—Penalties.

1 (a) It is unlawful for any person knowingly or in-
2 tentionally:
3 (1) to distribute as a registrant a controlled substance
4 classified in Schedule I or II, except pursuant to an order
5 form as required by section 307 of this act;
6 (2) to use in the course of the manufacture or distri-
7 bution of a controlled substance a registration number
8 which is fictitious, suspended, revoked, or issued to an-
9 other person;
10 (3) to acquire or obtain possession of a controlled sub-
11 stance by misrepresentation, fraud, forgery, deception,
12 or subterfuge;
13 (4) to furnish false or fraudulent material information
14 in, or omit any material information from, any applica-
15 tion, report, or other document required to be kept or
16 filed under this act, or any record required to be kept by
17 this act; or
(5) to make, distribute, or possess any punch, die, plate, stone, or other thing designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any of the foregoing upon any drug or container or labeling thereof so as to render the drug a counterfeit substance.

(b) Any person who violates this section is guilty of a felony, and, upon conviction, may be imprisoned in the penitentiary for not less than one year nor more than four years, or fined not more than thirty thousand dollars, or both.

§60A-4-404. Penalties under other laws.

Any penalty imposed for violation of this act is in addition to, and not in lieu of, any civil or administrative penalty or sanction otherwise authorized by law.

§60A-4-405. Bar to prosecution.

If a violation of this act is a violation of a federal law or the law of another state, a conviction or acquittal under federal law or the law of another state for the same act is a bar to prosecution in this state.

§60A-4-406. Distribution to persons under age eighteen.

Any person eighteen years of age or over who violates section 401(a) by distributing a controlled substance listed in Schedule I or II which is a narcotic drug to a person under eighteen years of age who is at least three years his junior is punishable by the fine authorized by section 401(a)(1)(i), by a term of imprisonment of up to twice that authorized by section 401(a)(1)(i), or by both. Any person eighteen years of age or over who violates section 401(a) by distributing any other controlled substance listed in Schedules I, II, III, IV and V to a person under eighteen years of age who is at least three years his junior is punishable by the fine authorized by section 401(a)(1)(ii), (iii) or (iv), by a term of imprisonment up to twice that authorized by section 401(a)(1)(ii), (iii) or (iv), or both.
§60A-4-407. Conditional discharge for first offense of possession.

1 Whenever any person who has not previously been convicted of any offense under this act or under any statute of the United States or of any state relating to narcotic drugs, marihuana, or stimulant, depressant, or hallucinogenic drugs, pleads guilty to or is found guilty of possession of a controlled substance under section 401(c), the court, without entering a judgment of guilt and with the consent of the accused, may defer further proceedings and place him on probation upon terms and conditions. Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as otherwise provided. Upon fulfillment of the terms and conditions, the court shall discharge the person and dismiss the proceedings against him. Discharge and dismissal under this section shall be without adjudication of guilt and is not a conviction for purposes of this section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime, including the additional penalties imposed for second or subsequent convictions under section 408. The effect of such dismissal and discharge shall be to restore such person in contemplation of law to the status he occupied prior to such arrest and trial. No person as to whom such dismissal and discharge have been effected shall be thereafter held to be guilty of perjury, false swearing, or otherwise giving a false statement by reason of his failure to disclose or acknowledge such arrest or trial in response to any inquiry made of him for any purpose. There may be only one discharge and dismissal under this section with respect to any person.

31 After a period of not less than six months which shall begin to run immediately upon the expiration of a term of probation imposed upon any person under this act, such person may apply to the court for an order to expunge from all official records all recordations of his arrest, trial, and conviction, pursuant to this section. If the court determines after a hearing that such person during the period of such probation and during the period of time prior to his application to the court under this section has not been guilty of any serious or re-
peated violation of the conditions of such probation, it shall enter such order.

§60A-4-408. Second or subsequent offenses.

(a) Any person convicted of a second or subsequent offense under this act may be imprisoned for a term up to twice the term otherwise authorized, fined an amount up to twice that otherwise authorized, or both. When a term of imprisonment is doubled under section 406, such term of imprisonment shall not be further increased for such offense under this subsection (a), even though such term of imprisonment is for a second or subsequent offense.

(b) For purposes of this section, an offense is considered a second or subsequent offense, if, prior to his conviction of the offense, the offender has at any time been convicted under this act or under any statute of the United States or of any state relating to narcotic drugs, marihuana, depressant, stimulant, or hallucinogenic drugs.

(c) This section does not apply to offenses under section 401(c).

ARTICLE 5. ENFORCEMENT AND ADMINISTRATIVE PROVISIONS.


(a) Any member of the department of public safety, any sheriff, any deputy sheriff and any municipal police officer may in the enforcement of the provisions of this act:

(1) carry firearms;

(2) execute and serve search warrants, arrest warrants, subpoenas, and summonses issued under the authority of this state;

(3) make arrests without warrant for any offense
under this act committed in his presence, or if he has
probable cause to believe that the person to be arrested
has committed or is committing a violation of this act
which may constitute a felony;
(4) make seizures of property pursuant to this act; or
(5) perform such other law-enforcement duties as
said state board of pharmacy or said appropriate depart-
ment, board or agency, as specified in section 301, desig-
nates.
(b) All officers, agents, inspectors, and representatives
of the said state board of pharmacy and of the said ap-
propriate department, board, or agency, as specified in
section 301, and members of the department of public
safety may execute and serve administrative warrants
issued incident to the enforcement of the provisions of
this act. Any such officer, agent, inspector, and repre-
sentative of the said state board of pharmacy and of the
said appropriate department, board, or agency, as speci-
fied in said section 301, may:
(1) execute and serve subpoenas and summonses
issued under the authority of this state;
(2) make arrests without warrant for any offense
under this act committed in his presence, or if he has
probable cause to believe that the person to be arrested
has committed or is committing a violation of this act
which may constitute a felony; or
(3) make seizures of property pursuant to this act.
(c) All prosecuting attorneys and the attorney gen-
eral, or any of their assistants, shall assist in the enforce-
ment of all provisions of this act and shall cooperate with
all agencies charged with the enforcement of the laws
of the United States, of this state, and of all other states
relating to controlled substances.

§60A-5-502. Administrative inspections and warrants.
(a) Issuance and execution of administrative inspec-
tion warrants shall be as follows:
(1) A judge of any court of record in this state having
criminal jurisdiction, and upon proper oath or affirma-
tion showing probable cause, may issue warrants for the
purpose of conducting administrative inspections authorized by this act or rules hereunder, and seizures of property appropriate to the inspections. For purposes of the issuance of administrative inspection warrants, probable cause exists upon showing a valid public interest in the effective enforcement of this act or rules hereunder, sufficient to justify administrative inspection of the area, premises, building, or conveyance in the circumstances specified in the application for the warrant;

(2) A warrant shall issue only upon an affidavit of a designated officer or employee having knowledge of the facts alleged, sworn to before the judge and establishing the grounds for issuing the warrant. If the judge is satisfied that grounds for the application exist or that there is probable cause to believe they exist, he shall issue a warrant identifying the area, premises, building, or conveyance to be inspected, the purpose of the inspection, and, if appropriate, the type of property to be inspected, if any. The warrant shall:

(i) state the grounds for its issuance and the name of each person whose affidavit has been taken in support thereof;

(ii) be directed to a person authorized by section 501 to execute it;

(iii) command the person to whom it is directed to inspect the area, premises, building, or conveyance identified for the purpose specified and, if appropriate, direct the seizure of the property specified;

(iv) identify the item or types of property to be seized, if any;

(v) direct that it be served during normal business hours and designate the judge to whom it shall be returned;

(3) A warrant issued pursuant to this section must be executed and returned within ten days of its date unless, upon a showing of a need for additional time, the court orders otherwise. If property is seized pursuant to a warrant, a copy shall be given to the person from whom or from whose premises the property is taken, together with a receipt for the property taken. The return of the
warrant shall be made promptly, accompanied by a written inventory of any property taken. The inventory shall be made in the presence of the person executing the warrant and of the person from whose possession or premises the property was taken, if present, or in the presence of at least one credible person other than the person executing the warrant. A copy of the inventory shall be delivered to the person from whom or from whose premises the property was taken and to the applicant for the warrant;

(4) The judge who has issued a warrant shall attach thereto a copy of the return and all papers returnable in connection therewith and file them with the clerk of the court.

(b) Administrative inspections of controlled premises shall be made in accordance with the following provisions:

(1) For purposes of this section only, "controlled premises" means:

(i) places where persons registered or exempted from registration requirements under this act are required to keep records; and

(ii) places including factories, warehouses, establishments, and conveyances in which persons registered or exempted from registration requirements under this act are permitted to hold, manufacture, compound, process, sell, deliver, or otherwise dispose of any controlled substance.

(2) When authorized by an administrative inspection warrant issued pursuant to subsection (a), any person authorized in subsection (b), section 501 of this article to execute and serve the same, upon presenting the warrant and appropriate credentials to the owner, operator, or agent in charge, may enter controlled premises for the purpose of conducting an administrative inspection.

(3) When authorized by an administrative inspection warrant, any such person may:

(i) inspect and copy records required by this act to be kept;
(ii) inspect, within reasonable limits and in a reasonable manner, controlled premises and all pertinent equipment, finished and unfinished material, containers and labeling found therein, and, except as provided in subsection (b) (5), all other things therein, including records, files, papers, processes, controls, and facilities bearing on violation of this act; and

(iii) inventory any stock of any controlled substance therein and obtain samples thereof.

(4) This section does not prevent the inspection without a warrant of books and records pursuant to an administrative subpoena issued in accordance with any pertinent provision of this code, nor does it prevent entries and administrative inspections, including seizures of property, without a warrant:

(i) if the owner, operator, or agent in charge of the controlled premises consents;

(ii) in situations presenting imminent danger to health or safety;

(iii) in situations involving inspection of conveyances if there is reasonable cause to believe that the mobility of the conveyance makes it impracticable to obtain a warrant;

(iv) in any other exceptional or emergency circumstance where time or opportunity to apply for a warrant is lacking; or,

(v) in all other situations in which a warrant is not constitutionally required.

(5) An inspection authorized by this section shall not extend to financial data, sales data, other than shipment data, or pricing data unless the owner, operator, or agent in charge of the controlled premises consents in writing.

§G0A-5-503. Injunctions.

1. (a) The courts of record of this state have and may exercise jurisdiction to restrain or enjoin violations of this act.

(b) The defendant may demand trial by jury for an alleged violation of an injunction or restraining order under this section.

[Ch. 54]
§60A-5-504. Cooperative arrangements; confidentiality.

(a) The state board of pharmacy and the appropriate departments, boards, and agencies, as specified in section 301, shall cooperate with federal and other state agencies in discharging their responsibilities concerning traffic in controlled substances and in suppressing the abuse of controlled substances. To this end, they may:

(1) arrange for the exchange of information among governmental officials concerning the use and abuse of controlled substances;

(2) coordinate and cooperate in training programs concerning controlled substance law enforcement at local and state levels;

(3) cooperate with the bureau by establishing a centralized unit to accept, catalogue, file, and collect statistics, including records of drug dependent persons and other controlled substance law offenders within the state, and make the information available for federal, state, and local law-enforcement purposes. They shall not furnish the name or identity of a patient or research subject whose identity could not be obtained under subsection (c); and

(4) conduct programs of eradication aimed at destroying wild or illicit growth of plant species from which controlled substances may be extracted.

(b) Results, information, and evidence received from the bureau relating to the regulatory functions of this act, including results of inspections conducted by it may be relied and acted upon by the state board of pharmacy in the exercise of its regulatory functions under this act.

(c) A practitioner engaged in medical practice or research is not required or compelled to furnish the name or identity of a patient or research subject to the state board of pharmacy or to the appropriate department, board, or agency by which he is licensed or registered, as specified in section 301, nor may he be compelled in any state or local civil, criminal, administrative, legislative, or other proceedings to furnish the name or identity of an individual that the practitioner is obligated to keep confidential.
(d) No mental health organization or hospital shall be compelled in any state or local civil, criminal, administrative, legislative or other proceeding to furnish the name or identity of any person voluntarily requesting treatment for or rehabilitation from addiction to or dependency upon the use of a controlled substance as defined in article one of this chapter.

§60A-5-505. Forfeitures.

(a) The following are subject to forfeiture:

1. all controlled substances which have been manufactured, distributed, dispensed, or acquired in violation of this act;
2. all raw materials, products, and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting any controlled substance in violation of this act;
3. all property which is used, or intended for use, as a container for property described in subdivision (1) or (2);
4. all conveyances, including aircraft, vehicles, or vessels, which are used, or intended for use, to transport, or in any manner to facilitate the transportation, for the purpose of sale or receipt of property described in subdivision (1) or (2), but:
   (i) no conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this act;
   (ii) no conveyance is subject to forfeiture under this section by reason of any act or omission established by the owner thereof to have been committed or omitted without his knowledge or consent;
   (iii) a conveyance is not subject to forfeiture for a violation of section 401(c); and,
   (iv) a forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of
(5) all books, records, and research products and materials, including formulas, microfilm, tapes, and data which are used, or intended for use, in violation of this act.

(b) Property subject to forfeiture under this act may be seized by any person granted enforcement powers under this act in subsections (a) and (b), section 501 of this act (hereinafter in this section referred to as the “appropriate person”) upon process issued by any court of record having jurisdiction over the property. Seizure without process may be made if:

(1) the seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant;

(2) the property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding based upon this act;

(3) the appropriate person has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(4) the appropriate person has probable cause to believe that the property was used or is intended to be used in violation of this act.

(c) In the event of seizure pursuant to subsection (b), proceedings under subsection (d) shall be instituted promptly.

(d) Property taken or detained under this section shall not be subject to replevin, but is deemed to be in the custody of the appropriate person subject only to the orders and decrees of the court having jurisdiction over the forfeiture proceedings. When property is seized under this act, the appropriate person may:

(1) place the property under seal;

(2) remove the property to a place designated by him;

or

(3) require the appropriate administrative agency to
take custody of the property and remove it to an appropriate location for disposition in accordance with law.

(e) When property is forfeited under this act the appropriate person may:

(1) retain it for official use;

(2) sell that which is not required to be destroyed by law and which is not harmful to the public. The proceeds shall be used for payment of all proper expenses of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising, and court costs;

(3) require the appropriate administrative agency to take custody of the property and remove it for disposition in accordance with law; or

(4) forward it to the bureau for disposition.

(f) Controlled substances listed in Schedule I which are possessed, transferred, sold, or offered for sale in violation of this act are contraband and shall be seized and summarily forfeited to the state. Controlled substances listed in Schedule I, which are seized or come into the possession of the state, the owners of which are unknown, are contraband and shall be summarily forfeited to the state.

(g) Species of plants from which controlled substances in Schedules I and II may be derived which have been planted or cultivated in violation of this act, or of which the owners or cultivators are unknown, or which are wild growths, may be seized and summarily forfeited to the state.

(h) The failure, upon demand by the appropriate person, or his authorized agent, of the person in occupancy or in control of land or premises upon which the species of plants are growing or being stored, to produce an appropriate registration, or proof that he is the holder thereof, constitutes authority for the seizure and forfeiture of the plants.

§60A-5-506. Burden of proof; liability of officers.

(a) It is not necessary for the state to negate any exemption or exception in this act in any complaint, in-
formation, indictment, or other pleading or in any trial, hearing, or other proceeding under this act. The burden of proof of any exemption or exception is upon the person claiming it.

(b) In the absence of proof that a person is the duly authorized holder of an appropriate registration or order form issued under this act, he is presumed not to be the holder of the registration or form. The burden of proof is upon him to rebut the presumption.

(c) No liability is imposed by this act upon any authorized state, county, or municipal officer, engaged in the lawful performance of his duties.


All final determinations, findings, and conclusions of the said state board of pharmacy or the appropriate department, board, or agency, as specified in section 301, made under this act after hearing are final and conclusive decisions of the matters involved. Any person aggrieved by the decision may obtain review of the decision pursuant to the provisions of articles five and six, chapter twenty-nine-a of this code.

§60A-5-508. Education and research.

(a) The said state board of pharmacy and the appropriate departments, boards, and agencies, as specified in section 301, and the division on alcoholism and drug abuse in the department of mental health (all hereinafter in this section referred to as “such agencies”), shall carry out educational programs designed to prevent and deter misuse and abuse of controlled substances. In connection with these programs they may:

(1) promote better recognition of the problems of misuse and abuse of controlled substances within the regulated industry and among interested groups and organizations;

(2) assist the regulated industry and interested groups and organizations in contributing to the reduction of misuse and abuse of controlled substances;

(3) consult with interested groups and organizations
to aid them in solving administrative and organizational problems;

(4) evaluate procedures, projects, techniques, and controls conducted or proposed as part of educational programs on misuse and abuse of controlled substances;

(5) disseminate the results of research on misuse and abuse of controlled substances to promote a better public understanding of what problems exist and what can be done to combat them; and

(6) assist in the education and training of state and local law-enforcement officials in their efforts to control misuse and abuse of controlled substances.

(b) Such agencies shall encourage research on misuse and abuse of controlled substances. In connection with the research, and in furtherance of the enforcement of this act, such agencies may:

(1) establish methods to assess accurately the effects of controlled substances and identify and characterize those with potential for abuse;

(2) make studies and undertake programs of research to:

(i) develop new or improved approaches, techniques, systems, equipment, and devices to strengthen the enforcement of this act;

(ii) determine patterns of misuse and abuse of controlled substances and the social effects thereof; and,

(iii) improve methods for preventing, predicting, understanding, and dealing with the misuse and abuse of controlled substances; and,

(3) enter into contracts with public agencies, institutions of higher education, and private organizations or individuals for the purpose of conducting research, demonstrations, or special projects which bear directly on misuse and abuse of controlled substances.

(c) Such agencies may enter into contracts for educational and research activities without performance bonds.

(d) Such agencies may authorize persons engaged in research on the use and effects of controlled substances
to withhold the names and other identifying characteristics of individuals who are the subjects of the research.

Persons who obtain this authorization are not compelled in any civil, criminal, administrative, legislative, or other proceeding to identify the individuals who are the subjects of research for which the authorization was obtained.

(e) Such agencies may authorize the possession and distribution of controlled substances by persons engaged in research. Persons who obtain this authorization are exempt from state prosecution for possession and distribution of controlled substances to the extent of the authorization.

ARTICLE 6. MISCELLANEOUS PROVISIONS.

§60A-6-601. Pending proceedings.

1 (a) The provisions of this act shall govern and control as to any offenses committed in violation thereof on and after the effective date of this act, and the provisions of articles eight, eight-a and eight-b, chapter sixteen of this code shall govern and control as to any offenses committed in violation of said articles, or any of them, prior to the effective date of this act, with like effect as to such prior offenses as if said articles had not been repealed and this act had not been enacted: Provided, That if the offense being prosecuted is similar to one set out in article four of this act, then the penalties under article four apply if they are less than those under prior law.

(b) Civil seizures of forfeitures and injunctive proceedings commenced prior to the effective date of this act are not affected by this act.

(c) All administrative proceedings pending under prior laws which are superseded by this act shall be continued and brought to a final determination in accord
with the laws and rules in effect prior to the effective
date of the act. Any substance controlled under prior
law which is not listed within Schedules I through V, is automatically controlled without further proceedings
and shall be listed in the appropriate schedule.

(d) The state board of pharmacy or the appropriate
departments, boards, and agencies, as specified in sec-
tion 301, shall initially permit persons to register who
own or operate any establishment engaged in the manu-
facture, distribution, or dispensing of any controlled
substance prior to the effective date of this act and who
are registered or licensed by the state.

(e) This act applies to violations of law, seizures, and
forfeiture, injunctive proceedings, administrative proceed-
ings, and investigations which occur following its effec-
tive date.

§60A-6-602. Continuation of orders and rules.

Any orders and rules promulgated under any law
affected by this act and in effect on the effective date of
this act and not in conflict with it continue in effect until
modified, superseded or repealed.

§60A-6-603. Uniformity of interpretation.

This act shall be so applied and construed as to effec-
tuate its general purpose to make uniform the law with
respect to the subject of this act among those states
which enact it.

§60A-6-604. Short title.

This act may be cited as the Uniform Controlled Sub-
stances Act.

§60A-6-605. Severability.

If any provision of this act or the application thereof
to any person or circumstance is held invalid, such in-
validity shall not affect other provisions or applications
of the act, and to this end the provisions of this act are
hereby declared to be severable.
AN ACT to amend and reenact sections two and three, article one; and section two, article two, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, to define the term “minor” as used in article four, section one of the state constitution and as used in the West Virginia election code to mean a person who has not become eighteen years of age, and to permit a minor to vote in a primary election if he will have reached the age of eighteen years on the date of the general election next to be held after such primary election, to provide that citizens of the state who are between the ages of eighteen and twenty-one and who are otherwise qualified to vote shall not be entitled to vote except in elections held on and after July one, one thousand nine hundred seventy-one, within the precincts of the counties and municipalities in which they respectively reside, to permit a minor, otherwise qualified, to register if he shall have attained the age of eighteen years by the time of the next ensuing election, and to provide that on and after the effective date of this act, citizens of the state who are between the ages of eighteen and twenty-one and who are otherwise qualified to vote shall be permitted to register to vote, and the voter registration of any citizen of the state who prior to the effective date of this act registered to vote and who was between the ages of eighteen and twenty-one at the time of registration and who was otherwise qualified to vote shall be valid.

Be it enacted by the Legislature of West Virginia:

That sections two and three, article one; and section two, 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.
ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§3-1-2. Scope of chapter; definitions.
§3-1-3. Persons entitled to vote.

§3-1-2. Scope of chapter; definitions.

1 Unless restricted by the context, the provisions of this chapter shall apply to every general, primary and special election in which candidates are nominated or elected or in which voters pass upon any public question submitted to them, except that the provisions hereof shall be construed to be operative in municipal elections only in those instances in which they are made expressly so applicable.

2 Unless the context clearly requires a different meaning, as herein used:

3 "Voter" shall mean any person who possesses the statutory and constitutional qualifications for voting;

4 "Election" shall mean the procedure whereby the voters of this state or any subdivision thereof elect persons to fill public offices, or elect members of a constitutional convention, or vote on public questions;

5 "Any election" or "all elections" shall include every general, primary, or special election held in this state, or in any of its subdivisions, for the purpose of nominating or electing federal or state officers, or county, city, town or village officers of any subdivision now existing or hereafter created, or for the purpose of electing members of a constitutional convention, or for voting upon any public question submitted to the people of the state or any of the aforesaid subdivisions;

6 "Office" shall be construed to mean "public office" which shall include (1) any elective office provided for by the constitution or laws of the United States or of this state to which a salary or other compensation attaches, and (2) membership in a constitutional convention;

7 "Candidate" shall mean any person to be voted for at an election;

8 "Public question" shall mean any issue or proposition,
now or hereafter required by the governing body of this
state or any of its subdivisions to be submitted to the
voters of the state or subdivision for decision at elections;
The term "minor" as used in article four, section one
of the state constitution and as used in this chapter shall
mean a person who has not become eighteen years of age.

§3-1-3. Persons entitled to vote.

1 Citizens of the state shall be entitled to vote at all
elections held within the precincts of the counties and
municipalities in which they respectively reside. But
no person who has not been registered as a voter as
required by law, or who is a minor, or of unsound mind,
or a pauper, or who is under conviction of treason, felony
or bribery in an election, or who, in the case of state-
county elections has not been a bona fide resident of
the state for one year and of the county in which he
offers to vote for sixty days next preceding such election,
or who, in the case of a special election to elect members
to a constitutional convention, has not been a bona fide
resident of the state for one year and of the county
in which he offers to vote for sixty days next preceding
such election, or who in the case of municipal elections
has not been a bona fide resident of the state for one
year and of the municipality in which he offers to vote
for sixty days next preceding such election, shall be
permitted to vote at such election while such disability
continues. Subject to the qualifications otherwise pre-
scribed in this section, however, a minor shall be per-
mitted to vote in a primary election if he will have
reached the age of eighteen years on the date of the
general election next to be held after such primary elec-
tion.

Notwithstanding the foregoing provisions of this sec-
tion, citizens of the state who are between the ages of
eighteen and twenty-one and who are otherwise qualified
to vote shall not be entitled to vote except in elections
held on and after July one, one thousand nine hundred
seventy-one, within the precincts of the counties and mu-
nicipalities in which they respectively reside.
ARTICLE 2. REGISTRATION OF VOTERS.
§ 3-2-2. Voter registration requirements.

1 No voter otherwise qualified shall be permitted to vote at any election unless he shall have been duly registered or shall have placed himself within the "challenged voters" provision of this chapter, and only those persons who possess the constitutional and statutory qualifications for voting shall be permitted to register, except that minors, otherwise qualified, who shall have attained the age of eighteen years by the time of the next ensuing election, may be permitted to register.

2 On and after the effective date of this act, citizens of the state who are between the ages of eighteen and twenty-one and who are otherwise qualified to vote shall be permitted to register to vote, and the voter registration of any citizen of the state who prior to the effective date of this act registered to vote and who was between the ages of eighteen and twenty-one at the time of registration and who was otherwise qualified to vote shall be valid.

CHAPTER 56
(Senate Bill No. 371—By Mr. Brotherton)

[Passed March 6, 1971; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article one, chapter three 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 persons entitled to vote under the federal Voting Rights Act Amendments of 1970, and authorizing the secretary of state to make, amend and rescind such rules, regulations, orders and instructions, and prescribe such registration and voting procedures, forms (including registration, ballot and ballot label forms), lists and records, as may be necessary in order for this state to fully implement, and comply with, the federal Voting Rights Act Amendments of 1970, as in-
interpreted and limited by the United States supreme court, and making it the duty of all public officers, election officers, boards and commissions having any authority or responsibility in connection with any election, to comply with all such rules, regulations, orders and instructions, and use, make, follow or comply with all such registration and voting procedures, forms (including registration, ballot and ballot label forms), lists and records as have been prescribed by the secretary of state under the foregoing authority vested in that office.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§3-1-3a. Persons entitled to vote under federal Voting Rights Act Amendments of 1970; authority of secretary of state.

1 (1) Any citizen of the United States who is a resident of the state and who applies, not later than thirty days immediately prior to any presidential election for registration or qualification to vote for the choice of electors for president and vice-president, or for president and vice-president, in such election, and who is otherwise qualified to vote, may register to vote, and vote, for the choice of electors for president and vice-president, or for president and vice-president, in such election, as provided by the federal Voting Rights Act Amendments of 1970.

2 (2) Any citizen of the United States who has moved his residence from this state within thirty days next preceding any election for president and vice-president, and who was otherwise qualified to vote in this state as of the date of his change of residence and who has not satisfied the registration requirements of the state to which he has moved, may vote for the choice of electors for president and vice-president, or for president and vice-president, in such election, as provided by the federal Voting Rights Act Amendments of 1970.
(3) Any citizen of the United States who has attained the age of eighteen years but who has not attained the age of twenty-one years by the time of the next ensuing primary or election in which he may vote under section 302 of the federal Voting Rights Act Amendments of 1970, as interpreted and limited by the United States supreme court, and who is otherwise qualified to vote, may vote in any primary or election for those candidates for whom he is entitled to vote under said section 302 of the federal Voting Rights Act Amendments of 1970, as interpreted and limited by the United States supreme court.

(4) The secretary of state shall have authority to make, amend and rescind such rules, regulations, orders and instructions, and prescribe such registration and voting procedures, forms (including registration, ballot and ballot label forms), lists and records, as may be necessary in order for this state to fully implement, and comply with, the federal Voting Rights Act Amendments of 1970, as interpreted and limited by the United States supreme court, and it shall be the duty of all public officers, election officers, boards and commissioners having any authority or responsibility in connection with any election, to comply with all such rules, regulations, orders and instructions, and use, make, follow or comply with all such registration and voting procedures, forms (including registration, ballot and ballot label forms), lists and records as have been prescribed by the secretary of state under the foregoing authority vested in that office.

CHAPTER 57
(Senate Bill No. 165—By Mr. Ward and Mr. Palumbo)

[Passed March 8, 1971; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section nine, article one, chapter three of the code of West Virginia, one thousand nine hun-
Ch. 57] ELECTIONS 315

dred thirty-one, as amended, relating to political party
ccommittees.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§3-1-9. Political party committees; how composed; organization.

1 At the May primary election in the year one thousand
nine hundred seventy-two and at the May primary elec-
tion in the year one thousand nine hundred seventy-four
and in every fourth year subsequent to the May primary
election held in the year one thousand nine hundred
seventy-four, the voters of each political party in each
senatorial district shall elect two male and two female
members of the state executive committee of the party. In
senatorial districts containing two or more counties, not
more than two such elected committee members shall be
residents of the same county. The committee, when con-
voked and organized as herein provided, shall appoint
three additional members of the committee from the state
at large.

At such primary election, the voters of each political
party in each county shall elect one male and one fe-
male member of the party’s executive committee of the
congressional district, of the senatorial district in which
such county is situated and of the delegate district in
which such county is situated if such county be situated in
a delegate district. At the same time such voters in
each magisterial district of the county shall elect one
male and one female member of the party’s county execu-
tive committee and, in any county containing a city of
ten thousand or more in population, such voters of each
ward of such city within the county shall elect one male
and one female member of such county party executive
committee in addition to the members thereof chosen
from the magisterial district or districts in which such
city is situated.

All members of executive committees, selected for
each political division as herein provided, shall reside
within the county, district, or ward from which chosen.
The term of office of all members of executive com-
mittees so elected at the May primary election in the
year one thousand nine hundred seventy-two shall begin
on the first day of June, following said May primary,
and shall continue for two years thereafter and until
their successors are elected and qualified. The term of
office of all members of executive committees elected
at the May primary in the year one thousand nine
hundred seventy-four, and every four years thereafter,
shall begin on the first day of June, following said May
primary, and shall continue for four years thereafter
and until their successors are elected and qualified.
Vacancies in the state executive committee shall be filled
by the members of the committee for the unexpired
term. Vacancies in the party's executive committee of
a congressional district, senatorial district, delegate dis-
trict or county shall be filled by the party's executive
committee of the county in which such vacancy exists,
and shall be for the unexpired term.
As soon as possible after the first day of June, following
the election of the new executive committees, as herein
provided, they shall convene within their respective po-
litical divisions, on the call of the chairman of corre-
spanding outgoing executive committees, or by any mem-
ber of the new executive committee in the event there
is no corresponding outgoing executive committee, and
proceed to select a chairman, a treasurer, and a secre-
tary, and such other officers as they may desire, each
of which officers shall for their respective committees
perform the duties that usually appertain to such offices.

CHAPTER 58

(House Bill No. 962—By Mr. Jones, of Roane, and Mr. McGraw)
[Passed March 13, 1971; in effect ninety days from passage. Approved by the
Governor.]

AN ACT to amend and reenact section two-a, article three,
chapter three of the code of West Virginia, one thousand
nine hundred thirty-one, as amended, relating to voting
booths within public view for absentee voting and prohibits
the display of campaign material in absentee voting areas.

*Be it enacted by the Legislature of West Virginia:*

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

**ARTICLE 3. VOTING BY ABSENTEES.**

§3-3-2a. Voting booths within public view to be provided by
clerk; prohibition against display of campaign
material.

1 Throughout the period during which absent voter bal-
2 lots may be voted in the clerk's office as provided else-
3 where 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. Such booths or compartments
10 shall be so placed within the clerk's office as to be sep-
11 arate from, but within the clear view of the entrance area
12 accessible to the public conducting normal business in
13 the clerk's office. If the compartment to be used for the
14 purpose of voting is a room otherwise used as a portion
15 of the clerk's office, the entrance to such room shall be
16 within the clear view of the entrance area accessible to
17 the public conducting normal business in the clerk's
18 office, and no other person, including but not limited to
19 the circuit clerk and ballot commissioners, shall be per-
20 mitted to pass through the entrance to such voting room
21 during the period in which it is occupied by any one
22 voter while preparing his ballot.

23 Throughout the period during which absent voter bal-
24 lots may be voted in the clerk's office as provided else-
25 where in this article, it shall be the duty of the clerk
26 to prohibit the display in any manner of any literature
27 or material of any kind urging the voting for or against
28 any candidate or candidates or public question or ques-
29 tions within the whole area of the clerk's office or within
sixty feet thereof. The clerk is hereby authorized to direct the sheriff of the county to enforce such prohibition.

CHAPTER 59
(House Bill No. 1158—By Mr. Seibert)

[Passed March 9, 1971; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section nine, article one, chapter fifty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the right of one party having power of eminent domain to cross or alter the property and works belonging to another party with such power, and civil action related thereto.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. RIGHT OF EMINENT DOMAIN.

§54-1-9. Crossing or alteration of works of another entity; civil action.

1 If any entity having the power of eminent domain under other provisions of this article including any railroad company, canal company, company organized for the purpose of transporting oil or natural or manufactured gas, or both, by means of pipeline, company organized for the purpose of transporting coal and its derivatives and all mixtures and combinations thereof with any substance by means of pipes or otherwise, telephone or telegraph company, company operating an electric transmission line, private corporation or public corporation operating a system of pipelines for transporting water, private corporation or public corporation operating a sewer system for public use, the West Virginia department of highways, or any county court, deems it necessary in the construction or relocation of its works, or any part thereof, to cross any other railroad, canal, sewer line, pipeline, any state or other public road at grade or other-
wise, telephone or telegraph line or electric transmis-
be so constructed as not to impede the passage or trans-
along, over or through the same. If any such company,
private corporation, public corporation, West Virginia de-
dpartment of highways or county court desire that the
course of any other railroad, canal, sewer line, pipeline,
state, or other public road, telephone or telegraph line,
electric transmission line, or any stream which is not a
public highway, be altered to avoid the necessity of any
crossing, or of frequent crossings, or to facilitate the cross-
ing thereof, or the construction of a parallel work, the
alteration may be made in such manner as may be agreed
between the said party desiring such alteration and the
owner of such other facility or land to be affected
thereby. In case the parties interested fail to agree upon
such crossing or alteration as is desired, said party de-
siring such crossing or alteration may bring a civil action,
and in such action the court may, in a proper case, order
that any proper crossing, or alteration, may be made
upon payment of just compensation for the property or
interest in property to be taken and upon payment of
damages, if any, to the residue thereof beyond all bene-
fits to be derived thereby. Following said civil action,
and if the court order such crossing or alteration may be
made, said party desiring such crossing or alteration may
thereupon proceed under article two of this chapter to
obtain the right to make such crossing or alteration and
to have determined the amount of compensation and
damages owing as a result thereof.

CHAPTER 60
(House Bill No. 547—By Mr. Myles)

[Passed February 15, 1971; in effect ninety days from passage. Approved by the
Governor.]

AN ACT to amend and reenact section one, article two, chapter
forty-four of the code of West Virginia, one thousand
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. PROOF AND ALLOWANCE OF CLAIMS AGAINST ESTATES OF DECEDEENTS.

§44-2-1. Reference of decedents’ estates; proceedings thereon.

1 Upon the qualification of any personal representative, the estate of his decedent shall, by order of the county court to be then made, be referred to a commissioner of accounts for proof and determination of debts and claims, establishment of their priority, determination of the amount of the respective shares of the legatees and distributees, and any other matter necessary and proper for the settlement of the estate: Provided, That in counties where there are two or more such commissioners, the estates of decedents shall be referred to such commissioners in rotation, in order that, so far as possible, there may be an equal division of the work: Provided, however, That if and when the personal representative shall file with the clerk of the county court an appraisement of the estate, showing its value to be three thousand dollars or less, then reference to a commissioner of accounts shall not be necessary, but the personal representative shall, within two months from his appointment, file with the county clerk his report of receipts and disbursements, and, unless some creditor or heir shall within thirty days thereafter show good cause why the report is not correct, the personal representative and his bondsman shall be discharged.
AN ACT to amend and reenact section twenty-four-a, article two, chapter forty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to accounting by personal representatives for certain moneys not capable of payment or distribution at the time of final settlement of estates, and to the payment of such moneys to the general receiver of the circuit court; procedure for the distribution of such moneys under the direction of the circuit court.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. PROOF AND ALLOWANCE OF CLAIMS AGAINST ESTATES OF DECEDEMENTS.

§44-2-24a. Accounting for money not disposable at time of settlement; subsequent distribution of such money.

Notwithstanding any other provision of law, if an estate is otherwise ready for final settlement and the personal representative holds any sum or sums of money necessary for the payment or distribution of any contingent, unliquidated, unmatured or disputed bequest or claim, which cannot be paid or distributed because the whereabouts of the claimant or distributee are unknown, or cannot be paid or distributed for any other reason, he may, with the consent of the commissioner of accounts to whom the estate has been referred, pay such sum or sums to the general receiver of the circuit court in the county in which the estate is being administered. Any such payment, together with a receipt therefor, shall be reflected and shown in said commissioner's final report. After said report is confirmed by
16 the county court, such personal representative shall not
17 be personally liable for any such aforesaid bequest or
18 claim.
19 Any person entitled to any funds paid to a general
20 receiver of a circuit court pursuant to the provisions
21 of this section may petition the circuit court in a sum-
22 mary proceeding for an order directing the distribu-
23 tion of such funds. Any person believed to have any
24 claim to or interest in said funds shall be made a party
25 defendant to such petition and shall be given such
26 notice of any hearing thereon as the circuit court may
27 direct. The circuit court shall enter an order directing
28 the distribution of said funds to the person or persons
29 entitled thereto. The costs of said proceedings shall be
30 paid from the funds.

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**CHAPTER 62**

(Senate Bill No. 443—By Mr. Brotherton)

[Passed March 11, 1971; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seven, article eight, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section two, article six, chapter forty-four of said code, relating to investments that may be made by insurers and fiduciaries.

**Be it enacted by the Legislature of West Virginia:**

That section seven, article eight, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section two, article six, chapter forty-four of said code be amended and reenacted, all to read as follows:

Chapter

33. Insurance.

44. Administration of Estate and Trusts.
CHAPTER 33. INSURANCE.

ARTICLE 8. INVESTMENTS.

§33-8-7. Government obligations.

1 An insurer may invest any of its funds in:
2 (a) Bonds or securities which are the direct obligation
3 of or which are secured or guaranteed in whole or in
4 part as to principal and interest by the United States, any
5 state or territory of the United States or the District
6 of Columbia, where there exists the power to levy taxes
7 for the prompt payment of the principal and interest
8 of such bonds or evidences of indebtedness, and, in bonds
9 issued by the federal land banks or securities issued by
10 the federal home loan bank system.
11 (b) Bonds or evidences of indebtedness which are
12 direct general obligations of any county, district, city,
13 town, village, school district, park district or other politi-
14 cal subdivision of this state or any other state or ter-
15 ritory of the United States or the District of Columbia,
16 which shall not be in default in the payment of any of
17 its general obligation bonds, either principal or interest,
18 at the date of such investment; where they are payable
19 from ad valorem taxes levied on all the taxable prop-
20 erty located therein and the total indebtedness after de-
21 ducting sinking funds and all debts incurred for self-
22 sustaining public works does not exceed ten per centum
23 of the actual value of all taxable property therein on
24 the basis of which the last assessment was made before
25 the date of such investment.

CHAPTER 44. ADMINISTRATION OF ESTATES
AND TRUSTS.

ARTICLE 6. INVESTMENTS BY FIDUCIARIES.

§44-6-2. In what securities fiduciaries may invest trust funds.

1 Any executor, administrator, guardian, curator, com-
2 mittee, trustee or other fiduciary whose duty it may be
3 to loan or invest money entrusted to him as such, may,
4 without any order of any court, invest the same or any
5 part thereof in any of the following securities, and with-
6 out liability for any loss resulting from investments
therein: Provided, That such fiduciary shall exercise the judgment and care under the circumstances then prevailing which men of prudence, discretion and intelligence exercise in the management of their own affairs, not in regard to speculation, but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital:

(a) In bonds or interest-bearing notes or obligations of the United States, or those for which the faith of the United States is distinctly pledged to provide for the payment of the principal and interest thereof, including, but not by way of limitation, bonds or debentures issued under the "Federal Farm Loan Act," debentures issued by "Banks for Cooperatives" under the "Farm Credit Act of One Thousand Nine Hundred Thirty-Three," as amended, debentures issued by the federal national mortgage association, securities issued by the federal home loan bank system; and in bonds, interest-bearing notes and obligations issued, guaranteed or assumed by the International Bank for Reconstruction and Development or by the Inter-American Development Bank;

(b) In bonds or interest-bearing notes or obligations of this state;

(c) In bonds of any state of the United States which has not within ten years previous to the making of such investment defaulted in the payment of any part of either principal or interest on any of its bonds issued by authority of the Legislature of such state;

(d) In the bonds or interest-bearing notes or obligations of any county, district, school district or independent school district, municipality or any other political division of this state that have been issued pursuant to the authority of any law of this state, since the ninth day of May of the year one thousand nine hundred seventeen;

(e) In bonds and negotiable notes secured by first mortgage or first trust deed upon improved real estate where the amount secured by such mortgage or trust deed shall not at the time of making the same exceed eighty percent of the assessed value, or sixty-six and
two-thirds percent of the appraised value as determined by wholly disinterested and independent appraisers, whichever value shall be the higher, of the real estate covered by such mortgage or trust deed, and when such mortgage or trust deed is accompanied by a satisfactory abstract of title, certificate of title or title insurance policy, showing good title in the mortgagor when making such mortgage or trust deed, and by a fire insurance policy in an old line company with loss, if any, payable to the mortgagee or trustee as his interest may appear:

Provided, That the rate of interest upon the above enumerated securities in this subdivision (e), in which such investments may be made, shall not be less than two percent, nor more than eight percent, per annum;

(f) In savings accounts and time deposits of banks or trust companies to the extent that such deposits are insured by the federal deposit insurance corporation, or by any other similar federal instrumentality that may be hereafter created, provided there shall be such an instrumentality in existence and available for the purpose, or by bonds of solvent surety companies: Provided, That the rate of interest upon such savings accounts or time deposits shall not be less than the rate paid other depositors in such bank or trust company;

(g) In shares of state building and loan associations, or federal savings and loan associations, to the extent that such shares are insured by the federal savings and loan insurance corporation, or by any other similar federal instrumentality that may be hereafter created: Provided, That there shall be such an instrumentality in existence and available for the purpose, or by bonds of solvent surety companies: Provided, however, That the dividend rate upon such shares shall not be less than the rate paid to other shareholders in such associations;

(h) In other securities of corporations organized and existing under the laws of the United States, or of the District of Columbia or any state of the United States including, but not by way of limitation, bonds, debentures, notes, equipment trust obligations or other evidences of indebtedness, and shares of common and preferred stocks of such corporations and securities of any open end or closed
end management type investment company or investment trust registered under the "Federal Investment Company Act" of one thousand nine hundred forty, as from time to time amended, which men of prudence, discretion and intelligence acquire or retain for their own account, provided, and upon conditions, however, that:

(1) No investment shall be made pursuant to the provisions of this subdivision (h) which, at the time such investment shall be made, will cause the aggregate market value thereof to exceed fifty percent of the aggregate market value at that time of all of the property of the fund held by such fiduciary. Notwithstanding the aforesaid percentage limitation the cash proceeds of the sale of securities received or purchased by a fiduciary and made eligible by this subdivision (h) may be reinvested in any securities of the type described in this subdivision (h).

(2) No bonds, debentures, notes, equipment trust obligations or other evidence of indebtedness of such corporations shall be purchased under authority of this subdivision (h) unless such obligations, if other than issues of a common carrier subject to the provisions of section twenty-a of the "Interstate Commerce Act," as amended, shall be obligations issued, guaranteed or assumed by corporations which have any securities currently registered with the securities and exchange commission.

(3) No common or preferred stocks, other than bank and insurance company stocks, shall be purchased under authority of this subdivision (h) unless currently fully listed and registered upon an exchange registered with the securities and exchange commission as a national securities exchange. No sale or other liquidation of any investment shall be required solely because of any change in the relative market value of those investments made eligible by this subdivision (h) and those made eligible by the preceding subdivisions of this section. In determining the aggregate market value of the property of a fund and the percentage of a fund to be invested under the provisions of this subdivision, a fiduciary may rely upon published market quotations as
to those investments for which such quotations are available, and upon such valuations of other investments as in the fiduciary's best judgment seem fair and reasonable according to available information.

Trust funds received by executors, administrators, guardians, curators, committees, trustees and other fiduciaries may be kept invested in the securities originally received by them, unless otherwise ordered by a court having jurisdiction of the matter, as hereinafter provided, or unless the instrument under which the trust was created shall direct that a change of investment be made, and any such fiduciary shall not be liable for any loss that may occur by depreciation of such securities.

This section shall not apply where the instrument creating the trust, or the last will and testament of any testator, or any court having jurisdiction of the matter, specially directs in what securities the trust funds shall be invested, and every such court is hereby given power specially to direct by order or orders, from time to time, additional securities in which trust funds may be invested, and any investment thereof made in accordance with any such special direction shall be legal, and no executor, administrator, guardian, curator, committee, trustee or other fiduciary shall be held for any loss resulting in any such case.

CHAPTER 63

(House Bill No. 724—By Mr. Steptoe)

[Passed February 19, 1971; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eight, article ten, chapter forty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to income and corpus of estates of infant wards.

Be it enacted by the Legislature of West Virginia:

That section eight, article ten, chapter forty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:
ARTICLE 10. GUARDIANS AND WARDS.

§44-10-8. Disbursements and expenditures by guardians from income and corpus of estates of infant wards.

1 No disbursements, beyond the annual income of the ward's estate, shall be allowed to any guardian where the deed or will, under which the estate is derived, does not authorize it, unless the same shall have been authorized by the circuit court of the county in which the guardian was appointed or qualified. Any guardian, who may desire to spend more than the annual income of his ward's estate for any purpose, shall file in such circuit court a petition, verified by his oath, setting forth the reasons why it is necessary to make such expenditures, to which petition the ward shall be made defendant. The court shall appoint a guardian ad litem for the ward, who shall answer such petition, be present at the hearing, and represent the infant. Five days' notice shall be given to the defendant before such petition can be heard.

2 At the hearing the evidence may be taken orally, and the court, if satisfied that such expenditure would be judicious and proper, may grant the prayer of the petition. Such petition may be filed and heard before the judge of such court in vacation as well as in term time.

3 In the settlement of the guardian's accounts no credit shall be allowed him by the commissioner of accounts or the court for expenditures for his ward, except for expenditures of the annual income of his ward's estate and for expenditures of such amounts of the principal of the ward's personal estate as shall have been authorized by the court as provided by this section: Provided, however, That if the personal estate in the hands of the guardian does not exceed in amount the sum of three thousand dollars, disbursement may be made by the guardian from the corpus of such personal estate for the ward's maintenance and education, after first securing the written approval so to do of and from the commissioner of accounts to whom the settlement of the ward's estate was referred.
AN ACT to amend chapter forty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article ten-a, relating to guardianships for mentally retarded persons; limited and standby guardianships for such persons, the duration of all such guardianships and the application of other provisions of this code with respect to such mentally retarded persons.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10A. GUARDIANS OF MENTALLY RETARDED PERSONS GENERALLY.

§44-10A-1. Guardianship of mentally retarded person.

§44-10A-2. Limited guardianship.

§44-10A-3. Duration of guardianship.

§44-10A-4. Standby guardianship.

§44-10A-5. Application of other provisions.

§44-10A-1. Guardianship of mentally retarded person.

1 When it shall appear to the satisfaction of the county court that a person is a mentally retarded person as defined in section three, article one, chapter twenty-seven of this code, that such condition is certified as being permanent in nature by at least two physicians, licensed to practice medicine in this state, or one such physician and one licensed psychologist having qualifications to make such certification, and that such person requires in his best interests the appointment of a guardian, the county court is authorized and empowered, upon application of both parents, natural or adoptive, if living, or upon application of one such parent and the consent of the
other, if living, or upon application of any other interested person and the consent of both parents or the surviving parent if either or both such parents shall be living, to appoint such guardian.

§44-10A-2. Limited guardianship.

1 When it shall appear to the satisfaction of the county court that such mentally retarded person for whom an application for guardianship is made is over the age of twenty-one years and is wholly or substantially self-supporting by means of his wages or earnings from employment, the county court is authorized and empowered to appoint a limited guardian for such mentally retarded person who shall receive, manage, disburse and account for only such property of said mentally retarded person as shall be received from other than the wages or earnings of said person.

2 The mentally retarded person for whom a limited guardian has been appointed shall have the right to receive and expend any and all wages or other earnings of his employment and shall have the power to contract or legally bind himself for any sum of money which in the aggregate shall not exceed one month’s wages or earnings from such employment or the sum of three hundred dollars, whichever is less, in any one month.

3 In all other respects the requirements, powers and duties of a limited guardian shall be the same as those of a committee as set forth in article eleven, chapter twenty-seven of this code.

§44-10A-3. Duration of guardianship.

1 Such guardianship shall not terminate at the age of majority or upon marriage and such limited guardianship shall not terminate upon marriage but shall continue during the life of such mentally retarded person, or until terminated by the county court; except that the prior appointment of a guardian or limited guardian for a mentally retarded female shall terminate upon her subsequent marriage. A person of the age of twenty-one or more years for whom a guardian has been previously appointed and a person for whom a limited guardian has been previously appointed may, however, petition the
county court which made such appointment or the county
court of his county of residence to have the guardianship
or limited guardianship terminated, or, in the alternative,
to have the guardian or limited guardian discharged and
a successor appointed, or to have the guardian designated
as a limited guardian.

Upon such a petition for review or upon a petition
for appointment of a guardian in the first instance for
a mentally retarded person over the age of twenty-one
or upon a petition for appointment of a limited guardian
in the first instance for a mentally retarded person, the
county court shall conduct a hearing at which the re-
tarded person shall be present.

§44-10A-4. Standby guardianship.

(a) Upon application or consent of both parents,
natural or adoptive, if living, or of the surviving parent,
a standby guardian of a mentally retarded person may
be appointed by the county court. The county court
may also upon application or consent of such parents
or surviving parent appoint an alternate to such guar-
dian, to act if such guardian shall die or become in-
capacitated after the death of the last surviving parent
of such retarded person, or if such guardian shall re-
nounce his appointment.

(b) Such standby guardian, or alternate in the event
of such guardian's death or incapacity or his renuncia-
tion, shall without further proceedings be empowered
to assume the duties of his office immediately upon
death or adjudication of incompetency of the last sur-
viving of the natural or adoptive parents of such men-
tally retarded person, subject only to confirmation of
his appointment by the county court within sixty days
following assumption of his duties of office.

(c) After the appointment of a standby guardian,
the court shall have and retain general jurisdiction over
the mentally retarded person for whom such guardian
shall have been appointed, to take of its own motion or
to entertain and adjudicate such steps and proceedings
relating to such standby guardianship as may be deemed
necessary or proper for the welfare of such retarded person.

§44-10A-5. Application of other provisions.

To the extent that the context thereof shall admit, the provisions of article ten of this chapter shall apply to all proceedings under this article with the same force and effect as if "a child", "a ward" or "a minor", as therein referred to, were "a mentally retarded person" as herein defined, and a "guardian" as therein referred to were a "guardian of a mentally retarded person", as herein provided for.

CHAPTER 65

(House Bill No. 657—By Mr. Loop)

[Passed February 22, 1971; 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, chapter thirty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the release or disclaimer of powers of appointment.

Be it enacted by the Legislature of West Virginia:

That sections one, two, three, four and five, article five, chapter thirty-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. RELEASE OR DISCLAIMER OF POWERS OF APPOINTMENT.

§36-5-1. Release or disclaimer of general power of appointment.
§36-5-2. Method of effecting release or disclaimer of power of appointment.
§36-5-3. Release or disclaimer of other than general power of appointment.
§36-5-4. Validity of release or disclaimer of power of appointment heretofore made.
§36-5-5. Other methods of release or disclaimer of power of appointment not affected.
§36-5-1. Release or disclaimer of general power of appointment.

Any general power, whether exercisable by will, by deed, by will or deed, or otherwise, to appoint property, whether real or personal or both, may be released or disclaimed by the person or persons having such power, with or without consideration, wholly or partially. Any such power may be released or disclaimed with respect to the whole or any part of the property subject thereto; and any such power may also be released or disclaimed in such manner as to reduce, limit, or restrict the persons or objects, or classes of persons or objects, to or among any one or more of whom, but no others, the property subject to such power may be appointed by an exercise thereof, as fully as the creator of such power himself could have so reduced, limited or restricted the same and with like effect as if he had.

§36-5-2. Method of effecting release or disclaimer of power of appointment.

Any release or disclaimer mentioned in section one of this article may be effected by a written instrument signed and acknowledged as a deed by the person or persons having the general power to appoint mentioned in that section; and such instrument may be delivered by filing it for record in the office of the clerk of the county court of the county wherein the will, deed or other instrument creating such power is recorded. Such clerk shall record such instrument of release or disclaimer as a deed is recorded, index it, and note a reference to the record thereof on the margin of the record of the will, deed or other instrument creating such power.

§36-5-3. Release or disclaimer of other than general power of appointment.

Any other power than a general one, whether exercisable by will, by deed, by will or deed, or otherwise, to appoint property, real or personal or both, may be released or disclaimed to the extent that a release or disclaimer thereof would not be contrary to any manifest intent or purpose of the creator of such power expressly set forth in the will, deed or other instrument creating
such power; and to the extent so releasable or disclaimable it may be released or disclaimed in like manner as above provided in this article for the release or disclaimer of a general power of appointment, and with like effect.

§36-5-4. Validity of release or disclaimer of power of appointment heretofore made.

Any release or disclaimer of a general or other releasable or disclaimable power of appointment heretofore made in conformity with the provisions of the foregoing sections of this article shall be as valid, binding and effective as if hereafter so made.

§36-5-5. Other methods of release or disclaimer of power of appointment not affected.

Nothing in this article contained shall affect the validity of any release or disclaimer of any power of appointment heretofore or hereafter lawfully effected in any other form or manner.

CHAPTER 66

(Senate Bill No. 80—By Mr. Gainer and Mr. Hubbard)

[Passed February 5, 1971; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, two, three, four, six, seven, ten and eleven, article seven, chapter thirty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the West Virginia uniform gifts to minors act, the inclusion of life insurance policies and annuity contracts as possible subjects of gifts to minors, definition of terms, designation of custodians of gifts to minors, and redesignating article as West Virginia uniform gifts to minors act.

Be it enacted by the Legislature of West Virginia:

That sections one, two, three, four, six, seven, ten and eleven, article seven, chapter thirty-six of the code of West Virginia,
one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 7. WEST VIRGINIA UNIFORM GIFTS TO MINORS ACT.

§36-7-1. Definitions.
§36-7-2. Manner of making gift.
§36-7-3. Effect of gift.
§36-7-4. Duties and powers of custodian.
§36-7-6. Exemption of third persons from liability.
§36-7-7. Resignation, death or removal of custodian; bonds; appointment of successor custodian.
§36-7-10. Short title; application of amendments.
§36-7-11. Severability.

§36-7-1. Definitions.

1 In this article, unless the context otherwise requires:

2 (a) An "adult" is a person who has attained the age of twenty-one years.

3 (b) A "bank" is a bank, trust company, national banking association, savings bank or industrial bank.

4 (c) A "broker" is a person lawfully engaged in the business of effecting transactions in securities for the account of others. The term includes a bank which effects such transactions. The term also includes a person lawfully engaged in buying and selling securities for his own account, through a broker or otherwise, as a part of a regular business.

5 (d) "Court" means the circuit court.

6 (e) "The custodial property" includes:

7 (1) All securities, life insurance policies, annuity contracts and money under the supervision of the same custodian for the same minor as a consequence of a gift or gifts made to the minor in a manner prescribed in this article;

8 (2) The income from the custodial property; and

9 (3) The proceeds, immediate and remote, from the sale, exchange, conversion, investment, reinvestment, surrender or other disposition of such securities, money, life insurance policies, annuity contracts and income.

10 (f) A "custodian" is a person so designated in a manner
A "financial institution" is a bank, a building and loan association, a federal savings and loan association, a savings institution chartered and supervised as a savings and loan or similar institution under federal law or the laws of a state; an "insured financial institution" is one, deposits (including a savings, share, certificate or deposit account) in which are, in whole or in part, insured by the federal deposit insurance corporation or by the federal savings and loan insurance corporation.

A "guardian" of a minor means the general guardian, guardian, tutor or curator of his property or estate appointed or qualified by a court of this state or another state.

An "issuer" is a person who places or authorizes the placing of his name on a security (other than as a transfer agent) to evidence that it represents a share, participation or other interest in his property or in an enterprise or to evidence his duty or undertaking to perform an obligation evidenced by the security, or who becomes responsible for or in place of any such person.

A "legal representative" of a person is his executor or the administrator, general guardian, guardian, committee, conservator, tutor or curator of his property or estate.

A "life insurance policy or annuity contract" means a life insurance policy or annuity contract issued by an insurance company authorized to do business in this state on the life of a minor to whom a gift of the policy or contract is made in the manner prescribed in this article or on the life of a member of the minor's family.

A "member" of a "minor's family" means any of the minor's parents, grandparents, brothers, sisters, uncles and aunts, whether of the whole blood or the half blood, or by or through legal adoption.
Ch. 66] ESTATES IN PROPERTY 337

(m) A "minor" is a person who has not attained the age of twenty-one years.

(n) A "security" includes any note, stock, treasury stock, bond, debenture, evidence of indebtedness, collateral trust certificate, transferable share, voting trust certificate or, in general, any interest or instrument commonly known as a security, or any certificate of interest or participation in, any temporary or interim certificate, receipt or certificate of deposit for, or any warrant or right to subscribe to or purchase, any of the foregoing. The term does not include a security of which the donor is the issuer. A security is in "registered form" when it specifies a person entitled to it or to the rights it evidences and its transfer may be registered upon books maintained for that purpose by or on behalf of the issuer.

(o) A "transfer agent" is a person who acts as authenticating trustee, transfer agent, registrar or other agent for an issuer in the registration of transfers of its securities or in the issue of new securities or in the cancellation of surrendered securities.

(p) A "trust company" is a bank or corporation authorized to exercise trust powers in this state.

§36-7-2. Manner of making gift.

(a) An adult person may, during his lifetime, make a gift of a security, a life insurance policy or annuity contract or money to a person who is a minor on the date of the gift:

(1) If the subject of the gift is a security in registered form, by registering it in the name of the donor, another adult person or a trust company, followed, in substance, by the words: "as custodian for ______________________ under (name of minor) the West Virginia Uniform Gifts to Minors Act";

(2) If the subject of the gift is a security not in registered form, by delivering it to an adult other than the donor or to a trust company, accompanied by a statement of gift in the following form, in substance, signed by the donor and the person designated as custodian:
"GIFT UNDER THE WEST VIRGINIA UNIFORM GIFTS TO MINORS ACT

I, ________________, hereby deliver to ________________
(name of donor) (name of custodian)
as custodian for ________________ under the West Virginia
(name of minor)
Uniform Gifts to Minors Act, the following security (ies):
(insert an appropriate description of the security or
securities delivered sufficient to identify it or them)

______________________________
(signature of donor)
______________________________ hereby acknowledges receipt of the
(name of custodian)
above described security (ies) as custodian for the above
minor under the West Virginia Uniform Gifts to Minors
Act.

Dated: ________________________ ________________________
(signature of custodian)"

(3) If the subject of the gift is money, by paying
or delivering it to a broker or a financial institution for
credit to an account in the name of the donor, another
adult or a trust company, followed, in substance, by the
words: “as custodian for ________________ under the
(name of minor)
West Virginia Uniform Gifts to Minors Act”;

(4) If the subject of the gift is a life insurance policy
or annuity contract, by causing the ownership of the
policy or contract to be registered with the issuing
insurance company in the name of the donor, another
adult or a trust company, followed, in substance, by the
words: “as custodian for ________________ under the
(name of minor)
West Virginia Uniform Gifts to Minors Act.”

(b) Any gift made in a manner prescribed in sub-
section (a) may be made to only one minor and only
one person may be the custodian.

(c) A donor who makes a gift to a minor in a manner
prescribed in subsection (a) shall promptly do all things
within his power to put the subject of the gift in the
possession and control of the custodian, but neither the
§36-7-3. Effect of gift.

(a) A gift made in a manner prescribed in this article is irrevocable and conveys to the minor indefeasibly vested legal title to the security, life insurance policy, annuity contract or money given, but no guardian of the minor has any right, power, duty or authority with respect to the custodial property except as provided in this article.

(b) By making a gift in a manner prescribed in this article, the donor incorporates in his gift all the provisions of this article and grants to the custodian, and to any issuer, transfer agent, bank, financial institution, life insurance company, broker or third person dealing with a person designated as custodian, the respective powers, rights and immunities provided in this article.

§36-7-4. Duties and powers of custodian.

(a) The custodian shall collect, hold, manage, invest and reinvest the custodial property.

(b) The custodian shall pay over to the minor for expenditure by him, or expend for the minor's benefit, so much of or all the custodial property as the custodian deems advisable for the support, maintenance, education and benefit of the minor in the manner, at the time or times, and to the extent that the custodian in his discretion deems suitable and proper, with or without court order, with or without regard to the duty of himself or of any other person to support the minor or his ability to do so, and with or without regard to any other income or property of the minor which may be applicable or available for any such purpose.

(c) The court, on the petition of a parent or guardian of the minor or of the minor, if he has attained the age of fourteen years, may order the custodian to pay over to the minor for expenditure by him or to expend so
much of or all the custodial property as is necessary for the minor’s support, maintenance or education.

(d) To the extent that the custodial property is not so expended, the custodian shall deliver or pay it over to the minor on his attaining the age of twenty-one years or, if the minor dies before attaining the age of twenty-one years, he shall thereupon deliver or pay it over to the estate of the minor.

(e) The custodian, notwithstanding statutes restricting investments by fiduciaries, shall invest and reinvest the custodial property as would a prudent man of discretion and intelligence who is seeking a reasonable income and the preservation of his capital, except that he may, in his discretion and without liability to the minor or his estate, (i) retain a security given to the minor in a manner prescribed in this article or (ii) hold money so given in an account in the financial institution to which it was paid or delivered by the donor.

(f) The custodian may sell, exchange, convert, surrender or otherwise dispose of custodial property in the manner, at the time or times, for the price or prices and upon the terms he deems advisable. He may vote in person or by general or limited proxy a security which is custodial property. He may consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution or liquidation of an issuer, a security which is custodial property, and to the sale, lease, pledge or mortgage of any property by or to such an issuer, and to any other action by such an issuer. He may execute and deliver any and all instruments in writing which he deems advisable to carry out any of his powers as custodian.

(g) The custodian shall register each security which is custodial property and in registered form in the name of the custodian, followed, in substance, by the words: “as custodian for __________ under the West Virginia Uniform Gifts to Minors Act.” Subject to the provisions of subdivision (ii), subsection (e) of this section, the custodian shall hold all money which is custodial property in
an account with a broker or in an insured financial institu-
tion in the name of the custodian, followed, in substance, by
the words: “as custodian for __________ under the West
Virginia Uniform Gifts to Minors Act.” The custodian
shall keep all other custodial property separate and dis-
tinct from his own property in a manner to identify it
clearly as custodial property.

(h) The custodian shall keep records of all transactions
with respect to the custodial property and make them
available for inspection at reasonable intervals by a
parent or legal representative of the minor or by the
minor, if he has attained the age of fourteen years.

(i) A custodian has and holds as powers in trust,
with respect to the custodial property, in addition to the
rights and powers provided in this article, all the rights
and powers which a guardian has with respect to
property not held as custodial property.

(j) If the subject of the gift is a life insurance policy
or annuity contract, the custodian:

(1) In his capacity as custodian, has all the incidents
of ownership in the policy or contract to the same extent
as if he were the owner, except that the designated
beneficiary of any policy or contract on the life of the
minor shall be the minor’s estate and the designated
beneficiary of any policy or contract on the life of a
person other than the minor shall be the custodian as
custodian for the minor for whom he is acting; and

(2) May pay premiums on the policy or contract out
of the custodial property.

§36-7-6. Exemption of third persons from liability.

1 No issuer, transfer agent, bank, life insurance company,
2 broker or other person or financial institution acting on
3 the instructions of or otherwise dealing with any person
4 purporting to act as a donor or in the capacity of a cus-
todian is responsible for determining whether the person
5 designated as custodian by the purported donor or by
6 the custodian or purporting to act as a custodian has
7 been duly designated or whether any purchase, sale or
transfer to or by or any other act of any person pur-
porting to act in the capacity of custodian is in accordance
with or authorized by this article, or is obliged to in-
quire into the validity or propriety under this article of
any instrument or instructions executed or given by a
person purporting to act as a donor or in the capacity of
a custodian, or is bound to see to the application by any
person purporting to act in the capacity of a custodian
of any money or other property paid or delivered to him.
No issuer, transfer agent, bank, life insurance company,
broker or other person or financial institution acting on
any instrument of designation of a successor custodian,
executed as provided in subsection (a) of section seven
of this article by a minor to whom a gift has been made
in a manner prescribed in this article and who has
attained the age of fourteen years, is responsible for
determining whether the person designated by the minor
as successor custodian has been duly designated, or is
obliged to inquire into the validity or propriety under
this article of the instrument of designation.
§36-7-7. Resignation, death or removal of custodian; bonds; ap-
pointment of successor custodian.
(a) Only an adult member of the minor's family, a
guardian of the minor or a trust company is eligible
to become successor custodian. A custodian may desig-
nate his successor by executing and dating an instru-
ment of designation before a subscribing witness other
than the successor; the instrument of designation may
but need not contain the resignation of the custodian.
If the custodian does not so designate his successor
before he dies or becomes legally incapacitated, and the
minor has attained the age of fourteen years, the minor
may designate a successor custodian by executing an
instrument of designation before a subscribing witness
other than the successor. A successor custodian has all
the rights, powers, duties and immunities of a custodian
designated in a manner prescribed by this article.
(b) The designation of a successor custodian as pro-
vided in subsection (a) takes effect as to each item of
the custodial property when the custodian resigns, dies
or becomes legally incapacitated and the custodian or his legal representative:

(1) Causes the item, if it is a security in registered form or a life insurance policy or annuity contract, to be registered, with the issuing insurance company in the case of a life insurance policy or annuity contract, in the name of the successor custodian, followed, in substance, by the words: “as custodian for _______________
(name of minor) under the West Virginia Uniform Gifts to Minors Act;”

and

(2) Delivers or causes to be delivered to the successor custodian any other item of the custodial property, together with the instrument of designation of the successor custodian or a true copy thereof and any additional instruments required for the transfer thereof to the successor custodian.

(c) A custodian who executes an instrument of designation of his successor containing the custodian's resignation as provided in subsection (a) shall promptly do all things within his power to put each item of the custodial property in the possession and control of the successor custodian named in the instrument. The legal representative of a custodian who dies or becomes legally incapacitated shall promptly do all things within his power to put each item of the custodial property in the possession and control of the successor custodian named in an instrument of designation executed as provided in subsection (a) by the custodian or, if none, by the minor if he has no guardian and has attained the age of fourteen years, or in the possession and control of the guardian of the minor if he has a guardian. If the custodian has executed as provided in subsection (a) more than one instrument of designation, his legal representative shall treat the instrument dated on an earlier date as having been revoked by the instrument dated on a later date.

(d) If a person designated as custodian or as successor custodian by the custodian as provided in subsection (a) is not eligible, dies or becomes legally incapacitated
before the minor attains the age of twenty-one years
and if the minor has a guardian, the guardian of the
minor shall be successor custodian. If the minor has
no guardian and if no successor custodian who is eligible
and has not died or become legally incapacitated has
been designated as provided in subsection (a), a donor,
his legal representative, the legal representative of the
custodian or an adult member of the minor's family may
petition the court for the designation of a successor
custodian.

(e) A donor, the legal representative of a donor, a
successor custodian, an adult member of the minor's
family, a guardian of the minor or the minor, if he has
attained the age of fourteen years, may petition the
court that, for cause shown in the petition, the custodian
be removed and a successor custodian be designated or,
in the alternative, that the custodian be required to
give bond for the performance of his duties.

(f) Upon the filing of a petition as provided in this
section, the court shall grant an order, directed to the
persons and returnable on such notice as the court may
require, to show cause why the relief prayed for in the
petition should not be granted and, in due course, grant
such relief as the court finds to be in the best interests
of the minor.

§36-7-10. Short title; application of amendments.

1 This article may be cited as the "West Virginia Uniform
Gifts to Minors Act."

2 Any amendments of this article shall not affect gifts
made in a manner prescribed by the former provisions of
this article nor the powers, duties or immunities con-
ferred by gifts in such manner upon custodians and per-
sons dealing with custodians. This article as amended
shall henceforth apply, however, to all gifts made in a
manner and form prescribed by the former provisions of
this article except insofar as such application impairs
constitutionally vested rights.

§36-7-11. Severability.

1 If any provision of this article or the application there-
of to any person or circumstance is held invalid, such
invalidity shall not affect other provisions or applications
of this article, and to this end the provisions of this
article are severable.

CHAPTER 67
(Senate Bill No. 266—By Mr. Brotherton)

[Passed February 20, 1971; in effect ninety days from passage. Approved by the
Governor.]

AN ACT to amend and reenact section three, article four-a,
chapter fifty-three of the code of West Virginia, one thou-
sand nine hundred thirty-one, as amended, relating to
post-conviction review by a writ of habeas corpus; and
providing that the court with whose clerk a petition for
a writ of habeas corpus for such purpose is filed may ex-
amine and review the record or records which are part of
the official court files of any court within the same judicial
circuit as the court with whose clerk such petition is filed.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4A. POST-CONVICTION HABEAS CORPUS.

§53-4A-3. Refusal of writ; granting of writ; direction of writ;
how writ made returnable; duties of clerk, attorney
general and prosecuting attorney.

(a) If the petition, affidavits, exhibits, records and other
documentary evidence attached thereto, or the record in
the proceedings which resulted in the conviction and
sentence, or the record or records in a proceeding or
proceedings on a prior petition or petitions filed under
the provisions of this article, or the record or records
in any other proceeding or proceedings instituted by the
petitioner to secure relief from his conviction or sen-
tence (if any such record or records are part of the
official court files of the court with whose clerk the
petition is filed or are part of the official court files of any other court within the same judicial circuit as the court with whose clerk such petition is filed and are thus available for examination and review by such court) show to the satisfaction of the court that the petitioner is entitled to no relief, or that the contention or contentions and grounds (in fact or law) advanced have been previously and finally adjudicated or waived, the court shall by order entered of record refuse to grant a writ, and such refusal shall constitute a final judgment. If it appears to such court from said petition, affidavits, exhibits, records and other documentary evidence, or any such available record or records referred to above, that there is probable cause to believe that the petitioner may be entitled to some relief, and that the contention or contentions and grounds (in fact or law) advanced have not been previously and finally adjudicated or waived, the court shall forthwith grant a writ, directed to and returnable as provided in subsection (b) hereof. If any such record or records referred to above are not a part of the official court files of the court with whose clerk the petition is filed or are not part of the official court files of any other court within the same judicial circuit as the court with whose clerk such petition is filed and are thus not available for examination and review by such court, the determination as to whether to refuse or grant the writ shall be made on the basis of the petition, affidavits, exhibits, records and other documentary evidence attached thereto.

(b) Any writ granted in accordance with the provisions of this article shall be directed to the person under whose supervision the petitioner is incarcerated. Whether the writ is granted by the supreme court of appeals, a circuit court, or any statutory court in this state, it shall, in the discretion of the court, be returnable before (i) the court granting it, (ii) the circuit court, or a statutory court, of the county wherein the petitioner is incarcerated, or (iii) the circuit court, or the statutory court, in which, as the case may be, the petitioner was convicted and sentenced.
(c) The clerk of the court to which a writ granted in accordance with the provisions of this article is made returnable shall promptly bring the petition and any affidavits, exhibits, records and other documentary evidence attached thereto, and the writ to the attention of the court if the writ was granted by some other court, and in every case deliver a copy of such petition and any affidavits, exhibits, records and other documentary evidence attached thereto and the writ to the prosecuting attorney of the county, or the attorney general if the writ is returnable before the supreme court of appeals. The prosecuting attorney or the attorney general, as the case may be, shall represent the state in all cases arising under the provisions of this article.

CHAPTER 68
(Senate Bill No. 187—By Mr. Nelson)

[Passed March 10, 1971; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article two, and section one, article two-a, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the organization and jurisdiction of county and municipal boards of health.

Be it enacted by the Legislature of West Virginia:

That section three, article two, and section one, article two-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
2. Local Health Officers.
2a. Alternative Method of Organizing Local Health Agencies.

ARTICLE 2. LOCAL HEALTH OFFICERS.

§16-2-3. Counties, or counties and municipalities, may combine in employment of officers and installation and main-
tenance of equipment; combined local boards of health.

1 Any two or more counties, or any county or counties
2 and any one or more municipalities within or partially
3 within the said county or counties, may combine to co-
4 operate with the state department of health, by vote of
5 the county court in the case of a county and by vote of
6 the council or other governing body in the case of a
7 municipality, and may participate in the employment of
8 trained health officers and other agents and employees,
9 or in the installation and maintenance of a common lab-
10 oratory and other equipment. Whenever any such units
11 shall decide so to cooperate and shall appropriate a sum
12 or sums of money for such joint or cooperative action, the
13 state department of health is authorized and empowered
14 to pay over and contribute to such cooperating units, and
15 the cooperating units are authorized and empowered to
16 receive and expend for public purposes, such sum or sums
17 of money as may be available from funds included in
18 appropriations made for the state department of health
19 for such purpose: Provided, That the general plan of co-
20 operation, as well as the principal health officers, execu-
21 tive agent or laboratory director employed by the co-
22 operating units, shall first have been approved by the
23 state board of health. The amount of any such payment
24 or contribution by the state department of health to such
25 cooperating units shall be determined in accordance with
26 regulations established by the state board of health. Such
27 regulations shall provide a method for determining the
28 amount of any payment or contribution, and this method
29 shall be uniformly applied in determining the amount of
30 any payment or contribution to any such local govern-
31 mental unit or units.

32 Each county or municipality participating in any such
33 cooperative action shall select and appoint by vote of the
34 county court in the case of a county, and by vote of the
35 council or other governing body in the case of a munici-
36 pality, not less than one nor more than three persons to
37 be members of a combined board of health. No such
38 person shall be selected by, nor represent on, any such
39 combined board, more than one such county or munici-
pality. The number of persons to be selected by each participating county or municipality as members of such board, subject to the limitation contained in the two preceding sentences, shall be agreed upon by the several counties or municipalities participating.

All members of such combined board of health shall be appointed for terms of five years each, except that the persons first appointed pursuant to the provisions of this section, if more than one such person is appointed at the same time by any one county court or municipal governing body, shall be individually designated to serve for terms of one, two and three years, respectively, and if only one such person is appointed at such time by each participating county or municipality, the several participating counties or municipalities shall initially appoint such persons to serve for individually designated terms, which shall be agreed upon by the several appointing authorities, of one, two, three, four and five years, respectively. Upon the expiration of the term of such initial appointments, the term of each new appointee shall be five years. Any vacancy on such board shall be filled by appointment, by the original appointing authority, for the unexpired term. All members shall serve until their duly qualified successors have been appointed. The number of members of such board belonging to one political party shall not exceed by more than one the number of members of such board belonging to any other political party.

All members of any such board shall be citizens and residents of the county or municipality they are appointed to represent. All members shall be eligible for reappointment.

No member of such board may be removed from office during the term for which he is appointed, except for official misconduct, incompetence, neglect of duty or gross immorality.

No member of such board shall receive any compensation for his services, but each may be reimbursed for all reasonable and necessary travel and other expenses actually incurred by him in the performance of his duties as a member of such board.
Any such combined board of health shall consist of the several members so selected. Such board shall organize by electing a chairman from among its members. It shall have the power to adopt, and from time to time amend, such rules and regulations as it may deem necessary concerning the time and place of its meetings, the procedure and method of conducting its meetings or business, and any other matters affecting, or necessary to, the orderly and efficient discharge of its duties or exercise of its powers. All powers and duties belonging to or vested in county boards of health or municipal boards of health under any provision of the code are hereby vested in, conferred upon, and declared to be, the powers and duties of any combined board of health created pursuant to the provisions of this section. All powers and duties belonging to or vested in county or municipal health officers, so far as they are applicable and not in conflict with the provisions of this section, are hereby vested in, conferred upon, and declared to be, the powers and duties of any health officer appointed and employed by any combined board of health. Any health officer or other employee appointed or employed by any combined board of health shall be employed and serve, and may be discharged, at the will and pleasure of such board. The territorial jurisdiction of any such combined board of health shall be coextensive with the boundaries of all of the counties and municipalities which have been combined to cooperate as herein provided.

Upon the formation of a combined local board of health as herein provided, and during the period that it continues to exist, there shall be no separate county board of health or municipal board of health in any county or municipality represented on the combined board of health.

ARTICLE 2A. ALTERNATIVE METHOD OF ORGANIZING LOCAL HEALTH AGENCIES.

§16-2A-1. County and municipal boards of health authorized; jurisdiction.

Any county or municipality may in its discretion, and in lieu and instead of the local board of health provided
for in article two of this chapter, create, establish and
maintain a county board of health or a municipal board of
health organized pursuant to, and with the powers and
duties prescribed by, the provisions of this article. Such
county board of health may be created and established
by the county court, and such municipal board of health
may be created and established by the governing body of
the municipality. The jurisdiction of such county board
of health shall be coextensive with the territorial limits
of the county and shall include every city, town, and vil-
lage therein which does not have a full-time health officer
of its own employed in the manner, for the purpose, and
to perform the duties set forth in this article. The juris-
diction of such municipal board of health shall be co-
extensive with the territorial limits of the municipality
and an area including all points within a distance of one
mile from the limits of the municipality. The jurisdiction
of any combined local board of health established pursuant
to the provisions of section three, article two of this
chapter shall be coextensive with the combined territorial
limits of the participating municipality or municipalities
and county or counties, and if any municipality be partly
located in a nonparticipating county, the jurisdiction of
the combined local board of health shall extend, neverthe-
less, to include the entire municipality; but the jurisdiction
of any such combined local board of health or of any
county board of health shall not extend to or include any
area within the jurisdiction of any municipal board of
health which has established and is maintaining a separate
full-time municipal health department under the super-
vision of a municipal health officer.

In any county in which there is created and established
a county board of health pursuant to the provisions of
this article, the county board of health provided for in
article two of this chapter shall cease to exist and shall
be abolished during such period of time as the county
board of health provided for in this article is maintained
and continued in existence.
AN ACT to amend and reenact section four, article three, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to compulsory immunization of school children, and providing for penalties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. PREVENTION AND CONTROL OF COMMUNICABLE, INFECTIOUS AND OTHER DISEASES.

§16-3-4. Compulsory immunization of school children; offenses; penalties.

1 All children entering school for the first time in this state shall have been immunized against smallpox, diphtheria, polio, rubeola, rubella, tetanus and whooping cough. Any person who cannot give satisfactory proof of having been immunized previously or a certificate from a reputable physician showing that an immunization for any or all smallpox, diphtheria, polio, rubeola, rubella, tetanus and whooping cough is impossible or improper or sufficient reason why any or all immunizations should not be done, shall be immunized for smallpox, diphtheria, polio, rubeola, rubella, tetanus and whooping cough prior to being admitted in any of the schools of the state. No child or person shall be admitted or received in any of the schools of the state until he or she has been immunized as hereinafter provided, or produces a certificate from a reputable physician showing that an immunization for smallpox, diphtheria, polio, rubeola, rubella, tetanus and whooping cough has been done or is impossible or improper or other sufficient reason why such immunizations have not been done.
Any teacher, having information concerning any person who attempts to enter school for the first time without having been immunized against smallpox, diphtheria, polio, rubella, rubeola, tetanus and whooping cough shall report the names of all such persons to the county health officer. It shall be the duty of the health officer in counties having a full-time health officer to see that such persons are immunized before entering school.

In counties where there is no full-time health officer or district health officer, the county court or municipal council shall appoint competent physicians to do the immunizations and fix their compensation. The expense incurred in carrying into effect the provisions of this section shall be deemed part of the expense of the county, city, town or village as the case may be, and shall be charged and paid in the same manner as other expenses. County health departments shall furnish the biologicals for this immunization free of charge.

Health officers and physicians who shall do this immunization work shall give to all persons and children a certificate free of charge showing that they have been immunized against smallpox, diphtheria, polio, rubeola, rubella, tetanus and whooping cough, or he may give the certificate to any person or child whom he knows to have been immunized against smallpox, diphtheria, polio, rubeola, rubella, tetanus and whooping cough. If any physician shall give any person a false certificate of immunization against smallpox, diphtheria, polio, rubeola, rubella, tetanus and whooping cough, he shall be guilty of a misdemeanor, and, upon conviction, he shall be fined not less than twenty-five nor more than one hundred dollars.

Any parent or guardian who refuses to permit his or her child to be immunized against smallpox, diphtheria, polio, rubeola, rubella, tetanus and whooping cough, who cannot give satisfactory proof that the child or person has been immunized against smallpox, diphtheria, polio, rubeola, rubella, tetanus and whooping cough previously or a certificate from a reputable physician showing that an immunization for any or all is impossible or improper or sufficient reason why any or all immunization
62 tions should not be done, shall be guilty of a misdemeanor, 
63 and, except as herein otherwise provided, shall, upon 
64 conviction, be punished by a fine of not less than ten nor 
65 more than fifty dollars for each offense.

CHAPTER 70

(House Bill No. 573—By Mrs. Withrow and Mr. McManus)

[Passed February 8, 1971; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article three, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section four-a, relating to the compulsory testing for tuberculosis of school children and school personnel; X rays required for reactors; suspension from school or employment for pupils and personnel found to have tuberculosis in a communicable stage.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. PREVENTION AND CONTROL OF COMMUNICABLE, INFECTIOUS AND OTHER DISEASES.

§16-3-4a. Compulsory testing for tuberculosis of school children and school personnel; X rays required for reactors; suspension from school or employment for pupils and personnel found to have tuberculosis in a communicable stage.

1 All first grade pupils and all students transferring 
2 from a school located outside this state shall furnish a 
3 certificate from a licensed physician stating that a tuber- 
4 culin skin test approved by the director of the department 
5 of health has been made within two months prior to 
6 the beginning of the school year or during the first seven 
7 months of the current school year. Test results must 
8 be recorded on the certificate. Positive reactors to the
9 skin test must be immediately X-rayed, and receive
10 annual X rays thereafter, or at more frequent intervals
11 if medically indicated. Pupils found to have tuberculosis
12 in a communicable stage will not be allowed to attend
13 school until their disease has been arrested and is no
14 longer communicable.
15 All school personnel shall have an annual chest X ray
16 or an approved tuberculin skin test within two months
17 prior to the beginning of each school year. Positive re-
18 actors to the skin test are to be immediately X-rayed and
19 re-x-rayed annually or at more frequent intervals if
20 medically indicated. Reactors who are annually X-rayed
21 will not be required to have an annual skin test. School
22 personnel found to have tuberculosis in a communicable
23 stage shall have their employment discontinued or sus-
24 pended until their disease has been arrested and is no
25 longer communicable. School personnel who have not
26 had the required examination will be suspended from
27 employment until reports of examination are confirmed.

CHAPTER 71
(House Bill No. 622—By Mr. Shaffer and Mrs. Withrow)

[Passed February 16, 1971; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section ten, article four, chapter
sixteen of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, relating to examination
and treatment of minors infected with a venereal dis-
ease.

Be it enacted by the Legislature of West Virginia:

That section ten, article four, 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 4. VENEREAL DISEASES.
§16-4-10. Minors.
1 Notwithstanding any other provision of law, any li-
2 censed physician may examine, diagnose, or treat any
3 minor with his or her consent for any venereal disease
4 without the knowledge or consent of the minor's parent
5 or guardian. The physician shall not incur any civil or
6 criminal liability in connection therewith except for
7 negligence or wilful injury.

CHAPTER 72
(Com. Sub. for House Bill No. 738—Originating in the House
Committee on the Judiciary)

[Passed March 10, 1971; in effect ninety days from passage. Approved by the
Governor.]

AN ACT to amend and reenact sections three and three-a,
article thirteen-a, chapter sixteen of the code of West
Virginia, one thousand nine hundred thirty-one, as
amended, relating to the grounds and methods for the
removal of any member of a public service district
board.

Be it enacted by the Legislature of West Virginia:
That sections three and three-a, article thirteen-a, chapter
sixteen of the code of West Virginia, one thousand nine hun­
dred thirty-one, as amended, be amended and reenacted to
read as follows:

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

§16-13A-3. District to be a public corporation and political subdivi­
sion; powers thereof; creation of public service boards;
appointment and qualifications of members; terms; re­
moval; vacancies; organization.

§16-13A-3a. Provisions for removal of members of public service
board.

§16-13A-3. District to be a public corporation and political
subdivision; powers thereof; creation of public
service boards; appointment and qualifications
of members; terms; removal; vacancies; organi­
ization.

1 From and after the date of the adoption of the order
2 creating any such public service district, it shall there­
3 after be a public corporation and political subdivision of
the state with power of perpetual succession, but without
any power to levy or collect ad valorem taxes. Each such
district shall have power to acquire, own and hold prop-
erty, both real and personal, in its corporate name, and
shall have power to sue, may be sued, may adopt an
official seal and may enter into contracts necessary or
incidental to its purposes, including contracts with any
city, incorporated town or other municipal corporation
located within or without its boundaries for furnishing
wholesale supply of water for the distribution system
of such city, town or other municipal corporation, and
contract for the operation, maintenance, servicing, repair
and extension of any properties owned by it, or for the
operation and improvement or extension by such district
of all or any part of the existing municipally owned public
service properties of any city, incorporated town or other
municipal corporation included within such district:
Provided, That no such contract shall extend over a period
of forty years, but provisions may be included therein
for a renewal or successive renewals thereof, and shall
conform to and comply with the rights of the holders
of any outstanding bonds issued by such municipalities
for such public service properties.

The powers of each such public service district shall
be vested in and exercised by a public service board
consisting of not less than three members, who shall be
appointed in the following manner:

Each city, incorporated town, or other municipal cor-
poration having a population in excess of three thousand,
but not exceeding eighteen thousand, shall be entitled
to appoint one member of such board, and each such city,
incorporated town, or other municipal corporation having
a population in excess of eighteen thousand shall be
entitled to appoint one additional member of such board
for each additional eighteen thousand population. The
members of said board representing such cities, incor-
porated towns or other municipal corporations shall be
residents thereof and shall be appointed by a resolution
of the governing bodies thereof, and upon the filing
of a certified copy or copies of such resolution or reso-
lutions in the office of the clerk of the county court which
entered the order creating such district, such persons so
appointed shall thereby become members of said board
without any further act or proceedings. If the number
of members of said board so appointed by the governing
bodies of cities, incorporated towns or other municipal
corporations included in the district shall equal or ex-
ceed three, then no further members shall be appointed
to such board and such members shall be and constitute
the board of said district.

If no city, incorporated town or other municipal cor-
poration having a population in excess of three thousand
is included within the district, then the county court
which entered the order creating the district shall appoint
three members of said board, who shall be persons re-
siding within the district, which said three members
shall become members of and constitute the board of
said district without any further act or proceedings.

If the number of members of said board appointed
by the governing bodies of cities, incorporated towns or
other municipal corporations included within the dis-
trict shall be less than three, then the county court which
entered the order creating the district shall appoint such
additional member or members of said board, who shall
be persons residing within the district, as shall be neces-
sary to make the number of members of said board equal
three, and said additional member or members shall
thereupon become members of such board; and the mem-
ber or members appointed by the governing bodies of
the cities, incorporated towns or other municipal cor-
porations included within the district and the additional
member or members appointed by such county court
as aforesaid, shall be and constitute the board of
said district. It shall be proper for one person to serve
as a member of the board in one or more public dis-
tricts.

The population of any city, incorporated town or other
municipal corporation, for the purpose of determining
the number of members of such board, if any, to be
appointed by the governing body or bodies thereof,
shall be conclusively deemed to be the population stated
for such city, incorporated town or other mu-
The respective terms of office of the members of the first board shall be fixed by the county court and shall be as equally divided as may be, that is approximately one third of the members for a term of two years, a like number for a term of four, and the term of the remaining member or members for six years, from the first day of the month during which such appointments are made. The first members of the board appointed as aforesaid shall meet at the office of the clerk of the county court which entered the order creating the district as soon as practicable after such appointments and shall qualify by taking an oath of office: *Provided, however,* That any member or members of the board may be removed from their respective office as provided in section three-a of this article.

Any vacancy shall be filled for the unexpired term, and otherwise successor members of the board shall be appointed for terms of six years, and the terms of office shall continue until successors have been appointed and qualified. All successor members shall be appointed in the same manner as the member succeeded was appointed.

The board shall organize promptly following the first appointments, and annually thereafter at its first meeting after January one of each year, by selecting one of its members to serve as chairman and by appointing a secretary and a treasurer who need not be members of such board. The secretary shall keep a record of all proceedings of the board which shall be available for inspection as other public records. The treasurer shall be lawful custodian of all funds of the public service district and shall pay same out on orders authorized or approved by the board. The secretary and treasurer shall perform such other duties appertaining to the affairs of the district and shall receive such salaries as shall be prescribed by the board. The treasurer shall furnish bond in an amount to be fixed by the board for the use and benefit of the district. The members of the board, and the chairman, secretary and treasurer thereof,

The county court or any other appointive body creating or establishing a public service district under the provisions of this article shall have the authority to remove any member of the governing board thereof for consistent violations of any provisions of this article, for reasonable cause which shall include but not be limited to a continued failure to attend meetings of the board, failure to diligently pursue the objectives for which the district was created, or failure to perform any other duty prescribed by law, or for any misconduct in office, or upon written petition signed by a majority of the registered voters residing within the public service district: Provided, That such appointee shall only be removed after a full hearing of any complaint presented against him and after due notice of such hearing.

CHAPTER 73

(House Bill No. 916—By Mr. Speaker, Mr. Boiarsky, and Mr. Steptoe)

[Passed March 13, 1971; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, two and five, article twenty, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto three new sections, designated sections eleven-a, eleven-b and eleven-c, all relating to air pollution control; specifying a declaration of policy and purpose of the article; relating to the clean air amendments of one thousand nine hundred seventy; defining terms; relating to the powers and duties of the air pollution control commission; relating to the right to enter and inspect any property, premise or
place in connection with air pollution abatement or control; relating to advisory councils; authorizing consent orders; requiring emission reports and data; relating to the release of records, reports, data or information; relating to the confidentiality of certain matters and providing for a determination and review in connection therewith; requiring permits in connection with stationary sources of air pollutants; relating to rules and regulations of the air pollution control commission; relating to motor vehicle pollution; relating to prohibitions; and providing penalties.

Be it enacted by the Legislature of West Virginia:

That sections one, two and five, article twenty, chapter sixteen 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 three new sections, designated sections eleven-a, eleven-b and eleven-c, all to read as follows:

ARTICLE 20. AIR POLLUTION CONTROL.

§16-20-1. Declaration of policy and purpose.
§16-20-2. Definitions.
§16-20-5. Air pollution control commission—Powers and duties; legal services; rules and regulations; public hearings.
§16-20-11a. Records, reports, data or information; confidentiality; proceedings upon request to inspect or copy.
§16-20-11c. Motor vehicle pollution.

§16-20-1. Declaration of policy and purpose.
1 It is hereby declared to be the public policy of this state and the purpose of this article to achieve and maintain such levels of air quality as will protect human health and safety, and to the greatest degree practicable, prevent injury to plant and animal life and property, foster the comfort and convenience of the people, promote the economic and social development of this state and facilitate the enjoyment of the natural attractions of this state.
9 To these ends it is the purpose of this article to provide for a coordinated statewide program of air pollution prevention, abatement and control; to facilitate cooperation
across jurisdictional lines in dealing with problems of air pollution not confined within single jurisdictions; and to provide a framework within which all values may be balanced in the public interest.

Further, it is the public policy of this state to fulfill its primary responsibility for assuring air quality pursuant to the “Clean Air Amendments of 1970” act of the Congress of the United States. To that end it is the public policy of this state and the purpose of this article to provide priorities in the preparation and implementation of a plan for achieving and maintaining and enforcing national primary and secondary ambient air quality standards in the state.

§16-20-2. Definitions.

The terms used in this article are defined as follows:

The term “person” shall mean any and all persons, natural or artificial, including any municipal, public or private corporation organized or existing under the laws of this or any other state or country, and any firm, partnership or association of whatever nature.

The term “commission” shall mean the air pollution control commission, and the term “commissioner” shall mean a member of said commission.

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

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

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

The term “director” shall mean the director of the West Virginia air pollution control commission appointed as hereinafter provided.
§16-20-5. Air pollution control commission—Powers and duties; legal services; rules and regulations; public hearings.

1 The commission is hereby authorized and empowered:

2 (1) To develop ways and means for the regulation and control of pollution of the air of the state;

3 (2) To advise, consult and cooperate with other agencies of the state, political subdivisions of the state, other states, agencies of the federal government, industries, and with affected groups in furtherance of the declared purposes of this article;

4 (3) To encourage and conduct such studies and research relating to air pollution and its control and abatement as the commission may deem advisable and necessary;

5 (4) To adopt and to promulgate reasonable rules and regulations, not inconsistent with the provisions of this article, relating to the control of air pollution: Provided, That no rule and regulation of the commission shall specify the design of equipment, type of construction, or particular method which a person shall use to reduce the discharge of air pollutants, nor shall any such rule and regulation apply to any aspect of an employer-employee relationship;

6 (5) To enter orders requiring compliance with the provisions of this article and the rules and regulations lawfully promulgated hereunder;

7 (6) To consider complaints, subpoena witnesses, administer oaths, make investigations, and hold hearings relevant to the promulgation of rules and regulations and the entry of compliance orders hereunder;

8 (7) To encourage voluntary cooperation by municipalities, counties, industries and others in preserving the purity of the air within the state;

9 (8) To employ personnel, including specialists and consultants, purchase materials and supplies, and enter into contracts necessary, incident or convenient to the accomplishment of the purpose of this article;

10 (9) To enter and inspect any property, premise or
place on or at which a source of air pollutants is located or is being constructed, installed or established at any reasonable time for the purpose of ascertaining the state of compliance with this article and rules and regulations in force pursuant thereto. No person shall refuse entry or access to any authorized representative of the commission who requests entry for purposes of inspection, and who presents appropriate credentials; nor shall any person obstruct, hamper or interfere with any such inspection: Provided, however, That nothing contained in this article shall be construed to allow a search of a private dwelling, including the curtilage thereof, without a proper warrant;

(10) Upon reasonable evidence of a violation of this article, which presents an imminent and serious hazard to public health, to give notice to the public or to that portion of the public which is in danger by any and all appropriate means;

(11) To cooperate with, receive and expend money from the federal government and other sources;

(12) To represent the state in any and all matters pertaining to plans, procedures and negotiations for interstate compacts in relation to the control of air pollution;

(13) To appoint advisory councils from such areas of the state as it may determine. Each such council so appointed shall consist of not more than five members appointed from the general public, for each area so designated. Such members shall possess some knowledge and interest in matters pertaining to the regulation, control and abatement of air pollution. The council may advise and consult with the commission about all matters pertaining to the regulation, control and abatement of air pollution within such area;

(14) To require any and all persons who are directly or indirectly discharging air pollutants into the air to file with the commission such information as the director may require in a form or manner prescribed by him for such purpose, including, but not limited to, location, size and height of discharge outlets, processes
employed, fuels used and the nature and time periods of
duration of discharges. Such information shall be filed
with the director, when and in such reasonable time, and
in such manner as the director may prescribe;
(15) To require the owner or operator of any sta-
tionary source discharging air pollutants to install such
monitoring equipment or devices as the director may pre-
scribe and to submit periodic reports on the nature and
amount of such discharges to the commission;
(16) To do all things necessary and convenient to pre-
pare and submit a plan or plans for the implementation,
maintenance and enforcement of each primary and sec-
ondary ambient air quality standard for any air pollutant
established pursuant to the “Clean Air Amendments of
1970” act: Provided, That in preparing and submitting
each such plan the commission shall establish in such
plan that such standard shall be first achieved, maintained
and enforced by limiting and controlling emissions of
pollutants from commercial and industrial sources and
locations and shall only provide in such plans for limiting
and controlling emissions of pollutants from private
dwellings and the curtilage thereof as a last resort: Pro-
vided further, That nothing herein contained shall be con-
strued to affect plans for achievement, maintenance and
enforcement of motor vehicle emission standards and of
standards for fuels used in dwellings; and
(17) Whenever the commission achieves informally,
by letter, or otherwise, an agreement with any person
that said person will cease and desist in any act resulting
in the discharge of pollutants or do any act to reduce or
eliminate such discharge, such agreement shall be em-
body in a consent order and entered as, and shall have
the same effect as, an order entered after a hearing as
provided in section six of this article.
The attorney general and his assistants and the prose-
cuting attorneys of the several counties shall render to
the commission without additional compensation such
legal services as the commission may require of them to
enforce the provisions of this article.
No rule and regulation of the commission pertaining to
the control, reduction or abatement of air pollution shall
become effective until after at least one public hearing thereon shall have been held by the commission within the state. Notice to the public of the time and place of any such hearing shall be given by the commission at least thirty days prior to the scheduled date of such hearing by advertisement published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county wherein such hearing is to be held. Full opportunity to be heard shall be accorded to all persons in attendance and any person, whether or not in attendance at such hearing, may submit in writing his views with respect to any such rule and regulation to the commission within thirty days after such hearing. After such thirty-day period, no views or comments shall be received in writing or otherwise, unless formally solicited by the commission. The proceedings at the hearing before the commission shall be recorded by mechanical means or otherwise as may be prescribed by the commission. Such record of proceedings need not be transcribed unless requested by an interested party, in which event the prevailing rates for such transcripts will be required from such interested party.

§16-20-11a. Records, reports, data or information; confidentiality; proceedings upon request to inspect or copy.

All air quality data, emission data, permits, compliance schedules, commission orders and any other information required by a federal implementation program (all for convenience hereinafter referred to in this section as "records, reports, data or information") obtained under this article shall be available to the public, except that upon a showing satisfactory to the director, by any person, that records, reports, data or information or any particular part thereof, to which the director has access under this article if made public, would divulge methods or processes entitled to protection as trade secrets of such person, the director shall consider such records, reports, data or information or such particular portion thereof confidential: Provided, That such confidentiality shall not apply to the types and amounts of air
pollutants discharged, and that such records, reports, data or information may be disclosed to other officers or employees of the state concerned with enforcing this article when relevant to any official proceedings thereunder.

All requests to inspect or copy documents must state with reasonable specificity the documents or type of documents sought to be inspected or copied. Within five business days of the receipt of such a request, the director or his designate shall: (a) Advise the person making such request of the time and place at which he may inspect and copy the documents; or (b) deny the request, stating in writing the reasons for such denial. For purposes of judicial appeal, a written denial by the director or his designate shall be deemed an exhaustion of administrative remedies. Any person whose request for information is denied in whole or in part may appeal from such denial by filing with the director a notice of appeal. Such notice shall be filed within thirty days from the date the request for information was denied, and shall be signed by the person whose request was denied or his attorney. The appeal shall be taken to the circuit court of Kanawha county, where it shall be heard without a jury. The scope of review shall be limited to the question of whether the records, reports, data or other information, or any particular part thereof (other than emission data), sought to be inspected or copied, would, if made public, divulge methods or processes entitled to protection as trade secrets. The said court shall make findings of fact and conclusions of law based upon the evidence and testimony. The director, the person whose request was denied, or any other person whose interest shall have been substantially affected by the final order of the circuit court may appeal to the supreme court of appeals in the manner prescribed by law.


No person shall construct or modify any stationary source of air pollutants without first obtaining a permit therefor as hereinafter provided.
The commission shall by rule and regulation specify the class or categories of stationary sources to which this section shall apply and compliance with this section shall be required only with respect to such sources as are specified in such rule and regulation. Application for permits shall be made upon such form, in such manner, and within such time as the rule and regulation shall prescribe and shall include such information, as in the judgment of the director, will enable him to determine whether such source will be so designed as to operate in conformance with the provisions of this article or any rules and regulations promulgated thereunder.

Within ninety days of the receipt of an application required pursuant to this section the director shall issue such permit unless he determines that the proposed construction or modification will not be in accordance with this article or rules and regulations promulgated thereunder, in which case he shall issue an order for the prevention of such construction or modification. Failure to issue the permit or such order within the time prescribed herein shall be deemed a determination that such construction or modification may proceed:

Provided, That it is in accordance with the plans and specifications or other information required to be submitted on the application required herein.

For the purposes of this section a modification is deemed to be any physical change in, or change in the method of operation of, a stationary source which increases the amount of any air pollutant discharged by such source or which results in the emission of any air pollutant not previously discharged.

§16-20-11c. Motor vehicle pollution.

(a) As the state of knowledge and technology relating to the control of emissions from motor vehicles may permit or make appropriate, and in furtherance of the purposes of this article, the commission may provide by rules and regulations for the control of emissions from motor vehicles. Such rules and regulations may prescribe requirements for the installation and use of equipment designed to reduce or eliminate emissions
and for the proper maintenance of such equipment and
vehicles. Any rules and regulations pursuant to this
section shall be consistent with provisions of federal
law, if any, relating to control of emissions from the
vehicles concerned. The commission shall not require,
as a condition precedent to the initial sale of a vehicle
or vehicular equipment, the inspection, certification or
other approval of any feature or equipment designed for
the control of emissions from motor vehicles, if such
feature or equipment has been certified, approved, or
otherwise authorized pursuant to federal law.

(b) Except as permitted or authorized by law, no
person shall fail to maintain in good working order or
remove, dismantle, or otherwise cause to be inoperative
any equipment or feature constituting an operational
element of the air pollution control system or mechanism
of a motor vehicle required by rules and regulations of
the commission to be maintained in or on the vehicle.
Any such failure to maintain in good working order or
removal, dismantling, or causing of inoperability shall
subject the owner or operator to suspension or cancella-
tion of the registration for the vehicle by the department
of motor vehicles. The vehicle shall not thereafter be
eligible for registration until all parts and equipment
constituting operational elements of the motor vehicle
have been restored, replaced or repaired and are in good
working order.

(c) The commission shall consult with the depart-
ment of motor vehicles and furnish it with technical in-
formation, including testing techniques, standards and
instructions for emission control features and equip-
ment.

(d) When the commission has issued rules and
regulations requiring the maintenance of features or
equipment in or on motor vehicles for the purpose of
controlling emissions therefrom, no motor vehicle shall
be issued an inspection sticker as required by article
sixteen, chapter seventeen-c of this code, unless all such
required features or equipment have been inspected in
accordance with the standards, testing techniques and
instructions furnished by the commission pursuant to
this section eleven-c and have been found to meet those
standards.
(e) The remedies and penalties provided in this sec-
tion eleven-c, shall apply to violations hereof, and no pro-
visions of sections eight or nine of this article shall apply
thereto.
(f) As used in this section “motor vehicle” shall have
the same meaning as in chapter seventeen-c of this code.

CHAPTER 74

(House Bill No. 522—By Mr. Harman and Mr. Donley)

[Passed February 17, 1971; in effect from passage. Approved by the Governor.]

AN ACT to amend chapter sixteen 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 blood donations.

Be it enacted by the Legislature of West Virginia:
That chapter sixteen 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. BLOOD DONATIONS.
§16-21-1. Donations by minors without parental permission.
1 Notwithstanding any other provision of law, any
2 person eighteen years of age or older may donate blood
3 without parental or other permission or authorization.

CHAPTER 75

(Senate Bill No. 261—By Mr. Hubbard and Mr. Wallace)

[Passed February 23, 1971; in effect from passage. Approved by the Governor.]

AN ACT to amend chapter sixteen of the code of West Vir-
ginia, one thousand nine hundred thirty-one, as amended,
by adding thereto a new article, designated article twenty-
three, providing that the procuring, furnishing, donating, processing, distributing or the using of human whole blood, blood plasma, blood products, blood derivatives, corneas, bones or organs or other human tissue for the purpose of injecting, transfusing or transplanting any of them in the human body shall be the rendition of a service and not a sale; and providing that no warranties of any kind or description shall be applicable thereto.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 23. TRANSFUSION OF BLOOD; TRANSPLANTING HUMAN ORGANS OR TISSUE.

§16-23-1. Procuring, etc., human blood, etc., organs or other human tissue declared not a sale; warranties inapplicable.

1 The procuring, furnishing, donating, processing, distributing or the using of human whole blood, blood plasma, blood products, blood derivatives, corneas, bones or organs or other human tissue for the purpose of injecting, transfusing or transplanting any of them in the human body, is declared for all purposes to be the rendition of a service by every person, firm or corporation participating therein, whether or not any remuneration is paid therefor, and is declared not to be a sale of any such items and no warranties of any kind or description shall be applicable thereto.

CHAPTER 76

(Senate Bill No. 159—By Mr. Moreland)

[Passed March 12, 1971; in effect ninety days from passage. Approved by the Governor.]
West Virginia, one thousand nine hundred thirty-one, as amended, relating to health care corporations.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 25. HEALTH CARE CORPORATIONS.

§33-25-4. Board of directors.

§33-25-13. Contracts to be furnished to subscribers; payments for subscribers by others; wage deductions.

§33-25-4. Board of directors.

1 The board of directors of any corporation organized under this article shall consist of at least seven members, all of whom shall be residents of the state of West Virginia, a majority of whom shall be subscribers to its services, one of whom shall be a person licensed to practice medicine under the laws of the state of West Virginia, one of whom shall be a person connected with the healing arts, and one of whom shall be a member of the general public not connected with any contracting party. The members of the board shall serve without compensation but may be reimbursed for expenses incurred in carrying out their duties as members of the board.

§33-25-13. Contracts to be furnished to subscribers; payments for subscribers by others; wage deductions.

1 (a) Every such corporation shall deliver to each subscriber to its health care plan a copy of the contract.

2 (b) A corporation may accept from private agencies, corporations, associations, groups or individuals, payment for or on behalf of any subscriber of all or any part of the cost of subscriptions for direct health care services to be rendered: Provided, That no employer or sponsor may deduct the proportionate share of such payment attributable to any employee or subscriber from that employee's or subscriber's wages or salary, without the prior written consent of the employee or subscriber.
12 It shall be unlawful for any governmental agency to pay subscriptions for or on behalf of any subscriber.

CHAPTER 77
(Com. Sub. for House Bill No. 589—Originating in the House Committee on the Judiciary

[Passed March 4, 1971; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two, three, four, six, eight, nine, ten and thirteen, article eleven, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto three new sections, designated sections seventeen, eighteen and nineteen, prohibiting discrimination in the sale, purchase, lease, rental or financing of housing accommodations and other real property by virtue of race, religion, color, national origin or ancestry; extending the prohibition of employment discrimination to cover employers of twelve or more persons; extending the jurisdiction of article eleven to discrimination by employers, labor organizations, employment agencies and places of public accommodations based upon age or sex; defining the terms age, housing accommodations, real property, real estate broker, real estate salesman and purchaser and owner of housing accommodations or real property; relating to hearings by human rights commission; relating to consent orders; authorizing the human rights commission to hire a hearing examiner and to maintain one branch office; requiring employers, labor organizations, employment agencies and persons operating places of public accommodations to post notices of the human rights commission; extending the statute of limitation to ninety days; providing for injunctive relief in certain housing complaints or cases; and providing exemptions relating to private clubs.

Be it enacted by the Legislature of West Virginia:
That sections two, three, four, six, eight, nine, ten and thir-
teen, article eleven, chapter five 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 three new sections, designated sections seventeen, eighteen and nineteen, all to read as follows:

ARTICLE 11. HUMAN RIGHTS COMMISSION.

§5-11-2. Declaration of policy.

§5-11-3. Definitions.

§5-11-4. Human rights commission continued; status, powers and objects.

§5-11-6. Commission organization and personnel; executive director; offices; meetings; quorum; expenses of personnel.

§5-11-8. Commission powers; functions; services.


§5-11-10. Discriminatory practices; investigations, hearings, procedures and orders.


§5-11-17. Posting of law and information.

§5-11-18. Injunctions in certain housing complaints.


§5-11-2. Declaration of policy.

1 It is the public policy of the state of West Virginia to provide all of its citizens equal opportunity for employment, equal access to places of public accommodations, and equal opportunity in the sale, purchase, lease, rental and financing of housing accommodations or real property. Equal opportunity in the areas of employment and public accommodations is hereby declared to be a human right or civil right of all persons without regard to race, religion, color, national origin, ancestry, sex or age. Equal opportunity in housing accommodations or real property is hereby declared to be a human right or civil right of all persons without regard to race, religion, color, national origin or ancestry.

14 The denial of these rights to properly qualified persons by reason of race, religion, color, national origin, ancestry, sex or age, is contrary to the principles of freedom and equality of opportunity and is destructive to a free and democratic society.

§5-11-3. Definitions.

1 When used in this article:
(a) The term "person" means one or more individuals, partnerships, associations, organizations, corporations, labor organizations, cooperatives, legal representatives, trustees, trustees in bankruptcy, receivers and other organized groups of persons;

(b) The term "commission" means the West Virginia human rights commission;

(c) The term "director" means the executive director of the commission;

(d) The term "employer" means the state, or any political subdivision thereof, and any person employing twelve or more persons within the state: Provided, That such term shall not be taken, understood or construed to include a private club;

(e) The term "employee" shall not include any individual employed by his parents, spouse, or child, or in the domestic service of any person;

(f) The term "labor organization" includes any organization which exists for the purpose, in whole or in part, for collective bargaining or for dealing with employers concerning grievances, terms or conditions of employment, or for other mutual aid or protection in relation to employment;

(g) The term "employment agency" includes any person undertaking with or without compensation to procure, recruit, refer or place employees. A newspaper engaged in the activity of advertising in the normal course of its business shall not be deemed to be an employment agency;

(h) The term "discriminate" or "discrimination" means to exclude from, or fail or refuse to extend to, a person equal opportunities because of race, religion, color, national origin, ancestry, sex or age, and includes to separate or segregate;

(i) The term "unlawful discriminatory practices" includes only those practices specified in section nine of this article;

(j) The term "place of public accommodations" means any establishment or person, as defined herein, including
the state, or any political or civil subdivision thereof,
which offers its services, goods, facilities or accommoda-
tions to the general public, but shall not include any
accommodations which are in their nature private;

(k) The term "housing accommodations" means any
building or portion thereof, which is used or intended
for use as the residence or sleeping place of one or more
persons. Nothing contained in this definition or this
article shall apply to the rental of a room or rooms in
a rooming house occupied by the owner as a place of
residence and containing no more than four rented
rooms, or rooms to be rented;

(l) The term "real property" includes real estate,
lands, leaseholds, commercial or industrial buildings and
any vacant land offered for sale or rent on which the
construction of a housing accommodation, commercial
or industrial building is intended, and any land operated
as a trailer camp or rented or leased for the use, parking
or storage of mobile homes or house trailers;

(m) The term "real estate broker" includes any per-
son, firm or corporation who, for a fee, commission or
other valuable consideration, or by reason of a promise
or reasonable expectation thereof, lists for sale, sells,
exchanges, buys or rents, or offers or attempts to nego-
tiate a sale, exchange, purchase, or rental of real estate
or an interest therein, or collects or offers or attempts to
collect rent for the use of real estate or solicits for pros-
pective purchaser or assists or directs in the procuring
of prospects or the negotiation or closing of any trans-
action which does or is contemplated to result in the sale,
exchange, leasing, renting or auctioning of any real
estate or negotiates, offers or attempts or agrees to nego-
tiate a loan secured or to be secured by mortgage or other
encumbrance upon or transfer of any real estate for
others, or any person who, for pecuniary gain or expec-
tation of pecuniary gain, conducts a public or private
competitive sale of lands or any interest in lands. In the
sale of lots, the term "real estate broker" shall also
include any person, partnership, association or corpora-
tion employed by or on behalf of the owner or owners
of lots or other parcels of real estate, at a stated salary, or upon a commission, or upon a salary and commission, or otherwise to sell such real estate, or any parts thereof, in lots or other parcels, and who shall sell or exchange, or offer or attempt or agree to negotiate the sale or exchange, of any such lot or parcel of real estate. A newspaper engaged in the activity of advertising in the normal course of its business shall not be deemed to be a real estate broker;

(n) The term "real estate salesman" includes any person who, for compensation, valuable consideration or commission, or other thing of value, or by reason of a promise or reasonable expectation thereof, is employed by and operates under the supervision of a real estate broker to sell, buy or offer to buy or negotiate the purchase, sale or exchange of real estate, offers or attempts to negotiate a loan secured or to be secured by a mortgage or other encumbrance upon or transfer of real estate for others, or to collect rents for the use of real estate, or to solicit for prospective purchasers or lessees of real estate, or who is employed by a licensed real estate broker to sell or offer to sell lots or other parcels of real estate, at a stated salary, or upon a commission, or upon a salary and commission, or otherwise to sell real estate, or any parts thereof, in lots or other parcels;

(o) The term "purchaser" includes any occupant, prospective occupant, lessee, prospective lessee, renter, prospective renter, buyer or prospective buyer;

(p) The term "owner" shall include the owner, lessee, sublessee, assignee, manager, agent, or other person, firm or corporation having the right to sell, rent or lease any housing accommodation or real property within the state of West Virginia or any agent of any of these;

(q) The term "age" means ages forty through sixty-five, both inclusive;

(r) The term "rooming house" means a house or building where there are one or more bedrooms which the proprietor can spare for the purpose of giving lodgings to such persons as he chooses to receive.
§5-11-4. Human rights commission continued; status, powers and objects.

1 The West Virginia human rights commission, heretofore created, is hereby continued. The commission shall have the powers and authority and shall perform the functions and services as in this article prescribed and as otherwise provided by law. The commission shall encourage and endeavor to bring about mutual understanding and respect among all racial, religious and ethnic groups within the state and shall strive to eliminate all discrimination in employment and places of public accommodations by virtue of race, religion, color, national origin, ancestry, sex or age and shall strive to eliminate all discrimination in the sale, purchase, lease, rental or financing of housing and other real property by virtue of race, religion, color, national origin or ancestry.

§5-11-6. Commission organization and personnel; executive director; offices; meetings; quorum; expenses of personnel.

1 As soon as practical after the first day of July of each year, the governor shall call a meeting of the commission to be convened at the state capitol. The commission shall at such meeting organize by electing one of its members as chairman of the commission and one as vice chairman thereof for a term of one year or until their successors are elected and qualified. At such meeting the commission shall also elect from its membership such other officers as may be found necessary and proper for its effective organization.

1 The governor shall, by and with the advice and consent of the Senate, appoint an executive director to serve at his will and pleasure. The executive director shall serve as secretary of the commission. The executive director shall have a college degree. He shall be selected with particular reference to his training, experience and qualifications for the position and shall be paid an annual salary, payable in monthly installments, from any appropriations made therefor. The commission, upon recommendation of the executive director and in accordance with the requirements of the civil service
The commission shall equip and maintain its offices at the state capitol and shall hold its annual organizational meeting there. The commission may hold other meetings during the year at such times and places within the state as may be found necessary, and likewise may maintain one branch office within the state as determined by the commission to be necessary for the effective and orderly performance of the functions and services of the commission. Any five members of the commission shall constitute a quorum for the transaction of business. Minutes of its meetings shall be kept by its secretary.

The executive director and other commission personnel shall be reimbursed for necessary and reasonable travel and subsistence expenses actually incurred in the performance of commission services upon presentation of properly verified expense accounts as prescribed by law.

§5-11-8. Commission powers; functions; services.

1 The commission is hereby authorized and empowered:
2 (a) To cooperate and work with federal, state and local government officers, units, activities and agencies in the promotion and attainment of more harmonious understanding and greater equality of rights between and among all racial, religious and ethnic groups in this state;
3 (b) To enlist the cooperation of racial, religious and ethnic units, community and civic organizations, industrial and labor organizations and other identifiable groups of the state in programs and campaigns devoted to the advancement of tolerance, understanding and the equal protection of the laws of all groups and peoples;
4 (c) To receive, investigate and pass upon complaints alleging discrimination in employment or places of public accommodations, because of race, religion, color, na-
tional origin, ancestry, sex or age, and complaints alleging discrimination in the sale, purchase, lease, rental and financing of housing accommodations or real property because of race, religion, color, national origin or ancestry and to initiate its own consideration of any situations, circumstances or problems, including therein any racial, religious or ethnic group tensions, prejudice, disorder or discrimination reported or existing within the state relating to employment, places of public accommodations, housing accommodations and real property;

(d) To hold and conduct public and private hearings on complaints, matters and questions before the commission and, in connection therewith, relating to discrimination in employment, or places of public accommodations, housing accommodations or real property and during the investigation of any formal complaint before the commission relating to employment, places of public accommodations, housing accommodations or real property to:

(1) Issue subpoenas and subpoenas duces tecum upon the concurrence of at least five members of the commission, administer oaths, take the testimony of any person under oath, and make reimbursement for travel and other reasonable and necessary expenses in connection with such attendance;

(2) Furnish copies of public hearing records to parties involved therein upon their payment of the reasonable costs thereof to the commission;

(3) Delegate to a panel of one commission member appointed by the chairman and a hearing examiner who shall be an attorney, duly licensed to practice law in West Virginia, the power and authority to hold and conduct the hearings, as herein provided, but all decisions and action growing out of or upon any such hearings shall be reserved for determination by the commission;

(4) To enter into conciliation agreements and consent orders;

(5) To apply to the circuit court of the county where the respondent resides or transacts business for enforce-
ment of any conciliation agreement or consent order by seeking specific performance of such agreement or consent order;

(6) To issue cease and desist orders against any person found, after a public hearing, to have violated the provisions of this article or the rules and regulations of the commission;

(7) To apply to the circuit court of the county where the respondent resides or transacts business for an order enforcing any lawful cease and desist order issued by the commission;

(e) To recommend to the governor and Legislature policies, procedures, practices and legislation in matters and questions affecting human rights;

(f) To delegate to its executive director such powers, duties and functions as may be necessary and expedient in carrying out the objectives and purposes of this article;

(g) To prepare a written report on its work, functions and services for each year ending on the thirtieth day of June and to deliver copies thereof to the governor on or before the first day of December next thereafter;

(h) To do all other acts and deeds necessary and proper to carry out and accomplish effectively the objects, functions and services contemplated by the provisions of this article, including the promulgation of rules and regulations in accordance with the provisions of article three, chapter twenty-nine-a of this code, implementing the powers and authority hereby vested in the commission;

(i) To create such advisory agencies and conciliation councils, local, regional or statewide, as in its judgment will aid in effectuating the purposes of this article, to study the problem of discrimination in all or specific fields or instances of discrimination because of race, religion, color, national origin, ancestry, sex or age; to foster, through community effort or otherwise, good will, cooperation and conciliation among the groups and elements of the population of this state, and to make recommendations to the commission for the development of
policies and procedures, and for programs of formal and informal education, which the commission may recommend to the appropriate state agency. Such advisory agencies and conciliation councils shall be composed of representative citizens serving without pay. The commission may itself make the studies and perform the acts authorized by this subdivision. It may, by voluntary conferences with parties in interest, endeavor by conciliation and persuasion to eliminate discrimination in all the stated fields and to foster good will and cooperation among all elements of the population of the state;

(j) To accept contributions from any person to assist in the effectuation of the purposes of this section and to seek and enlist the cooperation of private, charitable, religious, labor, civic and benevolent organizations for the purposes of this section;

(k) To issue such publications and such results of investigation and research as in its judgment will tend to promote good will and minimize or eliminate discrimination: Provided, That the identity of the parties involved shall not be disclosed.


It shall be an unlawful discriminatory practice, unless based upon a bona fide occupational qualification, or except where based upon applicable security regulations established by the United States or the state of West Virginia or its agencies or political subdivisions:

(a) For any employer to discriminate against an individual with respect to compensation, hire, tenure, terms, conditions or privileges of employment if the individual is able and competent to perform the services required: Provided, however, That it shall not be unlawful discriminatory practice for an employer to observe the provisions of any bona fide pension, retirement, group or employee insurance, or welfare benefit plan or system not adopted as a subterfuge to evade the provisions of this subsection;

(b) For any employer, employment agency or labor organization, prior to the employment or admission to
membership, to (1) elicit any information or make or keep
a record of or use any form of application or application
blank containing questions or entries concerning the race,
religion, color, national origin, ancestry, sex or age of any
applicant for employment or membership; (2) print or
publish or cause to be printed or published any notice or
advertisement relating to employment or membership in-
dicating any preference, limitation, specification or dis-
advantaging based upon race, religion, color, national ori-
gin, ancestry, sex or age; or (3) deny or limit, through a
quota system, employment or membership because of race,
religion, color, national origin, ancestry, sex or age;
(c) For any labor organization because of race, re-
ligion, color, national origin, ancestry, sex or age of any
individual to deny full and equal membership rights to
any individual or otherwise to discriminate against such
individuals with respect to hire, tenure, terms, condi-
tions or privileges of employment or any other matter,
directly or indirectly, related to employment;
(d) For an employer, labor organization, employ-
ment agency or any joint labor-management committee
controlling apprentice training programs to:
(1) Select individuals for an apprentice training pro-
gram registered with the state of West Virginia on any
basis other than their qualifications as determined by
objective criteria which permit review;
(2) Discriminate against any individual with respect
to his right to be admitted to or participate in a guidance
program, an apprenticeship training program, on-the-job
training program, or other occupational training or re-
training program;
(3) Discriminate against any individual in his pur-
suit of such programs or to discriminate against such a
person in the terms, conditions or privileges of such
programs;
(4) Print or circulate or cause to be printed or circu-
lated any statement, advertisement or publication, or
to use any form of application for such programs or
to make any inquiry in connection with such program
which expresses, directly or indirectly, discrimination
or any intent to discriminate, unless based upon a bona
die occupational qualification;

(e) For any employment agency to fail or refuse
to classify properly, refer for employment or otherwise
to discriminate against any individual because of his
race, religion, color, national origin, ancestry, sex or age;

(f) For any person being the owner, lessee, pro-
prietor, manager, superintendent, agent or employee of
any place of public accommodations to:

(1) Refuse, withhold from or deny to any individual
because of his race, religion, color, national origin, ances-
try, sex or age, either directly or indirectly, any of the
accommodations, advantages, facilities, privileges or ser-

(2) Publish, circulate, issue, display, post or mail,
either directly or indirectly, any written or printed
communication, notice or advertisement to the effect that
any of the accommodations, advantages, facilities, privi-
leges or services of any such place shall be refused, with-
hold from or denied to any individual on account of race,
religion, color, national origin, ancestry, sex or age, or that
the patronage or custom thereat of any individual, belong-
ing to or purporting to be of any particular race, re-
ligion, color, national origin, ancestry, sex or age is un-
welcome, objectionable, not acceptable, undesired or not
solicited;

(g) For the owner, lessee, sublessee, assignee or
managing agent of, or other person having the right of
ownership or possession of or the right to sell, rent,
lease, assign, or sublease any housing accommodations
or real property or part or portion thereof, or any agent,
or employee of any of them; or for any real estate
broker, real estate salesman, or employee or agent
thereof:

(1) To refuse to sell, rent, lease, assign or sublease
or otherwise to deny to or withhold from any person
or group of persons any housing accommodations or
real property, or part or portion thereof, because of race,
96 religion, color, national origin or ancestry of such person
97 or group of persons;
98 (2) To discriminate against any person or group of
99 persons because of the race, religion, color, national ori-
100 gin or ancestry of such person or group of persons
101 in the terms, conditions, or privileges of the sale, rental,
102 or lease of any housing accommodations or real prop-
103 erty, or part or portion thereof, or in the furnishing
104 of facilities or services in connection therewith;
105 (3) To print, publish, circulate, issue, display, post
106 or mail, or cause to be printed, published, circulated,
107 issued, displayed, posted or mailed any statement, ad-
108 vertisement, publication, or sign or to use any form
109 of application for the purchase, rental, lease, assignment
110 or sublease of any housing accommodations or real prop-
111 erty, or part or portion thereof, or to make any record
112 or inquiry in connection with the prospective purchase,
113 rental, lease, assignment or sublease of any housing ac-
114 commodations or real property or part or portion thereof,
115 which expresses, directly or indirectly, any limitation,
116 specification, or discrimination as to race, religion, color,
117 national origin or ancestry or any intent to make
118 any such limitation, specification, or discrimination and
119 the production of any statement, advertisement, pub-
120 licity, sign, form of application, record or inquiry pur-
121 porting to be made by any such person shall be prima
122 facie evidence in any action that the same was autho-
123 rized by such person;
124 (h) For any person or financial institution or lender
125 to whom application is made for financial assistance
126 for the purchase, acquisition, construction, rehabilitation,
127 repair or maintenance of any housing accommodations
128 or real property, or part or portion thereof, or any agent
129 or employee thereof to:
130 (1) Discriminate against any person or group of per-
131 sons because of race, religion, color, national origin or
132 ancestry of such person or group of persons or of the
133 prospective occupants or tenants of such housing ac-
134 commodations or real property, or part or portion thereof,
135 in the granting, withholding, extending, modifying or
136 renewing, or in the fixing of the rates, terms, conditions
or provisions of any such financial assistance or in the
extension of services in connection therewith;

(2) Use any form of application for such financial
assistance or to make any record of inquiry in connec-
tion with applications for such financial assistance which
expresses, directly or indirectly, any limitation, specifi-
cation or discrimination as to race, religion, color, na-
tional origin or ancestry, or any intent to make
any such limitation, specification or discrimination;

(i) For any person, employer, employment agency,
labor organization, owner, real estate broker, real estate
salesman or financial institution to:

(1) Engage in any form of threats or reprisal, or to
engage in, or hire, or conspire with others to commit
acts or activities of any nature, the purpose of which
is to harass, degrade, embarrass, or cause physical harm
or economic loss or to aid, abet, incite, compel or coerce
any person to engage in any of the unlawful discrimi-
natory practices defined in this section;

(2) Wilfully obstruct or prevent any person from
complying with the provisions of this article, or to re-
sist, prevent, impede or interfere with the commission
or any of its members or representatives in the per-
formance of duty under this article;

(3) Engage in any form of reprisal or otherwise dis-
criminate against any person because he has opposed
any practices or acts forbidden under this article or
because he has filed a complaint, testified or assisted
in any proceeding under this article;

(4) For profit to induce or attempt to induce any
person to sell or rent or to not sell or rent any housing
accommodations or real property by representations re-
garding the entry or prospective entry into the neighbor-
hood of a person or persons of a particular race, religion,
color, national origin or ancestry.

§5-11-10. Discriminatory practices; investigations, hearings,
procedures and orders.

1 Any individual claiming to be aggrieved by an alleged
2 unlawful discriminatory practice shall make, sign and
file with the commission a verified complaint, which shall
state the name and address of the person, employer, labor
organization, employment agency, owner, real estate
broker, real estate salesman or financial institution al-
leged to have committed the unlawful discriminatory
practice complained of, and which shall set forth the
particulars thereof and contain such other information
as may be required by the commission's rules and regu-
lations. The commission upon its own initiative, or the
attorney general, shall, in like manner, make, sign and
file such complaint. Any employer, whose employees, or
some of them, hinder or threaten to hinder compliance
with the provisions of this article, shall file with the
commission a verified complaint, asking for assistance
by conciliation or other remedial action and, during
such period of conciliation or other remedial action,
no hearings, orders or other actions shall be held,
made or taken by the commission against such employer.
Any complaint filed pursuant to this article must be
filed within ninety days after the alleged act of dis-

After the filing of any complaint, or whenever there
is reason to believe that an unlawful discriminatory
practice has been committed, the commission shall
make a prompt investigation in connection therewith.

If it shall be determined after such investigation that
no probable cause exists for substantiating the allega-
tions of the complaint, the commission shall, within ten
days from such determination, cause to be issued and
served upon the complainant written notice of such
determination, and the said complainant or his attorney
may, within ten days after such service, file with the
commission a written request for a meeting with the
commission to show probable cause for substantiating
the allegations of the complaint. If it shall be deter-
mined after such investigation or meeting that probable
cause exists for substantiating the allegations of the
complaint, the commission shall immediately endeavor
to eliminate the unlawful discriminatory practices com-
plained of by conference, conciliation and persuasion.
The members of the commission and its staff shall not
disclose what has transpired in the course of such endeavors: Provided, That the commission may publish the facts in the case of any complaint which has been dismissed, and the terms of conciliation when the complaint has been adjusted, without disclosing the identity of the parties involved.

In case of failure so to eliminate such practice or in advance thereof, if in the judgment of the commission circumstances so warrant, the commission shall cause to be issued and served a written notice, together with a copy of such complaint as the same may have been amended, in the manner provided by law for the service of summons in civil actions, requiring the person, employer, labor organization, employment agency, owner, real estate broker, real estate salesman or financial institution named in such complaint, hereinafter referred to as respondent, to answer the charges of such complaint at a hearing before the commission in the county where the respondent resides or transacts business at a time and place to be specified in such notice: Provided, however, That said written notice be served at least thirty days prior to the time set for the hearing.

The case in support of the complaint shall be presented before the commission by one of its attorneys or agents. The respondent may file a written, verified answer to the complaint and appear at such hearing in person or otherwise, with or without counsel, and submit testimony and evidence. Except as provided in the immediately preceding proviso, all of the pertinent provisions of article five, chapter twenty-nine-a of this code shall apply to and govern the hearing and the administrative procedures in connection with and following such hearing, with like effect as if the provisions of said article five were set forth in extenso in this section.

If, after such hearing and consideration of all of the testimony, evidence and record in the case, the commission shall find that a respondent has engaged in or is engaging in any unlawful discriminatory practice as defined in this article, the commission shall issue and cause to be served on such respondent an order
to cease and desist from such unlawful discriminatory practice and to take such affirmative action, including, but not limited to, hiring, reinstatement or upgrading of employees, with or without back pay, admission or restoration to membership in any respondent labor organization, or the admission to full and equal enjoyment of the services, goods, facilities, or accommodations offered by any respondent place of public accommodation, and the sale, purchase, lease, rental or financial assistance to any complainant otherwise qualified for the housing accommodation or real property, denied in violation of this article, as in the judgment of the commission, will effectuate the purposes of this article, and including a requirement for report of the manner of compliance. Such order shall be accompanied by findings of fact and conclusions of law as specified in section three, article five, chapter twenty-nine-a of this code.

If, after such hearing and consideration of all of the testimony, evidence and record in the case, the commission shall find that a respondent has not engaged in such unlawful discriminatory practice, the commission shall state its findings of fact and conclusions of law as aforesaid and shall issue and cause to be served on the complainant an order dismissing the said complaint as to such respondent.

A copy of its order shall be delivered in all cases by the commission to the complainant, the respondent, the attorney general and to such other public officers as the commission may deem proper. Any such order shall not be enforceable except as provided in section eleven of this article.


Nothing contained in this article shall be deemed to repeal or supersede any of the provisions of any existing or hereafter adopted municipal ordinance, municipal charter or of any law of this state relating to discrimination because of race, religion, color, national origin, ancestry, sex or age, but as to acts declared unlawful by section nine of this article the procedure herein provided shall,
when invoked, be exclusive and the final determination therein shall exclude any other action, civil or criminal, based on the same grievance of the complainant concerned. If such complainant institutes any action based on such grievance without resorting to the procedure provided in this article, he may not subsequently resort to the procedure herein. In the event of a conflict between the interpretation of a provision of this article and the interpretation of a similar provision contained in any municipal ordinance authorized by charter, the interpretation of the provision in this article shall apply to such municipal ordinance.

§5-11-17. Posting of law and information.

Every employer, labor organization, employment agency and person operating a place of public accommodations, as defined herein, subject to this article, shall keep posted in a conspicuous place or places on his premises a notice or notices to be prepared or approved by the commission, which shall set forth excerpts of this article and such other relevant information which the commission shall deem necessary.

§5-11-18. Injunctions in certain housing complaints.

When it appears that a housing unit or units described in a complaint may be sold, rented or otherwise disposed of before a determination of the complaint or case has been made by the commission or during judicial review of any final order of the commission, the circuit court of the county in which such housing unit or units are located may, upon the joint petition of the commission and the complainant, or if there be more than one complainant, all such complainants, issue a prohibitive injunction restraining the sale, rental or other disposition of such housing unit or units except in compliance with the order of the court. No such injunction shall be issued by the court until the complainant or complainants shall have posted bond, with good security therefor, in such penalty as the court or judge awarding it may direct. The court may include in any such injunction granted such other conditions as it deems proper and just. Such
injunction, if granted, shall be of no more than thirty
days duration. If at the end of such thirty day period
the commission notifies the court that additional time
is needed for the disposal or determination of the com-
plaint or case or the conclusion of such judicial re-
view, the court, for good cause shown, may extend the
period of the injunction for such additional time as the
court deems proper. No such extension shall be granted
except upon the continuation or reposting of the b...
required for the original injunction and any such exten-
sion of the injunction may be granted upon such additional
terms and conditions as to the court seem proper and just.


Nothing in this article shall prohibit a private club not
in fact open to the public, which as an incident to its
primary purpose or purposes provides lodgings which
it owns or operates for other than a commercial pur-
pose, from limiting the rental or occupancy of such lodg-
ings to its members or guests of members or from
giving preference to its members or guests of members:
Provided, That this exemption shall not apply to any
private club not in fact open to the public which owns or
operates residential subdivisions providing lodgings for
rental, occupancy or sale, or which provides real estate
for sale for the construction of single or multi-unit dwell-
ings.

CHAPTER 78

(House Bill No. 525—By Mr. Queen)

[Passed March 13, 1971; in effect ninety days from passage. Approved by the
Governor.]

AN ACT to amend and reenact section three, article two, chap-
ter fifty-two of the code of West Virginia, one thousand
nine hundred thirty-one, as amended, relating to grand
juries.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. GRAND JURIES.


1 The clerk of any court requiring a grand jury shall, at least thirty days before the term of court, summon the jury commissioners to attend at his office at a day specified, which shall not be less than twenty days before such term, and select persons for the grand jury, but the court, or judge thereof, may require such jury commissioners to appear forthwith, or at any specified time, and select grand jurors for either a regular, special or adjourned term of court. On the day appointed, the jury commissioners shall appear and draw the names of sixteen persons from the grand jury box, and the persons so drawn shall constitute the grand jury, and at the same time the jury commissioners shall draw the names of six additional persons from the grand jury box, and the persons so drawn shall constitute alternate jurors for the grand jury, and the judge may replace any absent members of the grand jury from among the alternate grand jurors. If when drawing the ballots it shall appear to the commissioners that any person so drawn is dead, or for any reason disqualified or unable to serve, they shall destroy the ballot and cancel the name on the list and draw another in such person's stead. They shall enter the names of all persons so drawn in a book kept for that purpose and deliver a list thereof to the clerk, who shall issue a summons for the persons drawn, directed to the sheriff of the county requiring him to summon them to appear on the day required and serve as grand jurors. The provisions of article one of this chapter relating to the drawing and summoning of petit jurors and drawing ballots and cancellation and marking thereof, so far as applicable and not inconsistent with the provisions of this article, shall be observed and govern the selection of a grand jury, except in that the ballots shall be drawn from the several envelopes in proportion as near as may be to the numbers endorsed thereon, but
so that at least one ballot shall be drawn from each
envelope.

CHAPTER 79

(Senate Bill No. 351—By Mr. Brotherton and Mr. Carrigan)

[Passed March 13, 1971; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article two, chapter fifty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section fourteen, relating to grand juries; authorizing a grand jury to sit for as long as one year and in addition to any other grand jury and providing that all of the provisions of said article two shall apply to a grand jury authorized to sit for as long as one year with exceptions with respect to the end of the term of court during which such grand jury was drawn and summoned, the appointment of replacement grand jurors beyond the end of the term and compensation for the members of any such grand jury.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. GRAND JURIES.

§52-2-14. Grand jury authorized to sit for as long as one year and in addition to any other grand jury; provisions of article applicable with certain exceptions.

1 Whenever it appears to the judge of any court of record having criminal jurisdiction that there may be possible offenses against the criminal laws of this state which because of their complexity and involvement may require a grand jury to sit for an extended period of time, he may, pursuant to the provisions of this section, order a grand jury to be drawn and to attend any
special, regular or adjourned term of such court in addition to any other grand jury attending any such term of court and all of the provisions of this article shall apply, except as follows:

(1) Such grand jury shall sit for one year unless an order for its discharge be earlier entered upon a determination by such grand jury, by majority vote, that its business has been completed, and such grand jury shall have the power to make presentments or find indictments at any time while it is sitting, notwithstanding the end of the term of court during which it was drawn and summoned;

(2) The term limitation specified in the last sentence of section ten of this article shall not apply to a grand jury attending pursuant to the provisions of this section fourteen; and

(3) Notwithstanding the first two sentences of section thirteen of this article, every person who shall serve upon a grand jury attending pursuant to the provisions of this section fourteen shall be entitled to receive for such services not less than eight dollars nor more than twenty dollars, to be fixed by the court, for each day he may so serve, for a total period not in excess of one year, and in addition thereto the same mileage as allowed to witnesses, to be paid out of the county treasury.

CHAPTER 80

(House Bill No. 519—By Mr. Steptoe)

[Passed March 13, 1971; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section thirteen, article three, chapter fifty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to service of process on the president or cashier of a branch bank.

Be it enacted by the Legislature of West Virginia:
ARTICLE 3. COMMENCEMENT OF ACTIONS AND PROCESS.

§1. Repeal of section relating to service of process on the president or cashier of a branch bank.

Section thirteen, article three, chapter fifty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, is hereby repealed.

CHAPTER 81
(House Bill No. 503—By Mr. Perry and Mr. Jones, of Roane)

[Passed March 1, 1971; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article eighteen, chapter fifty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to various offenses within the criminal jurisdiction of justices of the peace and the penalties which may be imposed upon conviction thereof.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 18. CRIMINAL JURISDICTION AND PROCEDURE; APPEALS.

§50-18-1. Offenses within criminal jurisdiction of justices; penalties.

A justice shall have jurisdiction of the following offenses committed in his county, or on any river or creek adjoining thereto:

(a) In cases of assault and battery, unless the offense was committed on a sheriff or other officer or justice, or riotously, or with intent to commit a felony; and no compromise with the party injured shall affect or prevent the trial of such offense by the justice; and if a defendant be convicted of such offense he shall be fined not less than ten nor more than fifty dollars, or be im-
prisoned in the county jail not exceeding thirty days, or
be both fined and imprisoned;
(b) In cases of trespass to personal property; and, if a defendant be convicted of such offense, he shall be fined not less than five nor more than fifty dollars;
(c) In cases for the violation of section fourteen, article six, chapter sixty-one of this code; and, upon the conviction of a defendant for a misdemeanor violation of any of the provisions of said section, he shall be punished as therein provided;
(d) In cases of adultery and fornication; and, if a defendant be convicted of such offense, he shall be fined twenty dollars;
(e) In cases of petit larceny; and, if a defendant be convicted of such offense, he shall be fined not less than ten nor more than fifty dollars, or be imprisoned in the county jail not exceeding thirty days, or be both fined and imprisoned;
(f) In cases for the violation of article seven, chapter sixty-one of this code; and, upon the conviction of a defendant for a violation of any of the provisions of said article, he shall be punished as therein provided;
(g) In any case where the punishment is limited to a fine not exceeding ten dollars, or to imprisonment for not more than ten days;
(h) In all misdemeanor cases for the violation of the provisions of chapter sixty of said code as amended;
(i) In cases for the violation of section thirteen, article six, chapter sixty-one of this code; and, upon the conviction of a defendant for a violation of any of the provisions of said section, he shall be punished as therein provided;
(j) In all misdemeanor cases for the violation of the provisions of chapter nineteen of this code. Upon conviction of a defendant for a violation of any of the provisions of chapter nineteen of this code, the defendant shall be punished as therein provided.
Whenever a person has been convicted in the municipal or police court of any incorporated municipality,
50 such conviction shall be a bar to any criminal proceedings
51 before a justice for the same offense.

CHAPTER 82
(Com. Sub. for House Bill No. 691—Originating in the House
Committee on the Judiciary.)

[Passed March 13, 1971; in effect July 1, 1971. Approved by the Governor.]

AN ACT to amend and reenact article one-a, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said chapter by adding thereto a new article, designated article one-b, providing a labor-management relations act for the private sector; setting forth a public policy and the purposes of said article; relating to mediation; relating to decisions of the national labor relations board and of the courts with respect to the national labor relations act; defining terms; providing a rule for the determination of the existence of an agency relationship; relating to rights of employees; specifying various unfair labor practices; relating to representatives of employees and petition and election procedures with respect thereto; authorizing intervention; relating to the prevention of unfair labor practices; specifying that said article one-a shall not preempt, limit or restrict various state court actions and remedies; authorizing actions to prevent unfair labor practices; providing that various provisions of the administrative procedures act shall be applicable; relating to suits by or against labor organizations; providing that labor organizations may sue or be sued as entities; relating to the service of summonses, subpoenas and other legal process under said article one-a; providing a severability clause; creating the West Virginia labor-management relations board; relating to its composition, the terms of its members, vacancies on the board and grounds for removal of members; relating to the quorum of such board; providing for an executive secretary of such board; relating to the oath of such board members
and of the executive secretary; relating to the salary and expenses of the members of such board and of the executive secretary; relating to the employees of such board; and relating to rules and regulations of such board.

Be it enacted by the Legislature of West Virginia:

That article one-a, chapter twenty-one, of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said chapter be further amended by adding thereto a new article, designated article one-b, all to read as follows:

Article

1A. Labor-Management Relations Act for the Private Sector.
1B. West Virginia Labor-Management Relations Board.

ARTICLE 1A. LABOR-MANAGEMENT RELATIONS ACT FOR THE PRIVATE SECTOR.

§21-1A-1. Public policy and purposes of article; mediation; investigation and mediation by commissioner of certain labor disputes; arbitration; construction of article.

§21-1A-2. Definitions; determination of agency.
§21-1A-3. Rights of employees.
§21-1A-4. Unfair labor practices.
§21-1A-5. Representatives and elections.
§21-1A-6. Prevention of unfair labor practices.
§21-1A-7. Suits by or against labor organizations.
§21-1A-8. Severability.

§21-1A-1. Public policy and purposes of article; mediation; investigation and mediation by commissioner of certain labor disputes; arbitration; construction of article.

(a) It is hereby declared to be the public policy of this state and the purposes of this article to encourage the practice and procedure of collective bargaining by protecting the exercise by employees of full freedom of association, self-organization and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection; to prescribe the legitimate rights of both employees and employers in their relations; to provide orderly and peaceful procedures for preventing the interference by either with the legitimate rights of the other; to protect the rights
of individual employees in their relations with labor
organizations; to define and prescribe practices on the
part of labor and management which are inimical to
the welfare, prosperity, health and peace of the people
of this state; and to protect the rights of the public in
connection with labor disputes. This article shall be
deemed an exercise of the police power of the state for
the protection of the welfare, prosperity, health and
peace of the people of this state.

(b) The commissioner of labor or his designated
representative may investigate and mediate labor dis-
putes between an employer and a labor organization,
whether or not a collective bargaining agreement ex-ists between such parties providing both parties to such
dispute request in writing such intervention or provided
the commissioner offers such service to both parties and
both parties to the dispute agree in writing to the investi-
gation or mediation. The commissioner may arbitrate
such disputes or arrange for the selection of boards of
arbitration on such terms as all of the parties to such dis-
putes may agree upon. Records of the department re-
lating to labor disputes shall be confidential.

(c) This article is patterned after the provisions of the
"National Labor Relations Act," as amended, and except
insofar as the provisions of this article differ from the
provisions of said act, as amended, the decisions of the
national labor relations board and of the courts with
respect to said act, as amended, shall be authoritative in
the interpretation, administration and application of the
provisions of this article.

§21-1A-2. Definitions; determination of agency.

(a) When used in this article:

(1) "Person" includes one or more individuals, labor
organizations, partnerships, associations, corporations,
legal representatives, trustees, trustees in bankruptcy or
receivers.

(2) "Employer" includes any person acting as an agent
of an employer, directly or indirectly, who employs fif-
teen or more persons, but shall not include the United
States or any wholly owned United States government corporation, or any federal reserve bank, or any person subject to the provisions of the "National Labor Relations Act," as amended, unless the national labor relations board has declined to assert jurisdiction over such person, or any person subject to the "Railway Labor Act," as amended from time to time, or any labor organization, other than when acting as an employer, or the state of West Virginia or any political subdivision or agency thereof, or any corporation or association operating a hospital, if no part of the net earnings inures to the benefit of any private shareholder or individual.

(3) "Employee" includes any employee, and shall not be limited to the employees of a particular employer, unless otherwise explicitly provided in this article, and among others shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed in the production of agricultural products or the processing or marketing of agricultural products by the producer thereof, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse, or any individual having the status of an independent contractor, or any individual employed as a supervisor, or any individual employed by any person who is not an employer as herein defined.

(4) "Representative" includes any individual or labor organization.

(5) "Labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

(6) "Unfair labor practice" means any unfair labor practice specified in section four of this article.

(7) "Labor dispute" or "dispute" includes any contro-
versy concerning terms, tenure or conditions of employment or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

(8) "Supervisor" means any individual having authority, in the interest of the employer, to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

(9) "Professional employee" means (a) any employee engaged in work (i) predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical or physical work; (ii) involving the consistent exercise of discretion and judgment in its performance; (iii) of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; (iv) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual, or physical processes; or (b) any employee, who (i) has completed the courses of specialized intellectual instruction and study described in (iv) of (a) of this subdivision (9), and (ii) is performing related work under the supervision of a professional person to qualify himself to become a professional employee as defined in (a) of this subdivision (9).

(b) In determining whether any person is acting as an "agent" of another person so as to make such other person responsible for his acts, for any purpose under this article including suits by or against labor organizations, the question of whether the specific acts performed were
actually authorized or subsequently ratified shall not be controlling.

§21-1A-3. Rights of employees.

Employees shall have the right to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in subdivision (3), subsection (a), section four of this article.

§21-1A-4. Unfair labor practices.

(a) It shall be an unfair labor practice for an employer:

(1) To interfere with, restrain or coerce employees in the exercise of the rights guaranteed in section three of this article;

(2) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: Provided, That an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay;

(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment, to encourage or discourage membership in any labor organization: Provided, however, That nothing contained in this article, or in any other statute of this state, shall preclude an employer from making an agreement with a labor organization (not established, maintained or assisted by any action defined in this section as an unfair labor practice) to require as a condition of employment membership therein on or after the thirtieth day following the beginning of such employment or the effective date of such agreement, whichever is the later, (i) if such labor organization is the representative of
the employees as provided in section five of this article, in the appropriate collective-bargaining unit covered by such agreement when made, and (ii) unless following an election held as provided in subsection (d), section five of this article, within one year preceding the effective date of such agreement, the board shall have certified that at least a majority of the employees eligible to vote in such election have voted to rescind the authority of such labor organization to make such an agreement:

Provided further, That no employer shall justify any discrimination against an employee for nonmembership in a labor organization (A) if he has reasonable grounds for believing that such membership was not available to the employee on the same terms and conditions generally applicable to other members, or (B) if he has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;

(4) To discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this article; and

(5) To refuse to bargain collectively with the representatives of his employees, subject to the provisions of subsection (a), section five of this article.

(b) It shall be an unfair labor practice for a labor organization or its agents:

(1) To restrain or coerce (A) employees in the exercise of the rights guaranteed in section three of this article: Provided, That this subdivision shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein; or (B) an employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances;

(2) To cause or attempt to cause an employer to discriminate against an employee in violation of subdivision (3), subsection (a) of this section or to discriminate against an employee with respect to whom membership
in such organization has been denied or terminated on some ground other than his failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;

(3) To refuse to bargain collectively with an employer, provided it is the representative of his employees subject to the provisions of subsection (a), section five of this article;

(4) (i) To engage in or induce or encourage any individual employed by any person to engage in, a strike or a refusal in the course of employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials or commodities or to perform any services; or (ii) to threaten, coerce, or restrain any person, where in either case an object thereof is:

(A) Forcing or requiring any employer or self-employed person to join any labor or employer organization or to enter into any agreement which is prohibited by subsection (e) of this section;

(B) Forcing or requiring any person to cease using, selling, handling, transporting or otherwise dealing in the products of any other producer, processor or manufacturer, or to cease doing business with any other person, or forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section five of this article: Provided, That nothing contained in this clause (B) shall be construed to make unlawful, where not otherwise unlawful, any primary strike or primary picketing;

(C) Forcing or requiring any employer to recognize or bargain with a particular labor organization as the representative of his employees if another labor organization has been certified as the representative of such employees under the provisions of section five of this article;

(D) Forcing or requiring any employer to assign
particular work to employees in a particular labor organ-
ization or in a particular trade, craft or class rather than to employees in another labor organization or in another trade, craft or class, unless such employer is failing to conform to an order of certification of the board determining the bargaining representative for employees performing such work: Provided, That nothing contained in this subsection (b) shall be construed to make unlawful a refusal by any person to enter upon the premises of any employer (other than his own em-
ployer), if the employees of such employer are engaged in a strike ratified or approved by a representative of such employees whom such employer is required by law to recognize;

(5) To require of employees covered by an agree-
ment authorized under subdivision (3), subsection (a) of this section, the payment, as a condition precedent to becoming a member of such organization, of a fee in an amount which the board finds excessive or discrimi-
natory under all the circumstances. In making such a finding, the board shall consider, among other relevant factors, the practices and customs of labor organizations in the particular industry, and the wages currently paid to the employees affected;

(6) To cause or attempt to cause an employer to pay or deliver or agree to pay or deliver any money or other thing of value, in the nature of an exaction, for services which are not performed or not to be performed; and

(7) To picket or cause to be picketed, or threaten to picket or cause to be picketed, any employer where an object thereof is forcing or requiring an employer to recognize or bargain with a labor organization as the representative of his employees, or forcing or requiring the employees of an employer to accept or select such labor organization as their collective bargaining repre-
sentative, unless such labor organization is currently certified as the representative of such employees:

(A) Where the employer has lawfully recognized in accordance with this article any other labor organization and a question concerning representation may not ap-
appropriately be raised under subsection (c), section five of this article;

(B) Where within the preceding twelve months a valid election under subsection (c), section five of this article has been conducted; or

(C) Where such picketing has been conducted without a petition under subsection (c), section five of this article being filed within a reasonable period of time not to exceed fifteen days from the commencement of such picketing: Provided, That when such a petition has been filed the board shall forthwith, without regard to the provisions of said subsection (c), section five or the absence of a showing of a substantial interest on the part of the labor organization, direct an election in such unit as the board finds to be appropriate and shall certify the results thereof. Nothing in this subdivision (7) shall be construed to permit any act which would otherwise be an unfair labor practice under this subsection (b).

(c) The expressing of any views, argument or opinion, or the dissemination thereof, whether in written, printed, graphic or visual form, shall not constitute or be evidence of unfair labor practice, or be prohibited under this article, if such expression contains no threat of reprisal or force or promise of benefit.

(d) For the purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making a concession: Provided, That where there is in effect a collective-bargaining contract covering employees, the duty to bargain collectively shall also mean that no party to such contract shall terminate or modify such contract, unless the party desiring such termination or modification:
(1) Gives a written notice to the other party of the proposed termination or modification sixty days prior to the expiration date thereof, or in the event such contract contains no expiration date, sixty days prior to the time it is proposed to make such termination or modification;

(2) Offers to meet and confer with the other party for the purpose of negotiating a new contract or a contract containing the proposed modifications;

(3) Notifies the commissioner of labor of the existence of a dispute;

(4) Continues in full force and effect, without resorting to strike or lockout, all the terms and conditions of the existing contract for a period of sixty days after such notice is given or until the expiration date of such contract, whichever occurs later. The duties imposed upon employers, employees, and labor organizations by subdivisions (2), (3) and (4) of this subsection (d) shall become inapplicable upon an intervening certification of the board, under which the labor organization or individual, which is a party to the contract, has been superseded as or ceased to be the representative of the employees subject to the provisions of subsection (a), section five of this article, and the duties so imposed shall not be construed as requiring either party to discuss or agree to any modification of the terms and conditions contained in a contract for a fixed period, if such modification is to become effective before such terms and conditions can be reopened under the provisions of the contract. Any employee who engages in a strike within the sixty-day period specified in this subsection shall lose his status as an employee of the employer engaged in the particular labor dispute, for the purposes of sections three, four and five of this article, but such loss of status for such employee shall terminate if and when he is reemployed by such employer.

(e) It shall be an unfair labor practice for any labor organization and any employer to enter into any contract or agreement, express or implied, whereby such employer ceases or refrains or agrees to cease or refrain
from handling, using, selling, transporting, or otherwise
dealing in any of the products of any other employer, or to
cease doing business with any other person and any such
credit or agreement entered into heretofore or here-
after shall be to such extent unenforceable and void.

§21-1A-5. Representatives and elections.

(a) Representatives designated or selected for the
purposes of collective bargaining by the majority of the
employees in a unit appropriate for such purposes shall
be the exclusive representatives of all the employees in
such unit for the purposes of collective bargaining with
respect to rates of pay, wages, hours of employment or
other conditions of employment.

(b) The board shall decide in each case whether, in
order to assure to employees the fullest freedom in exer-
cising the rights guaranteed by this article, the unit ap-
propriate for the purposes of collective bargaining shall
be the employer unit, craft unit, plant unit, or subdivision
thereof: Provided, That the board shall not (1) decide
that any unit is appropriate for such purposes if such
unit includes both professional employees and employees
who are not professional employees unless a majority of
such professional employees vote for inclusion in such
unit; or (2) decide that any craft unit is inappropriate for
such purposes on the ground that a different unit has
been established by a prior board determination, unless
a majority of the employees in the proposed craft unit
vote against separate representation; or (3) decide that
any unit is appropriate for such purposes if it includes,
together with other employees, any individual employed
as a guard to enforce against employees and other persons
rules to protect property of the employer or to protect
the safety of persons on the employer's premises; but no
labor organization shall be certified as the representative
of employees in a bargaining unit of guards if such organi-
ization admits to membership, or is affiliated directly or in-
directly with an organization which admits to member-
ship, employees other than guards.

(c) (1) Whenever a petition shall have been filed, in
accordance with such regulations as may be prescribed
by the board:
(A) By an employee or group of employees or any individual or labor organization acting in their behalf alleging that employees (i) wish to be represented for collective bargaining and that their employer declines to recognize their representative as the representative defined in subsection (a) of this section, or (ii) assert that the individual or labor organization, which has been certified or is being currently recognized by their employer as the bargaining representative, is no longer a representative as defined in subsection (a) of this section; or

(B) By an employer, alleging that one or more individuals or labor organizations have presented to him a claim to be recognized as the representative defined in subsection (a) of this section; the board shall investigate such petition and if it has reasonable cause to believe that a question of representation exists shall provide for an appropriate hearing upon due notice. If the board finds upon the record of such hearing that such a question of representation exists, it shall direct an election by secret ballot and shall certify the results thereof.

(2) Any labor organization may intervene in the procedures provided for in this subsection upon the filing with the board of a petition alleging that it represents one or more employees in the unit with respect to which a question of representation exists. If the board finds the allegation to be valid and the unit to be appropriate, it shall order an election and shall order that the name of such intervening labor organization be included among the choices on the secret ballot to be used in such election. If the board finds that the petition is invalid, the board may dismiss the petition or permit such petition to be amended in accordance with the procedures established by such board.

(3) No election shall be directed in any bargaining unit or any subdivision within which, in the preceding twelve-month period, a valid election shall have been held. Employees engaged in an economic strike who are not entitled to reinstatement shall be eligible to vote under such regulations as the board shall find consistent with the purposes and provisions of this article in any election conducted within twelve months after the com-
mencement of the strike. In any election where none of
the choices on the ballot receives a majority, a runoff
shall be conducted, the ballot providing for a selection
between the two choices receiving the largest and second
largest number of valid votes cast in the election.

(4) Nothing contained in this section shall be con-
strued as prohibiting the waiving of hearings by stipula-
tion for the purpose of a consent election in conformity
with regulations of the board.

(5) In determining whether a unit is appropriate for
the purposes specified in subsection (b) of this section
the extent to which the employees have organized shall
not be controlling.

(d) Upon the filing with the board, by thirty per
centum or more of the employees in a bargaining unit
covered by an agreement between their employer and a
labor organization made pursuant to subdivision (3),
subsection (a), section four of this article, of a petition
alleging that they desire that such authority be rescinded,
the board shall take a secret ballot of the employees in
such unit and certify the results thereof. No election
shall be conducted pursuant to this subsection in any
bargaining unit or any subdivision within which, in the
preceding twelve-month period, a valid election shall
have been held.

§21-1A-6. Prevention of unfair labor practices.

(a) The board is empowered, as hereinafter provided,
to prevent any person from engaging in any unfair labor
practice specified in section four of this article. The
authority and power to prevent unfair labor practices
prescribed in this article is exclusively vested in the
board, and shall be limited to the procedures provided in
this section, except for the rights of action explicitly
granted to and against employers and labor organiza-
tions by section seven of this article: Provided, That
nothing contained in this article shall be deemed to pre-
empt, limit or restrict any person in the enforcement or
prosecution of any action now or at any time in the future
in any court of this state to enforce any legal right or
cause of action heretofore or otherwise existing under
law, including, but not limited to, any right to injunctive relief against violence, threats of violence, mass picketing, obstruction, or injury or threatened injury to property or person, in connection with labor disputes.

(b) Whenever it is charged by a charge filed with the board that any person has engaged in or is engaging in any such unfair labor practice, the board's executive secretary, provided for in article one-b of this chapter, shall have power to investigate such charge and if he concludes that there is probable cause to believe that such person has engaged in or is engaging in such unfair labor practice, to issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the board, at a place therein fixed, not less than ten days after the serving of said complaint: Provided, That no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the board and the service of a copy thereof upon the person against whom the charge is made, unless the person aggrieved thereby was prevented from filing such charge by reason of service in the armed forces, in which event the six months' period shall be computed from the day of his discharge. Any such complaint may be amended by the board in its discretion at any time prior to the issuance of an order based thereon. The person so complained of shall have the right to file an answer to the original or amended complaint and to appear in person or otherwise at a hearing scheduled thereon and give testimony. Any such hearing may be conducted by the board, any member thereof or any agent of the board designated by the board for such purpose. In the discretion of the board, member or agent conducting the hearing, any other person may be allowed to intervene in the said proceeding and present testimony. Any scheduled hearing may be continued by the board, member or agent conducting the hearing upon its or his own motion or for good cause shown by any person thereto.

(c) All of the pertinent provisions of article five, chapter twenty-nine-a of this code shall apply to and
govern the hearing and the administrative procedures in connection with and following such hearing, with like effect as if the provisions of said article five were set forth in this subsection, with the following modifications or exceptions:

(1) Any such proceeding shall, so far as is practicable, be conducted in accordance with the rules of evidence as applied in civil cases in the circuit courts of this state; and

(2) The testimony taken by the board, member or agent conducting the hearing shall in every case be reduced to writing and filed with the board.

(d) For the purpose of conducting any such hearing any member of the board or agent designated to conduct such hearing shall have the power and authority to issue subpoenas and subpoenas duces tecum which shall be issued and served within the time, for the fees and shall be enforced, as specified in section one, article five of said chapter twenty-nine-a, and all of the said section one provisions dealing with subpoenas and subpoenas duces tecum shall apply to subpoenas and subpoenas duces tecum issued for the purpose of a hearing hereunder.

(e) Subsequent to the conclusion of the hearing, the board, in its discretion, may upon notice take further testimony or hear argument.

(f) If upon consideration of the record by the board, and upon a preponderance of the evidence, the board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the board shall state its findings of fact and conclusions of law and shall issue and cause to be served upon such person, by certified mail, return receipt requested, an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action including reinstatement of employees, with or without back pay, as will effectuate the purposes of this article. Such order may further require such person to make reports from time to time showing the extent to which such person has complied with the order. If upon the preponderance of
the evidence the board shall not be of opinion that the
person named in the complaint has engaged in or is
engaging in any such unfair labor practice, then the
board shall state its findings of fact and conclusions of
law and shall issue an order dismissing the said com-
plaint. No order of the board shall require the rein-
statement of any individual as an employee who has been
suspended or discharged, or the payment to him of any
back pay, if such individual was suspended or discharged
for cause.

(g) The decision of the board shall be final unless
reversed, vacated or modified upon judicial review there-
of in accordance with the provisions of subsection (h)
of this section.

(h) The board shall have power to petition the cir-
cuit court of any county wherein the unfair labor prac-
tice in question occurred, for the enforcement of such
order and for appropriate temporary relief or a restrain-
ing order. Any person aggrieved by a final order of the
board granting or denying in whole or in part the relief
sought may obtain a review of such order in the circuit
court of any county wherein the unfair labor practice in
question was alleged to have occurred, and such review
may be had only in such court notwithstanding the pro-
visions of section four, article five, chapter twenty-nine-a
of this code. Upon the filing of any such petition for en-
forcement or review, the court shall have jurisdiction
and power to grant such temporary relief or restraining
order as it deems just and to make and enter a decree
enforcing, modifying, and enforcing as so modified, or
setting aside in whole or in part, the order of the board.
Except as provided above in this subsection any petition
for review shall be governed by the provisions of section
four, article five, chapter twenty-nine-a of this code with
like effect as if the provisions of said section four were
set forth in this subsection (h).

(i) The board shall have the power, upon issuance of
a complaint as provided in subsection (b) of this sec-
tion charging that any person has engaged in or is en-
gaging in an unfair labor practice, to petition the cir-
cuit court of the county wherein the unfair labor prac-
(j) Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of subparagraphs (A), (B) or (C), subdivision (4), subsection (b), section four of this article, or subsection (e) of said section four or subdivision (7), subsection (b) of said section four, the preliminary investigation of such charge shall be made forthwith and given priority over all cases except cases of like character. If, after such investigation, the executive secretary of the board has reasonable cause to believe such charge is true and that a complaint should issue, he shall, on behalf of the board, petition the circuit court of any county wherein the unfair labor practice in question has occurred or is occurring, for appropriate temporary injunctive relief pending the final adjudication of the board with respect to such matter. Upon the filing of any such petition the circuit court shall have jurisdiction to grant such temporary injunctive relief or temporary restraining order as it deems just and proper.

(k) An appeal from any decision of a circuit court pursuant to this article may be had, notwithstanding the provisions of section one, article six, chapter twenty-nine-a of this code, by filing a petition for a writ of certiorari with the supreme court of appeals of West Virginia within sixty days of the date of entry of final order by the circuit court.

§21-1A-7. Suits by or against labor organizations.

(a) Suits for violation of contracts between an employer and a labor organization, or between labor organizations, may be brought in any circuit court of this state having jurisdiction of the parties.

(b) It shall be unlawful for any labor organization to engage in any activity or conduct defined as an unfair
7 labor practice in subdivision (4), subsection (b), section four of this article; and whoever shall be injured in his business or property by reason of any such violation may sue therefor in the circuit court of any county wherein such unfair labor practice occurred, and shall recover the damages by him sustained and the cost of the suit.

14 (c) Any labor organization and any employer shall be bound by the acts of its agents. Notwithstanding any other provision of law or rule to the contrary, any such labor organization may sue or be sued as an entity and in behalf of the employees whom it represents. Any money judgment against a labor organization in a suit under this section shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets.

15 (d) For the purposes of actions and proceedings by or against labor organizations, the circuit courts of this state shall be deemed to have jurisdiction of a labor organization in the county in which such organization maintains its principal offices, or in any county in which its duly authorized officers or agents are engaged in representing or acting for employee members.

17 (e) The service of summons, subpoena, or other legal process of any circuit court of this state upon an officer or agent of a labor organization, in his capacity as such, shall constitute service upon the labor organization.

§21-1A-8. Severability.

1 If any provision of this article, or the application of any provision to any person or circumstance, shall be held invalid, the remainder of this article, or the application of any such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

ARTICLE 1B. WEST VIRGINIA LABOR-MANAGEMENT RELATIONS BOARD.

§21-1B-1. West Virginia labor-management relations board created; members; appointment and vacancies; quorum; executive secretary; oath, compensation and expenses; meeting places and times.
§21-1B-1. West Virginia labor-management relations board created; members; appointment and vacancies; quorum; executive secretary; oath, compensation and expenses; meeting places and times.

(a) There is hereby created the "West Virginia Labor-Management Relations Board" (hereinafter called the "board") which shall consist of three members, appointed by the governor by and with the advice and consent of the Senate, for terms of five years and until their successors have been appointed and have qualified, except that the terms of the members first appointed shall be for three, four and five years, respectively, as designated by the governor at the time of their appointment, and until their successors have been appointed and have qualified. The governor shall designate one member to serve as chairman of the board. Not more than two of the members shall be members of the same political party. Vacancies shall be filled by appointment by the governor for the unexpired term of the member whose office shall be vacant and such appointment shall be made within sixty days of the occurrence of such vacancy. Notwithstanding the provisions of section four, article six, chapter six of this code, any member of the board may be removed by the governor for neglect of duty, gross immorality or malfeasance in office, but for no other cause.

(b) A vacancy on the board shall not impair the right of the remaining members to exercise all of the powers of the board, and two members of the board shall, at all times, constitute a quorum of the board, provided such two members be in agreement as to any action to be taken. Any member may be appointed any number of times.

(c) There shall be an executive secretary of the board who shall be an attorney licensed to practice law in this state, and who shall be appointed by the governor, by and with the advice and consent of the Senate, for a term of four years and until his successor has been appointed and has qualified. Any person may be appointed execu-
tive secretary any number of times. The executive secretary of the board shall have final authority, on behalf of the board, with respect to the investigation of charges and the issuance of complaints under section six, article one-a of this chapter and with respect to the prosecution of such complaints before the board, and shall have such other duties as the board may prescribe or as may hereafter be provided by law.

(d) Before entering upon the performance of his duties, each member of the board and the executive secretary shall take and subscribe to the oath prescribed by section five, article four of the constitution.

(e) Each member of the board shall be paid one hundred dollars per diem for actual time spent in the performances of his duties under article one-a of this chapter, under this article and under any other article of this chapter in which the board is expressly assigned responsibility, jurisdiction and duties to be exercised and performed. The executive secretary of the board shall receive an annual salary of twenty thousand dollars. The members of the board and the executive secretary shall be reimbursed for all reasonable and necessary expenses actually incurred in the discharge of their duties under said article one-a, this article and under any other article of this chapter in which such board and executive secretary are expressly assigned responsibility, jurisdiction and duties to be exercised and performed.

(f) The principal office of the board shall be in Charleston, Kanawha county, West Virginia, but it may meet and exercise any or all of its powers at any other place within this state. The board may meet as often as necessary to exercise and perform its responsibilities, jurisdiction and duties.

§21-1B-2. Employees.

The board shall have the authority to hire such attorneys admitted to practice law in this state and other employees as it may from time to time find necessary for the proper exercise and performance of its responsibilities, jurisdiction and duties. Any such attorneys so hired may, at the direction of the board, appear for and rep-
7 resent the board in any case in any court in which ad-
8 mitted to practice.

§21-1B-3. Rules and regulations.
1 The board shall have the authority from time to time
2 to make, amend and rescind such rules and regulations as
3 may be necessary to implement and carry out the pro-
4 visions of article one-a of this chapter, this article and
5 any other article of this chapter in which the board is
6 expressly assigned responsibility, jurisdiction and duties
7 to be exercised and performed, all such rules and regula-
8 tions to be promulgated pursuant to chapter twenty-
9 nine-a of this code.

CHAPTER 83

(House Bill No. 610—By Mr. Speaker, Mr. Boiarsky, and Mr. Kopp)

[Passed March 6, 1971; in effect July 1, 1971. Approved by the Governor.]

AN ACT to amend and reenact sections one, two, three, four
and seven, article five-c, chapter twenty-one of the code
of West Virginia, one thousand nine hundred thirty-one,
as amended, relating to minimum wages and maximum
hours for certain employees, definitions of terms, credit
for board and lodging, offenses and penalties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5C. MINIMUM WAGE AND MAXIMUM HOURS STAN-
DARDS FOR EMPLOYEES.

§21-5C-1. Definitions.
§21-5C-3. Maximum hours; overtime compensation.
§21-5C-4. Credits.
§21-5C-7. Offenses and penalties.

§21-5C-1. Definitions.
1 As used in this article:
2 (a) "Commissioner" means the commissioner of labor
3 or his duly authorized representatives.
(b) "Wage and hour director" means the wage and hour director appointed by the commissioner of labor as chief of the wage and hour division.

(c) "Wage" means compensation due an employee by reason of his employment.

(d) "Employ" means to hire or permit to work.

(e) "Employer" includes the state of West Virginia, its agencies, departments and all its political subdivisions, any individual, partnership, association, public or private corporation, or any person or group of persons acting directly or indirectly in the interest of any employer in relation to an employee; and who employs during any calendar week six or more employees as herein defined in any one separate, distinct and permanent location or business establishment: Provided, That the term "employer" shall not include any individual, partnership, association, corporation, person or group of persons or similar unit if eighty percent of the persons employed by him are subject to any federal act relating to minimum wage, maximum hours and overtime compensation.

(f) "Employee" includes any individual employed by an employer but shall not include: (1) Any individual employed by the United States; (2) any individual engaged in the activities of an educational, charitable, religious, fraternal or nonprofit organization where the employer-employee relationship does not in fact exist, or where the services rendered to such organizations are on a voluntary basis; (3) newsboys, shoeshine boys, golf caddies, pin boys and pin chasers in bowling lanes; (4) traveling salesmen and outside salesmen; (5) services performed by an individual in the employ of his parent, son, daughter or spouse; (6) any individual employed in a bona fide professional, executive or administrative capacity; (7) any person whose employment is for the purpose of on-the-job training; (8) any person having a physical or mental handicap so severe as to prevent his employment or employment training in any training or employment facility other than a nonprofit sheltered workshop; (9) any individual employed in a boys or girls summer camp; (10) any person sixty-two years of age or over who receives
old age or survivors benefits from the social security administration; (11) any individual employed in agriculture as the word agriculture is defined in the Fair Labor Standards Act of 1938, as amended; (12) any individual employed as a firefighter by the state or agency thereof; (13) ushers in theaters; (14) any individual employed on a part-time basis who is a student in any recognized school or college; (15) any individual employed by a local or interurban motorbus carrier; (16) so far as the maximum hours and overtime compensation provisions of this article are concerned, any salesman, partsman or mechanic primarily engaged in selling or servicing automobiles, trailers, trucks, farm implements, or aircraft if employed by a nonmanufacturing establishment primarily engaged in the business of selling such vehicles to ultimate purchasers; (17) any employee with respect to whom the United States Department of Transportation has statutory authority to establish qualifications and maximum hours of service.

(g) "Workweek" means a regularly recurring period of one hundred sixty-eight hours in the form of seven consecutive twenty-four-hour periods, need not coincide with the calendar week, and may begin any day of the calendar week and any hour of the day.

(h) "Hours worked", in determining for the purposes of sections two and three of this article, the hours for which an employee is employed, there shall be excluded any time spent in changing clothes or washing at the beginning or end of each workday, time spent in walking, riding or traveling to and from the actual place of performance of the principal activity or activities which such employee is employed to perform and activities which are preliminary to or postliminary to said principal activity or activities, subject to such exceptions as the commissioner may by rules and regulations define.


1 On and after the first day of July, one thousand nine hundred seventy-one, and until the thirtieth day of June,
LABOR

§21-5C-3. Maximum hours; overtime compensation.

(a) On and after January one, one thousand nine hundred sixty-seven, no employer shall employ any of his employees for a workweek longer than forty-eight hours, unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed.

(b) As used in this section the "regular rate" at which an employee is employed shall be deemed to include all remuneration for employment paid to, or on behalf of, the employee, but shall not be deemed to include:

(1) Sums paid as gifts; payments in the nature of gifts made at Christmas time or on other special occasions, as a reward for service, the amounts of which are not measured by or dependent on hours worked, production, or efficiency;

(2) Payments made for occasional periods when no work is performed due to vacation, holiday, illness, failure of the employer to provide sufficient work, or other similar cause; reasonable payments for traveling expenses, or other expenses, incurred by an employee in the furtherance of his employer's interests and properly reimbursable by the employer, and other similar payments to an employee which are not made as compensation for his hours of employment;
(3) Sums paid in recognition of services performed during a given period if either, (a) both the fact that payment is to be made and the amount of the payment are determined at the sole discretion of the employer at or near the end of the period and not pursuant to any prior contract, agreement, or promise causing the employee to expect such payments regularly; or (b) the payments are made pursuant to a bona fide profit-sharing plan or trust or bona fide thrift or savings plan, meeting the requirements of the commissioner set forth in appropriate regulation which he shall issue, having due regard among other relevant factors, to the extent to which the amounts paid to the employee are determined without regard to hours of work, production, or efficiency; or (c) the payments are talent fees (as such talent fees are defined and delimited by regulations of the commissioner) paid to performers, including announcers, on radio and television programs;

(4) Contributions irrevocably made by an employer to a trustee or third person pursuant to a bona fide plan for providing old-age, retirement, life, accident, or health insurance or similar benefits for employees;

(5) Extra compensation provided by a premium rate paid for certain hours worked by the employee in any day or workweek because such hours are hours worked in excess of eight in a day or in excess of the maximum workweek applicable to such employee under subsection (a) or in excess of the employee's normal working hours or regular working hours, as the case may be;

(6) Extra compensation provided by a premium rate paid for work by the employee on Saturdays, Sundays, holidays, or regular days of rest, or on the sixth or seventh day of the workweek, where such premium rate is not less than one and one-half times the rate established in good faith for like work performed in nonovertime hours on other days; or

(7) Extra compensation provided by a premium rate paid to the employee, in pursuance of an applicable employment contract or collective-bargaining agreement, for work outside of the hours established in good faith by the contract or agreement as the basic, normal, or
regular workweek where such premium rate is not less than one and one-half times the rate established in good faith by the contract or agreement for like work performed during such workweek.

(c) No employer shall be deemed to have violated subsection (a) by employing any employee for a workweek in excess of the maximum workweek applicable to such employee under subsection (a) if such employee is employed pursuant to a bona fide individual contract, or pursuant to an agreement made as a result of collective bargaining by representatives of employees, if the duties of such employee necessitate irregular hours of work, and the contract or agreement (1) specifies a regular rate of pay of not less than the minimum hourly rate provided in section two and compensation at not less than one and one-half times such rate for all hours worked in excess of such maximum workweek, and (2) provides a weekly guaranty of pay for not more than sixty hours based on the rates so specified.

(d) No employer shall be deemed to have violated subsection (a) by employing any employee for a workweek in excess of the maximum workweek applicable to such employee under such subsection if, pursuant to an agreement or understanding arrived at between the employer and the employee before performance of the work, the amount paid to the employee for the number of hours worked by him in such workweek in excess of the maximum workweek applicable to such employee under such subsection:

(1) In the case of an employee employed at piece rates, is computed at piece rates not less than one and one-half times the bona fide piece rates applicable to the same work when performed during nonovertime hours; or

(2) In the case of an employee performing two or more kinds of work for which different hourly or piece rates have been established, is computed at rates not less than one and one-half times such bona fide rates applicable to the same work when performed during nonovertime hours; or

(3) Is computed at a rate not less than one and one-
half times the rate established by such agreement or understanding as the basic rate to be used in computing overtime compensation thereunder: Provided, That the rate so established shall be authorized by regulation by the commissioner as being substantially equivalent to the average hourly earnings of the employee, exclusive of overtime premiums, in the particular work over a representative period of time; and if (i) the employee's average hourly earnings for the workweek exclusive of payments described in subdivisions (1) through (7) of subsection (b) are not less than the minimum hourly rate required by applicable law, and (ii) extra overtime compensation is properly computed and paid on other forms of additional pay required to be included in computing the regular rate.

(e) Extra compensation paid as described in subdivisions (5), (6) and (7) of subsection (b) shall be creditable toward overtime compensation payable pursuant to this section.

§21-5C-4. Credits.
In determining whether an employer is paying an employee wages and overtime compensation as provided in sections two and three of this article, there shall be provided in accordance with the regulations which shall be promulgated by the commissioner a credit of twenty-five cents an hour for an employee customarily receiving gratuities, and a reasonable credit for board and lodging furnished to an employee. The commissioner shall promulgate regulations relating to maximum allowances to employers for room and board furnished to employees.

§21-5C-7. Offenses and penalties.
(a) Any employer who wilfully discharges or in any manner wilfully discriminates against any employee because such employee has made complaint to his employer, or to the commissioner, that he has not been paid wages in accordance with the wage and hour provisions of this article, or because such employee has instituted or is about to institute any civil action, or file any petition or criminal complaint against the employer by reason
9 of the provisions of this article, or because such em-
10 ployee has testified or is about to testify in any ad-
11 ministrative proceeding, civil action, or criminal action
12 under this article, shall be guilty of a misdemeanor, and,
13 upon conviction thereof, shall be fined not less than one
14 hundred dollars nor more than five hundred dollars.
15 (b) Any employer, labor organization, employee, or
16 other person, alone or in concert, who in any manner
17 wilfully discriminates against any person with respect
18 to wages, hours of work or overtime compensation be-
19 cause of race, religion, color, national origin, ancestry,
20 age or sex, shall be guilty of a misdemeanor, and, upon
21 conviction thereof, shall be fined not less than two hun-
22 dred and fifty nor more than one thousand dollars, or
23 imprisoned in the county jail for not more than one
24 year, or both fined and imprisoned.
25 (c) Any employer who wilfully violates any other
26 provision of this article shall be guilty of a misdemeanor,
27 and, upon conviction thereof, shall be fined not more
28 than one hundred dollars.

CHAPTER 84
(Senate Bill No. 3—By Mr. Holliday)

[Passed February 1, 1971; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article two, chap-
ter two of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, relating to dates of legal
holidays and official acts or court proceedings thereon.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. LEGAL HOLIDAYS; CONSTRUCTION OF STATUTES;
DEFINITIONS.

§2-2-1. Legal holidays; official acts or court proceedings.

1 The following days shall be regarded, treated and
observed as legal holidays, viz: The first day of January, commonly called “New Year’s Day”; the twelfth day of February, commonly called “Lincoln’s Birthday”; the third Monday of February, commonly called “Washington’s Birthday”; the last Monday of May, commonly called “Memorial Day”; the twentieth day of June, commonly called “West Virginia Day”; the fourth day of July, commonly called “Independence Day”; the first Monday of September, commonly called “Labor Day”; the second Monday of October, commonly called “Columbus Day”; the fourth Monday of October, commonly called “Veterans Day”; the fourth Thursday of November, commonly called “Thanksgiving Day”; the twenty-fifth day of December, commonly called “Christmas Day”; any national, state or other election day throughout the district or municipality wherein held; and all days that may be appointed or recommended by the governor of this state, or the president of the United States, as days of thanksgiving, or for the general cessation of business; and when any of said days or dates falls on Sunday, then it shall be lawful to observe the succeeding Monday as such holiday. When the return day of any summons or other court proceedings or any notice or time fixed for holding any court or doing any official act shall fall on any of said holidays, the ensuing secular day shall be taken as meant and intended: Provided, however, That nothing herein contained shall increase nor diminish the legal school holidays provided for in chapter eighteen-a, article five, section two.

CHAPTER 85

(Senate Bill No. 214—By Mr. Moreland)

[Passed February 26, 1971; in effect ninety days from passage. Became a law without the approval of the Governor.]

AN ACT to amend article one, chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amend-
ed, by adding thereto a new section, designated section twenty, relating to acquisition of space within the capitol building for the Legislature and providing for use thereof.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. OFFICERS, MEMBERS AND EMPLOYEES; APPROPRIATIONS; INVESTIGATIONS; DISPLAY OF FLAGS; RECORDS; USE OF CAPITOL BUILDING.

§4-1-20. Legislative findings; space in capitol building for use by Legislature.

1. (a) The Legislature hereby recognizes that in December, one thousand nine hundred sixty-eight, the citizens advisory commission on the Legislature of West Virginia concluded its study for strengthening the West Virginia Legislature; that such commission recommended that the capitol building be utilized primarily for the space needs of the Legislature and that certain executive department offices be moved outside of the capitol building as necessary to provide the Legislature with the space it requires; and that these recommendations were based upon the following observations and conclusions of such commission: (1) There are fifteen committees in the Senate which consider legislation and twelve committees in the House of Delegates which consider legislation, (2) the rules committee of the Senate meets in the office of the president of the Senate and the rules committee of the House of Delegates meets in the office of the speaker of the House of Delegates, (3) the remaining fourteen committees of the Senate share three permanent committee rooms, (4) the remaining eleven committees of the House of Delegates share five permanent committee rooms, (5) the Legislature does not have a hearing room or a committee room large enough to accommodate large public hearings, (6) when any large public hearing is held, the chamber of the Senate or the House of Delegates must be
used, thereby eliminating the desks of the members on the floor of the chamber as work space for members not involved in the public hearing, (7) there are no rooms available in which individual members of the Legislature may talk with their constituents, (8) that at the very least offices should be provided for individual members of the Legislature to be used on a shared basis, (9) there is a pressing need for additional permanent committee rooms, with the view that in time all legislative committees which consider legislation would be assigned individual committee rooms, (10) that at least during legislative sessions, all committee chairmen should be provided, if possible, with a private office, and if not possible, with offices on a shared basis, (11) there should be adequate office space for the staff of the Senate and House of Delegates, and (12) the Legislature should have at least one hearing room, sufficiently large to seat one hundred fifty persons in addition to a legislative committee of twenty-five persons. The Legislature hereby determines and finds that the recommendations of the citizens advisory commission on the Legislature of West Virginia with respect to the space needs of the Legislature and the observations and conclusions of such commission upon which such recommendations were based are correct and proper. The remainder of this section is enacted to implement the recommendations of the commission in this regard.

(b) The Legislature shall continue to have the exclusive use of all of the space in the main unit of the capitol building above the ground floor, the main unit being that portion of the capitol building connecting the east and west wings. In addition, the following space in the capitol building is assigned to and set aside for the exclusive use of the Legislature, with the use thereof to be determined by the joint committee on government and finance:

(1) All of the space on the second floor of the east wing of the capitol building; and

(2) All of the space on the second floor of the west
wing of the capitol building, except that room designated
and numbered W-212 and the large vault used and occu-
plied by the land division of the state auditor's office,
which said room W-212 and said vault shall continue to
be used and occupied by the office of the state auditor.
The additional space for the Legislature provided for in
subdivisions (1) and (2) of this subsection shall be made
available to the Legislature as soon as possible, but shall
in any event be made available for occupancy by the
Legislature not later than July one, one thousand nine
hundred seventy-two.

(c) As soon as the additional space provided for in
subsection (b) of this section is made available for occu-
pancy by the Legislature, then (1) the rooms designated
and numbered E-126, E-128, E-130, E-132, E-134, E-136
and E-138 on the ground floor of the east wing of the
capitol building and the rooms designated and numbered
E-140, 28, 30 and 32 on the ground floor of the main unit
of the capitol building and occupied by the office of
legislative services on the effective date of this section
shall be relinquished by the Legislature for occupancy
by the executive branch of the state government, and
(2) as a substitute for the space on the second floor of
the west wing vacated by the state auditor, and in order
to insure adequate space for the office of the state auditor,
a constitutional officer, all of the ground floor of the west
wing of the capitol building (except the rooms designated
and numbered W-129, W-131, W-133, W-135, W-137, W-139,
W-141, W-148, W-150, W-152, W-154, W-156 and W-158
and except for the space occupied on the effective date
of this section by the office of the department of public
institutions) shall be assigned to and set aside for the
exclusive use of the state auditor.

(d) If any provision of this section or the application
thereof to any person or circumstance is held unconstitu-
tional or invalid, such unconstitutionality or invalidity
shall not affect other provisions or applications of the
section, and to this end the provisions of this section are
declared to be severable.
CHAPTER 86

(Senate Bill No. 326—By Mr. McCourt, Mr. President, and Mr. Carrigan)

[Passed February 12, 1971; in effect from passage. Approved by the Governor.]

AN ACT to amend chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article two-a, relating to compensation for and expenses of members of the Legislature.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2A. COMPENSATION FOR AND EXPENSES OF MEMBERS OF THE LEGISLATURE.

PART I. GENERAL.

§4-2A-1. Implementation of resolutions of citizens legislative compensation commission; definition.

PART II. COMPENSATION.

§4-2A-2. Basic compensation for services; proration.

§4-2A-3. Compensation for members of the Legislature during any extraordinary session.

§4-2A-4. Additional compensation for president of Senate and speaker of House of Delegates.

§4-2A-5. Interim compensation for members of joint committee on government and finance and commission on interstate cooperation.

PART III. EXPENSES.

§4-2A-6. Travel expenses.

§4-2A-7. Reimbursement for expenses incurred during any session.

§4-2A-8. Interim expenses.


§4-2A-10. Affidavits required; approval by legislative auditor of vouchers; rules authorized.

PART I. GENERAL.

§4-2A-1. Implementation of resolutions of citizens legislative compensation commission; definition.

1 The purpose of this article is to implement from time to time the resolutions submitted by the citizens legis-
3 legislative compensation commission created by section thirty-three, article six of the West Virginia constitution. For the purposes of this article, the term "regular session" shall include any extension of a regular session of the Legislature.

PART II. COMPENSATION.

§4-2A-2. Basic compensation for services; proration.

(a) Each member of the Legislature shall receive as compensation for his services the sum of three thousand three hundred dollars per calendar year. For the year one thousand nine hundred seventy-one, said sum shall be payable to each member as soon as possible after the effective date of this article.

(b) Beginning in the year one thousand nine hundred seventy-two and each year thereafter, said sum shall be payable twice a month during each regular session of the Legislature, without regard to any extension of such regular session. In the event of the death, resignation or removal of a member of the Legislature during the regular session of the Legislature in the year one thousand nine hundred seventy-two or in any year thereafter and the appointment and qualification of his successor during any such regular session, the compensation provided for in this section shall be prorated between the original member and his successor on the basis of the number of days served (including Saturdays and Sundays) as a member of the Legislature by each during said regular session.

(c) In the event of the death, resignation or removal of a member of the Legislature and the appointment and qualification of his successor subsequent to the regular session of the Legislature held in the calendar year in which such successor was appointed and qualified, none of the compensation provided for in this section shall be paid to such successor.

§4-2A-3. Compensation for members of the Legislature during any extraordinary session.

Each member of the Legislature shall receive, in addition to the basic compensation provided for in section
two of this article, additional compensation of thirty-
five dollars per day for each day served during any
extraordinary session of the Legislature, including Satur-
days and Sundays. Such additional compensation shall
be paid from time to time during any such extraordinary
session, as may be prescribed by rules established by the
legislative auditor.

§4-2A-4. Additional compensation for president of Senate and
speaker of House of Delegates.

In addition to the basic and additional compensation
provided for in sections two and three of this article,
the president of the Senate and the speaker of the House
of Delegates shall each receive additional compensation of
fifteen dollars per day for each day served during any
regular or extraordinary session as presiding officer, in-
cluding Saturdays and Sundays. Such presiding officer
compensation shall be paid from time to time during any
such session, as may be prescribed by rules established
by the legislative auditor.

§4-2A-5. Interim compensation for members of joint committee
on government and finance and commission on
interstate cooperation.

In addition to the basic and any additional and pre-
siding officer compensation provided for in sections two,
three and four of this article, each member of the joint
committee on government and finance and the commission
on interstate cooperation shall receive interim compensa-
tion of thirty-five dollars per day for each day actually
engaged in the performance of interim duties as a mem-
er of either such committee or commission between
regular sessions of the Legislature: Provided, That not
more than twenty-eight members of both such committee
and commission shall be entitled to receive the interim
compensation authorized in this section, and the total
additional interim compensation payable to any such
member and his replacement, if any, on such committee
or commission under the provisions of this section shall
not exceed the sum of one thousand fifty dollars per
calendar year.
PART III. EXPENSES.

§4-2A-6. Travel expenses.

1 Each member of the Legislature shall be entitled to be reimbursed, upon submission of an expense voucher, for expenses incurred incident to travel in the performance of his duties as a member of the Legislature or any committee of the Legislature, whether such committee is operating under general law or resolution, including, but not limited to, attendance at party caucuses held in advance of the date of the assembly of the Legislature in regular session in odd-numbered years for the purpose of selecting candidates for officers of the two houses, at the rate of ten cents per mile for the most direct usually traveled route, if travel is by private automobile, or for actual transportation costs for direct route travel, if travel is by public carrier, or for any combination of such means of transportation actually used, plus the cost of necessary taxi or limousine service, tolls and parking fees in connection therewith, but during any regular or extraordinary session, travel expenses shall not be paid to any member for more than one round trip to and from the seat of government and to and from his place of residence for each week of any such session.

§4-2A-7. Reimbursement for expenses incurred during any session.

1 In addition to reimbursement for any travel expenses, as provided for in section six of this article, each member of the Legislature shall also be entitled to be reimbursed, upon submission of an expense voucher therefore, for all reasonable and necessary expenses actually incurred in connection with any regular or extraordinary session of the Legislature, but the total of any and all such reimbursed expenses, exclusive of reimbursement for any such travel expenses as aforesaid, shall not exceed lodging expenses of fifteen dollars per day or one hundred five dollars per week and meal and miscellaneous expenses of ten dollars per day or seventy dollars per week. A receipt for the amount paid for lodging shall be submitted with the expense voucher,
but a receipt shall not be required to be submitted with
any such expense voucher for meal and miscellaneous
expenses. In lieu of reimbursement for lodging ex-
penses pursuant to the provisions of this section, any
member of the Legislature shall be entitled to be re-
imbursed, upon submission of an expense voucher, for
expenses incurred incident to daily travel to and from
his place of residence and to and from the seat of gov-
ernment at a rate of ten cents per mile for the most
direct usually traveled route, but the total of such daily
travel expenses shall not exceed fifteen dollars per day.

§4-2A-8. Interim expenses.

In addition to any travel expenses and any such reim-
bursements for any and all such session expenses as
provided for in sections six and seven of this article,
each member of the Legislature serving as a member
of any committee of the Legislature established by and
operating under general law and designated for the
performance of interim assignments by the Legislature
or otherwise duly authorized to perform interim assign-
ments between regular sessions of the Legislature shall
also be entitled to be reimbursed, upon submission of
an expense voucher therefor, for all reasonable and nec-
essary expenses actually incurred incident to the per-
formance of duties as a member of any such committee,
but the total of any and all such reimbursed interim
expenses, exclusive of reimbursement for any such travel
and session expenses as aforesaid, shall not under any
circumstances exceed lodging expenses of fifteen dollars
per day or meal and miscellaneous expenses of ten dol-
ars per day for each day actually engaged in the per-
formance of interim duties as a member of any such
committee. A receipt for the amount paid for lodging
shall be submitted with the expense voucher, but a
receipt shall not be required to be submitted with any
such expense voucher for meal and miscellaneous
expenses.


In addition to reimbursement for travel expenses as
authorized in section six of this article, each member
of the Legislature traveling from West Virginia to an out-of-state point or points and return incident to the performance of his duties as a member of the Legislature or any committee of the Legislature, whether such committee is operating under general law or resolution, shall be entitled to be reimbursed, upon submission of an expense voucher therefor, at a rate not to exceed thirty-five dollars per day in lieu of actual and necessary expenses for lodging and meals. No receipts shall be required to be submitted with any such expense voucher.

§4-2A-10. Affidavits required; approval by legislative auditor of vouchers; rules authorized.

Any expense voucher submitted pursuant to the provisions of sections six, seven, eight or nine of this article must be verified by the affidavit of the member incurring such expense and all such expense vouchers shall be approved by the legislative auditor prior to submission for payment.

The legislative auditor is hereby authorized to adopt such rules as may be necessary to implement or effectuate the provisions of this article.

CHAPTER 87
(Senate Bill No. 353—By Mr. Brotherton and Mr. Carrigan)

[Passed March 11, 1971; in effect from passage. Approved by the Governor.]

AN ACT to amend chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article five, relating to making the purchasing practices and procedures commission a statutory body; relating to its composition and its general powers, duties and responsibilities; specifically authorizing the commission to sit during any recess of the Senate and House of Delegates; granting the commission the power and authority to subpoena and
compel the attendance of witnesses and the production of books, records, documents, papers and any other tangible thing; authorizing judicial enforcement of any subpoena issued by the commission; and relating to the compensation and expenses of members of the commission and all expenses of the commission.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. PURCHASING PRACTICES AND PROCEDURES COMMISSION.

§4-5-1. Commission continued as statutory body; composition; appointment and terms of members.

§4-5-2. Powers and duties generally.

§4-5-3. Executive sessions; hearings; subpoena power; enforcement provisions.

§4-5-4. Compensation and expenses of members; other expenses; how paid; joint committee approval.

§4-5-1. Commission continued as statutory body; composition; appointment and terms of members.

1 The purchasing practices and procedures commission, heretofore existing under a concurrent resolution of the Senate and House of Delegates, is hereby continued as a statutory body. The commission shall continue to be 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, 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. The commission shall be headed by two cochairmen, one to be selected by and from the members appointed from the Senate, and one to be selected by and from the members appointed from the House of Delegates. All members of the commission shall serve until their successors shall have been appointed as heretofore provided.

§4-5-2. Powers and duties generally.

1 The purchasing practices and procedures commission shall have the power, duty and responsibility to:
(1) Conduct a comprehensive and detailed investigation into the purchasing practices and procedures of the state;

(2) Determine if there is reason to believe that the laws or public policy of the state in connection with purchasing practices and procedures have been violated or are inadequate;

(3) Determine if any criminal or civil statutes relating to the purchasing practices and procedures in this state are necessary to protect and control the expenditures of money by the state;

(4) Determine whether to recommend (a) criminal prosecution for any violations of law or (b) the institution of any civil action for the recoupment of moneys paid to vendors in violation of law or (c) both such criminal prosecution and civil action; and

(5) Make such written reports to the members of the Legislature between sessions thereof as the commission may deem advisable and on the first day of each regular session of the Legislature make an annual report to the Legislature containing the commission's findings and recommendations including in such report drafts of any proposed legislation which it deems necessary to carry such recommendations into effect.

The commission is also expressly empowered and authorized to:

(1) Sit during any recess of the Senate and House of Delegates;

(2) Recommend to the judge of any circuit court or of any court of record having criminal jurisdiction that a grand jury be convened pursuant to the provisions of section fourteen, article two, chapter fifty-two of this code, to consider any matter which the commission may deem in the public interest, and in support thereof make available to such court and such grand jury the contents of any reports, files, transcripts of hearings or other evidence pertinent thereto;

(3) Employ such legal, technical, investigative, clerical, stenographic, advisory and other personnel as it deems needed and, within the appropriation herein speci-
43 fied, fix reasonable compensation of such persons and firms
44 as may be employed;
45 (4) Consult and confer with all persons and agencies, public (whether federal, state or local) and private, that have information and data pertinent to an investigation; and all state and local governmental personnel and agencies shall cooperate to the fullest extent with the commission; and
51 (5) Call upon any department or agency of state or local government for such services, information and assistance as it may deem advisable.

§4-5-3. Executive sessions; hearings; subpoena power; enforcement provisions.
1. The commission shall have the power and authority to hold executive sessions for the purpose of establishing business, policy, an agenda and the interrogation of a witness or witnesses: Provided, That if a witness desires a public or open hearing he shall have the right to demand the same and shall not be heard otherwise: Provided, however, That if a witness desires a hearing in an executive session, he shall have the right to demand the same and shall not be heard otherwise. However, members of the staff of the commission may be permitted to attend executive sessions with permission of the commission.
13 The commission is hereby empowered and authorized to examine witnesses and to subpoena such persons and books, records, documents, papers or any other tangible things as it believes should be examined to make a complete investigation. All witnesses appearing before the commission shall testify under oath or affirmation, and any member of the commission may administer oaths or affirmations to such witnesses. To compel the attendance of witnesses at such hearings or the production of any books, records, documents, papers or any other tangible thing, the commission is hereby empowered and authorized to issue subpoenas, signed by one of the cochairmen, in accordance with section five, article one, chapter four of this code. Such subpoenas shall be served by
any person authorized by law to serve and execute legal
process and service shall be made without charge. Wit-
nesses subpoenaed to attend hearings shall be allowed
the same mileage and per diem as is allowed witnesses
before any petit jury in this state.

If any person subpoenaed to appear at any hearing
shall refuse to appear or to answer inquiries there pro-
pounded, or shall fail or refuse to produce books, records,
documents, papers or any other tangible thing within his
control when the same are demanded, the commission
shall report the facts to the circuit court of Kanawha
county or any other court of competent jurisdiction and
such court may compel obedience to the subpoena as
though such subpoena had been issued by such court in
the first instance.

§4-5-4. Compensation and expenses of members; other ex-
penses; how paid; joint committee approval.
1. The members of the commission shall receive travel,
interim and out-of-state expenses, as authorized in sec-
tions six, eight and nine, article two-a, chapter four of
this code. Such expenses and all other expenses including
those incurred in the employment of legal, technical, in-
vestigative, clerical, stenographic, advisory and other
personnel shall be paid from the appropriation under
“Account No. 103 for Joint Expenses,” but no expense
of any kind whatever shall be incurred unless the approval
of the joint committee on government and finance there-
for is first had and obtained by the commission.

CHAPTER 88
(Senate Bill No. 176—By Mr. McCourt, Mr. President, and Mr. Carrigan)

[Passed March 13, 1971; in effect ninety days from passage. Approved by the
Governor.]

AN ACT to amend and reenact section eleven, article one-a,
chapter twenty-seven of the code of West Virginia, one
thousand nine hundred thirty-one, as amended, relating
to designation, powers and duties of a division on alcoholism and drug abuse within the department of mental health; definitions of terms.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1A. DEPARTMENT OF MENTAL HEALTH.

§27-1A-11. Division on alcoholism and drug abuse; powers and duties; definitions.

1 The division on alcoholism, heretofore established in the department of mental health, shall continue and be known as the division on alcoholism and drug abuse.

2 The supervisor and personnel of this division shall assist the director of the department in the establishment of a program for the care, treatment, and rehabilitation of alcoholics and drug abusers; for research into the causes, prevention, and treatment of alcoholism and drug abuse; for the training of personnel to work with alcoholics and drug abusers; and for the education of the public concerning alcoholism and drug abuse.

3 The department's program for the care, treatment, and rehabilitation of alcoholics and drug abusers may include, when intended for such purposes, the establishment of special clinics or wards within, attached to, or upon the grounds of one or more of the state hospitals under the control of the department of mental health; the acquisition in the name of the department of real and personal property and the construction of buildings and other facilities; the leasing of suitable clinics, hospitals, or other facilities; and the utilization, through contracts or otherwise, of the available services and assistance of any professional or nonprofessional persons, groups, organizations or institutions in the development, promotion and conduct of the department's program.

4 Neither the department of mental health nor the division on alcoholism and drug abuse shall be required to accept any alcoholic or drug abuser voluntarily seeking hospitalization for clinical or hospital care, treatment,
or rehabilitation; but the department may accept, pur-
suant to its adopted and promulgated rules and regu-
lations, responsibility for clinical or hospital care, treat-
ment, or rehabilitation of any alcoholic or drug abuser
through arrangements made voluntarily with the de-
partment by him or some person acting in his behalf:

*Provided,* That any such person accepted by the de-
partment on a voluntary basis shall be charged a mini-
mum fee unless he shows, to the satisfaction of the de-
partment, that he is unable to pay the fee.

The department shall accept all alcoholics and drug
abusers committed by a county mental hygiene com-
mission in accordance with the procedure of article
six of this chapter; but notwithstanding any provision
in said article six which may be to the contrary, the
supervisor of the division on alcoholism and drug abuse
may, in his discretion, specify the clinic or hospital to
which the alcoholic or drug abuser shall be committed.

The department's program of research into the causes,
prevention, and treatment of alcoholism and drug abuse
may include the utilization, through contracts or other-
wise, of the available services and assistance of any pro-
fessional or nonprofessional persons, groups, organizations
or institutions, as well as cooperation with private and
public agencies engaged in research in alcoholism or
drug abuse or rehabilitation of alcoholics or drug abusers.

The department's programs shall also provide for the
training of personnel to work with alcoholics and drug
abusers and the informing of the public as well as in-
terested groups and persons concerning alcoholism and
drug abuse and the prevention and treatment thereof.

The department may employ such medical, psychi-
atric, psychological, secretarial and other assistance as
may be necessary to carry out the provisions of this
section.

As used in this section:

(a) "Alcoholic" shall mean any person who chroni-
cally and habitually uses alcoholic beverages to the extent
that he has lost the power of self-control as to the use
of such beverages, or, while chronically and habitually
under the influence of alcoholic beverages, endangers public morals, health, safety or welfare.

(b) "Alcoholism" shall mean the condition of abnormal behavior or illness resulting directly or indirectly from the chronic and habitual use of alcoholic beverages.

(c) "Drug abuser" shall mean a person who is in a state of psychic or physical dependence, or both, arising from the administration of any controlled substance, as that term is defined in chapter sixty-a of this code, on a continuous basis.

(d) "Drug abuse" shall mean the use of any controlled substance, as that term is defined in said chapter sixty-a, until such time as the user has become dependent upon or addicted to the same.

CHAPTER 89

(House Bill No. 708—By Mr. Speaker, Mr. Boiarisky, and Mr. Seibert)

[Passed March 13, 1971; in effect July 1, 1971. Approved by the Governor.]

AN ACT to amend and reenact articles one and two, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to mines and minerals and the administration and enforcement of the laws pertaining to mines and minerals; defining various terms; providing for a state department of mines; providing for a director of the department of mines, his appointment and term of office; providing for the powers and duties of said director; specifying the eligibility requirements for said director, and specifying his salary; prescribing an oath of office and requiring bond for said director; providing for selection, serving, and removal of mine inspectors, dividing the state into districts and divisions, and providing for the employment, tenure, oath of office and bond required of mine inspectors; providing for the employment of mine safety instructors, and specifying qualifications, and providing for the employ-
ment, compensation, tenure, oath of office and bond required of mine safety instructors; providing for the appointing of mine inspectors to appointive positions within the department of mines, and providing that permanent tenure benefits are not affected; providing for the employment of electrical inspectors, and specifying the qualifications, and providing for salary and expenses, tenure, oath of office, and bond required of electrical inspectors; specifying eligibility requirements for appointment, and qualifications for appointment, and providing for salary, expenses and removal of mine inspectors; providing for a mine inspectors' examining board and specifying salary and expenses and meetings and duties of said board; authorizing the director and inspectors to enter mines, providing for the duties of inspectors to examine mines, providing for the duties of inspectors to examine mines with no advance notice, and providing for reports after fatal accidents; providing for the making and issuing of findings, orders and notices; providing for the duties of mine electrical inspectors, and providing for findings and orders by such inspectors; providing for review of orders by the director; providing for posting of notices, orders, and decisions of mine offices; providing for judicial review of orders and decisions of the director; authorizing the director to institute actions, including injunctions; providing civil penalties and criminal penalties for violations; prohibiting discharge of and discrimination against miners; requiring operators to keep records and make reports; providing for a mine foreman examiner and salary of said examiner; providing for the duties of said examiner; providing for the place and time of examinations; providing for the preparation of examinations; providing for notification and appearance before said examiner; providing for certificates of qualification; providing for distribution of certificates of qualification; providing for a record of such examinations; providing for the withdrawal of certification; creating a board of appeals and prescribing its duties, powers, compensation, expenses and oath of office; authorizing the purchase of mine rescue stations and equipment; authorizing the employment of mine rescue crews and
prescribing their training, compensation and qualifications; providing for mine rescue teams; providing severability clause; relating to mine maps and surveying; requiring plans for ventilation and approval by the director; specifying safety standards for ventilation of mines in general; providing for sealing or ventilating of unused and abandoned parts of mine; relating to the movement of equipment; relating to the employment of mine foremen and specifying qualifications; providing for duties of mine foreman concerning ventilation, loose coal, slate or rock, props, drainage of water and man doors; relating to haulage roads; relating to signals on haulways, lights at mouth and bottom of shaft and operation of cages; relating to boreholes; providing for instruction of employees, annual examinations of persons using flame safety lamps, and providing for records of such examinations; relating to daily inspection of working places and records; relating to safety inspections and gas; relating to dangerous places; relating to examinations of reports of fire bosses; relating to the ascertainment, record and removal of all dangers; relating to notifying of the operator when unable to comply with the law, and duty of the operator; providing for successor of a mine foreman; relating to employment and qualification of fire boss; prescribing duties of fire boss; providing that fire boss to have no superior officers; making it unlawful to enter mine until fire boss reports it safe, with certain exceptions; relating to other duties of fire boss; relating to coal dust and rock dust; relating to roof, face and ribs; requiring operators to carry out roof control programs and plans; specifying safety standards for roof support, roof bolt recovery and mining methods; providing for canopies and cabs and electric face equipment; relating to explosives and blasting; requiring use of authorized explosives and making it unlawful to store or use unauthorized explosives; relating to surface magazines for explosives; specifying safety standards for transportation of explosives; specifying safety standards for underground storage of explosives; specifying safety standards for preparation of shots and blasting practices; specifying safety standards in the event of misfires of
explosives; specifying safety standards for other blasting devices; relating to hoisting; specifying safety standards for hoisting machinery, telephones, safety devices, hoisting engineers, and drum runners; relating to transportation; specifying safety standards for transportation, haulage roads and equipment, shelter holes, signals and inspection and prohibiting certain practices, specifying safety standards for transportation of men by cars, self-propelled equipment and belts; specifying safety standards for belt conveyor and installation and maintenance thereof; relating to electricity generally; specifying safety standards concerning bonding track used as a power conductor; specifying safety standards concerning telephone service or communication facilities; specifying safety standards for electric equipment in gassy mines; specifying safety standards for electric hand held tools; specifying safety standards for illumination; specifying safety standards for welding and cutting; relating to maintenance of face equipment; relating to control of dust and other inhalation hazards; relating to safeguards for mechanical equipment; relating to dust-tight electrical equipment dust control repairs, welding, handrails and toeboards; relating to housekeeping; relating to lamphouses; prohibiting smoking in and around surface structures; relating to miscellaneous safety provisions and requirements; providing for duties of persons subject to article and rules and regulations for operators; relating to protective clothing; providing for checking systems of identification of men; prohibiting acts endangering security of mine, and requiring search for intoxicants and matches; relating to fire protection; relating to first-aid equipment; providing for accessible outlets and safe roadways for emergencies; relating to coal storage bins, recovery tunnels and coal storage piles; relating to thermal coal dryers and plants; relating to opening and reopening of mines, approval fees, extension of certificate of approval; providing for nontransferability of certificates and requiring that provisions of this section be printed on certificates; relating to sealing of permanently closed or abandoned mines; relating to mining close to abandoned workings; providing for investi-
igation by department of mines in event of explosion or accident; providing for written report of accidents; providing for preservation of evidence at scene of accident; providing for notification of director and district mine inspector in event of fire in and about mine; relating to shafts and slopes generally; providing general provisions concerning the reopening of old or abandoned mines; relating to monthly reports by operator of mine; relating to examinations to determine compliance with permits; and providing a severability clause.

Be it enacted by the Legislature of West Virginia:

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

Article
1. Administration; Enforcement.
2. Coal Mines.

ARTICLE 1. ADMINISTRATION; ENFORCEMENT.

§22-1-1. Definitions.
§22-1-2. Department of mines.
§22-1-3. Director of the department of mines—Appointment; term of office.
§22-1-4. Same—Powers and duties.
§22-1-5. Same—Eligibility; salary.
§22-1-6. Same—Oath and bond.
§22-1-7. Mine inspectors; districts and divisions; employment; tenure; oath; bond.
§22-1-8. Mine safety instructors; qualifications; employment; compensation; tenure; oath; bond.
§22-1-9. Mine inspectors may be appointed to fill vacancy in department; permanent tenure benefits not affected.
§22-1-10. Employment of electrical inspectors; qualifications; salary and expenses; tenure; oath; bond.
§22-1-11. Eligibility for appointment as mine inspector; qualifications; salary and expenses; removal.
§22-1-12. Mine inspectors' examining board.
§22-1-13. Director and inspectors authorized to enter mines; duties of inspectors to examine mines; no advance notice; reports after fatal accidents.
§22-1-14. Findings, orders and notices.
§22-1-15. Powers and duties of electrical inspectors as to inspections, findings and orders; reports of electrical inspectors.
§22-1-16. Review of orders and notices by the director.
§22-1-17. Posting of notices, orders, and decisions; delivery to agent of operator; names and addresses to be filed by operators.
§22-1-19. Injunctions.
§22-1-20. Penalties.
§22-1-22. Records and reports.
§22-1-23. Mine foreman examiner for mine foremen, assistant mine foremen and fire bosses; salary.

§22-1-24. Duties of the mine foreman examiner.

§22-1-25. Place and time for examinations.

§22-1-26. Preparation of examinations; notice of intention to take examination; investigation of applicants.

§22-1-27. Certificates of qualification heretofore granted.

§22-1-28. Mine foreman examiner to certify successful applicants to director.

§22-1-29. Record of examinations.

§22-1-30. Withdrawal of certification.

§22-1-31. Board of appeals.

§22-1-32. Mine rescue stations; equipment.

§22-1-33. Mine rescue crews.

§22-1-34. Mine rescue teams.

§22-1-35. Provisions of article severable.

§22-1. Definitions.

1 Unless the context in which used clearly requires a different meaning, the following definitions shall apply to articles one and two of this chapter:

Mine: The term “mine” includes the shafts, slopes, drifts or inclines connected with excavations penetrating coal seams or strata, which excavations are ventilated by one general air current or divisions thereof, and connected by one general system of mine haulage over which coal may be delivered to one or more points outside the mine, and the surface structures or equipment connected therewith which contribute directly or indirectly to the mining, preparation or handling of coal.

Agent: The term “agent” means any person charged with responsibility for the operation of all or a part of a mine or the supervision of the miners in a mine.

Imminent Danger: The term “imminent danger” means the existence of any condition or practice in a coal mine which could reasonably be expected to cause death or serious physical harm before such condition or practice can be abated.

Department: The term “department” shall mean the state department of mines provided for in section two of this article.

Director of the Department of Mines: The term “director of the department of mines” shall mean the director of the department of mines provided for in section three of this article, and is synonymous with the term “chief of the department of mines.”
Mine Inspector: The term "mine inspector" shall mean a state mine inspector provided for in section seven of this article.

Mine Inspectors' Examining Board: The term "mine inspectors' examining board" shall mean the mine inspectors' examining board provided for in section twelve of this article.

Operator: The term "operator" shall mean any firm, corporation, partnership, or individual operating any coal mine or part thereof.

Person: The term "person" shall mean any individual, partnership, association, corporation, firm, subsidiary of a corporation, or other organization.

Miner: The term "miner" shall mean any individual working in a coal mine.

Work of Preparing the Coal: The term "work of preparing the coal" shall mean the breaking, crushing, sizing, cleaning, washing, drying, mixing, storing, and loading of bituminous coal or lignite, and such other work of preparing such coal as is usually done by the operator of the coal mine.

Accident: The term "accident" shall mean any mine explosion, mine ignition, mine fire, or mine inundation, or injury to, or death of any person.

Abandoned Workings: The term "abandoned workings" shall mean excavation, either caved or sealed, that is deserted and in which further mining is not intended, or open workings which are ventilated and not inspected regularly.

Excavations and Workings: The term "excavations and workings" shall mean any or all parts of a mine excavated or being excavated, including shafts, slopes, drifts, tunnels, entries, rooms, and working places, whether abandoned or in use.

Shaft: The term "shaft" shall mean a vertical opening through the strata that is or may be used for the purpose of ventilation, drainage, and the hoisting and transportation of men and material, in connection with the mining of coal.
Slope: The term “slope” shall mean a plane or incline roadway, usually driven to a coal seam from the surface and used for the same purposes as a shaft.

Drift: The term “drift” shall mean a horizontal or approximately horizontal opening through the strata or in a coal seam and used for the same purposes as a shaft.

Panel: The term “panel” shall mean workings that are or have been developed off of submain entries which do not exceed three thousand feet in length.

Active Workings: The term “active workings” shall mean all places in a mine that are ventilated and inspected regularly.

Inactive Workings: The term “inactive workings” shall include all portions of a mine in which operations have been suspended for an indefinite period, but have not been abandoned.

Superintendent: The term “superintendent” shall mean the person who shall have, on behalf of the operator, immediate supervision of one or more mines.

Mine Foreman: The term “mine foreman” shall mean the certified person whom the operator or superintendent shall place in charge of the inside workings of the mine and of the persons employed therein.

Supervisor: The term “supervisor” shall mean a superintendent, mine foreman, assistant mine foreman, or any person specifically designated by the superintendent or mine foreman to supervise work or employees and who is acting pursuant to such specific designation and instructions.

Assistant Mine Foreman: The term “assistant mine foreman” shall mean a certified person designated to assist the mine foreman in the supervision of a portion or the whole of a mine or of the persons employed therein.

Shot Firer: The term “shot firer” shall mean any person having had at least two years of practical experience in coal mines, who has a knowledge of ventilation, mine roof and timbering, and who has demonstrated his knowledge of mine gases, the use of a flame safety lamp, and other approved detecting devices by examination and certification given him by the department of mines.
Qualified Person: The term "qualified person" shall mean a person who has completed an examination and is considered qualified on record by the department of mines.

Interested Persons: The term "interested persons" shall include the operator, members of any mine safety committee at the mine affected and other duly authorized representative of the mine workers and department of mines.

Return Air: The term "return air" shall mean a volume of air that has passed through and ventilated all the working places in a mine section.

Mechanical Working Section: The term "mechanical working section" shall mean an area of a mine (1) in which coal is loaded mechanically, (2) which is comprised of a number of working places that are generally contiguous, and (3) which is of such size to permit necessary supervision during shift operation, including preshift and on-shift examinations and tests required by law.

Working Section: The term "working section" shall mean all areas of the coal mine from the loading point of the section to and including the working faces.

Working Face: The term "working face" shall mean any place in a coal mine in which work of extracting coal from its natural deposit in the earth is performed during the mining cycle.

Working Place: The term "working place" shall mean the area of a coal mine inby the last open crosscut.

Working Unit: The term "working unit" shall mean an area of a mine in which coal is mined with a set of production equipment; a conventional mining unit by a single loading machine; a continuous mining unit by a single continuous mining machine, which is comprised of a number of working places.

Face Equipment: The term "face equipment" shall mean mobile or portable mining machinery having electric motors or accessory equipment normally installed or operated inby the last open crosscut in an entry or room.

Approved: The term "approved" shall mean in strict compliance with mining law, or, in the absence of law, accepted by a recognized standardizing body or organiza-
tion whose approval is generally recognized as authorita-
tive on the subject.

Permissible: The term "permissible" shall mean any
equipment, device, or explosive that has been approved
as permissible by the United States bureau of mines and
meets all requirements, restrictions, exceptions, limita-
tions, and conditions attached to such classification by
the bureau.

Certified Electrician: The term "certified electrician"
shall mean any person who is qualified as a mine elec-
trician and who has passed an examination given by the
department of mines.

Armored Cable: The term "armored cable" shall mean
a cable provided with a wrapping of metal, usually steel
wires or tapes, primarily for the purpose of mechanical
protection.

Borehole Cable: The term "borehole cable" shall mean
a cable designed for vertical suspension in a borehole or
shaft and used for power circuits in the mine.

Cable: The term "cable" shall mean a stranded con-
ductor (single conductor cable) or a combination of con-
ductors insulated from one another (multiple conductor
cable).

Flame-resistant Cable, Portable: The term "flame-
resistant cable, portable" shall mean a portable flame-
resistant cable that has passed the flame tests of the
federal bureau of mines.

Portable (Trailing) Cable: The term "portable (trail-
ing) cable" shall mean a flexible cable or cord used for
connecting mobile, portable or stationary equipment in
mines to a trolley system or other external source of
electric energy where permanent mine wiring is pro-
hibited or is impracticable.

Branch Circuit: The term "branch circuit" shall mean
any circuit, alternating current or direct current, con-
nected to and leading from the main power lines.

Circuit Breaker: The term "circuit breaker" shall mean
a device for interrupting a circuit between separable
contacts under normal or abnormal conditions.
185 High Voltage: The term “high voltage” shall mean voltages of more than one thousand volts.

187 Medium Voltage: The term “medium voltage” shall mean voltages from six hundred sixty-one to one thousand volts.

190 Low Voltage: The term “low voltage” shall mean up to and including six hundred sixty volts.

192 Lightning Arrestor: The term “lightning arrestor” shall mean a protective device for limiting surge voltage on equipment by discharging or by passing surge current; it prevents continued flow of follow current to ground and is capable of repeating these functions as specified.

197 Mine Power Center or Distribution Center: The term “mine power center or distribution center” shall mean a combined transformer and/or distribution unit, complete within a metal enclosure from which one or more low-voltage power circuits are taken.

202 Delta Connected: The term “delta connected” shall mean a power system in which the windings or transformers or a.c. generators are connected to form a triangular phase relationship, and with phase conductors connected to each point of the triangle.

207 Wye-connected: The term “wye-connected” shall mean a power system connection in which one end of each phase windings or transformers or a.c. generators are connected together to form a neutral point, and a neutral conductor may or may not be connected to the neutral point, and the neutral point may or may not be grounded.

213 Zig-zag Transformer (Grounding Transformer): The term “zig-zag transformer (grounding transformer)” shall mean a transformer intended primarily to provide a neutral point for grounding purposes.

217 Neutral Point: The term “neutral point” shall mean the connection point of transformer or generator windings from which the voltage to ground is nominally zero, and is the point generally used for system groundings in wye-connected a.c. power system.

222 Neutral (Derived): The term “neutral (derived)” shall mean a neutral point or connection established by the
addition of a "zig-zag" or grounding transformer to a
normally ungrounded power system.

Effectively Grounded: The term "effectively grounded"
is an expression which means grounded through a
grounding connection of sufficiently low impedance (in-
herent or intentionally added or both) so that fault
grounds which may occur cannot build up voltages in ex-
cess of limits established for apparatus, circuits, or sys-
tems so grounded.

Grounded (Earthed): The term "grounded (earthed)"
shall mean that the system, circuit, or apparatus referred
to is provided with a ground.

Ground or Grounding Conductor (Mining): The term
"ground or grounding conductor (mining)," also referred
to as a safety ground conductor, safety ground, and
frame ground, shall mean a metallic conductor used
to connect the metal frame or enclosure of any equip-
ment, device or wiring system with a mine track or
other effective grounding medium.

Board of Appeals: The term "board of appeals" shall
mean as provided for in section thirty-one of this article.

Certified Person: The term "certified person," when
used to designate the kind of person to whom the per-
formance of a duty in connection with the operation of
a mine shall be assigned, shall mean a person who is
qualified under the provisions of this law to perform
such duty.

§22-1-2. Department of mines.

There shall be a state department of mines, which shall
have for its purpose the supervision of the execution and
enforcement of the provisions of this chapter, enacted for
the protection of the safety and health of persons em-
ployed within or at the mines within this state, and for
the protection and preservation of mining property and
property used in connection therewith.

§22-1-3. Director of the department of mines—Appointment;
term of office.

There shall be a director of the department of mines,
who shall be appointed by the governor with the advice
and consent of the Senate and who shall serve for a term of four years, subject to the provisions of chapter six, article six, section four of this code, as amended. The original term of the director of the department of mines appointed under this section shall commence as of the effective date of this article, as amended, and all appointments to such office made thereafter shall be made for a full term of four years, except that in case of a vacancy, the appointment shall be made for the unexpired term only.

§22-1-4. Same—Powers and duties.

1 The director of the department of mines shall have full charge of the department. He shall have the power and duty to:

2 (1) Supervise and direct the execution and enforcement of the provisions of this chapter.

3 (2) Appoint a deputy director of the department of mines, fix his compensation and prescribe his powers and duties.

4 (3) Employ such assistants, clerks, stenographers and other employees as may be necessary and fix their compensation, except as otherwise provided in this article.

5 (4) Employ mine inspectors, and assign them to divisions or districts in accordance with the provisions of section seven of this article, and to supervise and direct such mine inspectors in the performance of their duties.

6 (5) Suspend, for good cause, any mine inspector without compensation for a period not exceeding thirty days in any calendar year.

7 (6) Prepare report forms to be used by mine inspectors in making their findings, orders and notices, upon inspections made in accordance with this chapter.

8 (7) Hear and determine applications made by mine operators for the annulment or revision of orders made by mine inspectors, and to make inspections of mines, in accordance with the provisions of this article.

9 (8) Cause a properly indexed permanent and public record to be kept of all inspections made by himself or by mine inspectors.
(9) Make annually a full and complete written report of the administration of his department to the governor of the state for the year ending the thirty-first day of December. Such report shall include the number of visits and inspections of mines in the state by mine inspectors, the quantity of coal, coke and other minerals (including oil and gas) produced in the state, the number of men employed, number of mines in operation, statistics with regard to health and safety of persons working in the mines, improvements made, prosecutions, such other information in relation to the subject of mines, mine inspections and needed legislation as he may deem of public interest and beneficial to the mining interest of the state. Such reports shall be filed with the governor on or before the thirtieth day of June next succeeding the year for which it was made, and shall upon proper authority be printed and distributed to interested persons.

(10) Call or subpoena witnesses, for the purpose of conducting hearings into mine fires, mine explosions or any mine accident; to administer oaths and to require production of any books, papers, records, or other documents relevant or material to the hearing. Any witness so called or subpoenaed shall receive forty dollars per diem and shall receive mileage at the rate of ten cents for each mile actually traveled, which shall be paid out of the state treasury upon a requisition upon the state auditor, properly certified by such witness.

(11) Institute civil actions for relief, including permanent or temporary injunctions, restraining orders, or any other appropriate action in the appropriate federal or state court whenever any operator or his agent violates or fails or refuses to comply with any lawful order, notice or decision issued by the director or his representative.

(12) Perform all other duties which are expressly imposed upon him by the provisions of this chapter.

(13) Make all records of the department open for inspection of interested persons and the public.

§22-1-5. Same—Eligibility; salary.

1 The director of the department of mines shall be a
male citizen of West Virginia, shall be a competent person of good repute and temperate habits and shall have had at least fifteen years' experience underground in coal mines, at least ten of which shall have been underground in mines in this state. He shall possess a practical knowledge of the different systems of working, ventilating and draining of coal mines, and a practical and scientific knowledge of all noxious and dangerous gases found in such mines. A diploma in mining engineering from the West Virginia University school of mines or any similarly accredited engineering school shall be counted as two years' working experience. The director shall devote all of his time to the duties of his office and shall not be directly or indirectly interested financially in any mine in this state. The salary of the director of the department of mines shall be twenty-five thousand dollars per year and traveling expenses, which shall be paid out of the state treasury upon a requisition upon the state auditor, properly certified by the director of the department of mines.

§22-1-6. Same—Oath and bond.

The director of the department of mines shall, before entering upon the discharge of his duties, take the oath of office prescribed by section five, article four of the constitution, and shall execute a bond in the penalty of two thousand dollars, with security to be approved by the governor, conditioned upon the faithful discharge of his duties, a certificate of which oath and which bond shall be filed in the office of the secretary of state.

§22-1-7. Mine inspectors; districts and divisions; employment; tenure; oath; bond.

Notwithstanding any other provisions of law, mine inspectors shall be selected, serve and be removed as in this article provided.

The director of the department of mines shall divide the state into not more than forty-five mining districts and not more than five mining divisions, so as to equalize, as far as practical, the work of each inspector. He may assign inspectors to districts, designate and assign not
more than one inspector-at-large to each division and one assistant inspector-at-large. He shall designate the places of abode of inspectors at points convenient to the mines of their respective districts, and, in the case of inspectors and assistant inspectors-at-large, their respective divisions.

Except as in the next preceding paragraph provided, all mine inspectors appointed after the mine inspectors' examining board has certified to the director of the department of mines an adequate register of qualified eligible candidates in accordance with section eleven of this article, so long as such register contains the names of at least three qualified eligible candidates, shall be appointed from the names on such register. Each original appointment shall be made by the director of the department of mines for a probationary period of not more than one year.

The director of the department of mines shall make each appointment from among the three qualified eligible candidates on the register having the highest grades: Provided, That the director of the department of mines may, for good cause, at least thirty days prior to making an appointment, strike any name from the register. Upon striking any name from the register, the director of the department of mines shall immediately notify in writing each member of the mine inspectors' examining board of his action, together with a detailed statement of the reasons therefor. Thereafter, the mine inspectors' examining board, after hearing, if it finds that the action of the director of the department of mines was arbitrary or unreasonable, may order the name of any candidate so stricken from the register to be reinstated thereon. Such reinstatement shall be effective from the date of removal from the register.

Any candidate passed over for appointment for three years shall be automatically stricken from the register.

After having served for a probationary period of one year to the satisfaction of the director of the department of mines, a mine inspector shall have permanent tenure until he becomes sixty-five years of age, subject only to
A dismissal for cause in accordance with the provisions of section eleven of this article. No mine inspector, while in office, shall be directly or indirectly interested as owner, lessor, operator, stockholder, superintendent or engineer of any coal mine. Before entering upon the discharge of his duties as a mine inspector, he shall take the oath of office prescribed by the constitution, and shall execute a bond in the penalty of two thousand dollars, with security to be approved by the director of the department of mines, conditioned upon the faithful discharge of his duties, a certificate of which oath and bond shall be filed in the office of the secretary of state.

The district inspectors, inspectors-at-large and assistant inspectors-at-large, together with the director, shall make all inspections authorized by articles one and two of this chapter and shall perform such other duties as are imposed upon mine inspectors by articles one, two and six of this chapter.

§22-1-8. Mine safety instructors; qualifications; employment; compensation; tenure; oath; bond.

1 The department shall employ eleven or more mine safety instructors. To be eligible for employment as a mine safety instructor, the applicant shall be (1) a citizen of West Virginia, in good health, not less than twenty-five nor more than sixty-five years of age, and of good character, reputation and temperate habits, and (2) a person who has had at least five years' experience in first aid and mine rescue work and who has had practical experience with dangerous gases found in coal mines, and who has a practical knowledge of mines, mining methods, mine ventilation, sound safety practices, and applicable mining laws.

In order to qualify for appointment as a mine safety instructor, an eligible applicant shall submit to a written and oral examination, given by the mine inspectors' examining board. The examination shall relate to the duties to be performed by a safety instructor and may, subject to the approval of the mine inspectors' examining board, be prepared by the director of West Virginia department of mines.
If the board finds after investigation and examination that the applicant (1) is eligible for appointment, and (2) has passed all oral and written examinations with a grade of at least eighty percent, the board shall add such applicant's name and grade to a register of qualified eligible candidates and certify its action to the director of the department of mines. The director may then appoint one of the candidates from the three having the highest grades.

The salary for a mine safety instructor shall be not less than ten thousand dollars per year, with graduations of two hundred forty dollars annually for a ten-year period and shall be fixed by the director of the department of mines, who shall take into consideration ability, performance of duty, and experience. Such instructor shall devote all of his time to the duties of his office. No reimbursement for traveling expenses shall be made except on an itemized accounting for such expenses submitted by the instructor, who shall verify upon oath that such expenses were actually incurred in the discharge of his official duties.

Except as expressly provided in this section to the contrary, all provisions of this article relating to the eligibility, qualification, appointment, tenure and removal of mine inspectors shall be applicable to mine safety instructors.

§22-1-9. Mine inspectors may be appointed to fill vacancy in department; permanent tenure benefits not affected.

Notwithstanding any other provisions of law, if a vacancy occurs in any appointive position within the department of mines, any mine inspector having permanent tenure, if qualified, may be appointed to such appointive position without forfeiting any of the benefits which have accrued to him because of his permanent tenure as a mine inspector.

§22-1-10. Employment of electrical inspectors; qualifications; salary and expenses; tenure; oath; bond.

The department shall employ five or more electrical inspectors. To be eligible for employment as an electrical
inspector, the applicant shall be: (1) A citizen and resident of West Virginia, in good health, not less than twenty-five nor more than fifty-five years of age, and of good character, reputation and of temperate habits; and (2) a person who has had seven years' practical electrical experience in coal mines, or a degree in electrical engineering from an accredited electrical engineering school and one year's practical experience in underground coal mining.

In order to qualify for appointment as a mine electrical inspector, an eligible applicant shall submit to a written and oral examination given by the mine inspectors' examining board. The examination shall relate to the duties to be performed by an electrical inspector. If the board finds after investigation and examination that the applicant (1) is eligible for appointment and (2) has passed all oral and written examinations with a grade of at least ninety percent, the board shall add such applicant's name and grade to a register of qualified eligible candidates and certify its action to the director of the department of mines. The director may then appoint one of the candidates from the three having the highest grade.

The salary of a mine electrical inspector shall be not less than fourteen thousand five hundred dollars per year, with graduations of two hundred forty dollars annually for a ten-year period, and shall be fixed by the director of the department of mines, who shall take into consideration ability, performance of duty, and experience. No reimbursement for traveling expenses shall be made except on an itemized accounting for such expense submitted by the electrical inspector, who shall verify upon oath that such expenses were actually incurred in the discharge of his official duties.

Mine electrical inspectors, before entering upon the discharge of their duties, shall take and subscribe to the oath and shall execute a bond in the same penal sum, with surety approved by the director of the department of mines, all as is required by this article in the case of mine inspectors.
Except as expressly provided in this section to the contrary, all provisions of this article relating to the eligibility, qualifications, appointment, tenure and removal of mine inspectors shall be applicable to mine electrical inspectors.

§22-1-11. Eligibility for appointment as mine inspector; qualifications; salary and expenses; removal.

(a) No person shall be eligible for appointment as a mine inspector unless, at the time of his probationary appointment, he (1) is a citizen of West Virginia, in good health, not less than thirty nor more than fifty-five years of age, and of good character, reputation and temperate habits; (2) has had at least ten years’ practical experience in coal mines, at least five years of which, immediately preceding his original appointment, shall have been in mines in this state: Provided, That graduation from any accredited college of mining engineering shall be considered the equivalent of two years’ practical experience; (3) has had practical experience with dangerous gases found in coal mines; and (4) has a good theoretical and practical knowledge of mines, mining methods, mine ventilation, sound safety practices and applicable mining laws.

(b) In order to qualify for appointment as a mine inspector, an eligible applicant shall submit to a written and oral examination by the mine inspectors’ examining board and furnish such evidence of good health, character and other facts establishing eligibility as the board may require. If the board finds after investigation and examination that an applicant: (1) Is eligible for appointment and (2) has passed all written and oral examinations, with a grade of at least eighty percent, the board shall add such applicant’s name and grade to the register of qualified eligible candidates and certify its action to the director of the department of mines. No candidate’s name shall remain in the register for more than three years without requalifying.

(c) Salaries of district inspectors shall not be less than thirteen thousand six hundred dollars per year, with
graduations of two hundred forty dollars annually for a ten-year period; assistant inspector-at-large, not less than fifteen thousand dollars per year, with graduations of two hundred forty dollars annually for a ten-year period; inspectors-at-large, not less than sixteen thousand dollars per year, with graduations of two hundred forty dollars annually for a ten-year period, and they shall receive mileage at the rate of not less than ten cents for each mile actually traveled in the discharge of their official duties in a privately owned vehicle. Within the limits provided by law, the salary of each inspector shall be fixed by the director of the department of mines, subject to the approval of the mine inspectors' examining board. In fixing salaries of mine inspectors, the director of the department of mines shall consider ability, performance of duty and experience. No reimbursement for traveling expenses shall be made except upon an itemized account of such expenses submitted by the inspector, who shall verify upon oath, that such expenses were actually incurred in the discharge of his official duties.

(d) Any mine inspector who has fulfilled the requirements of this section with respect to employment and who has served satisfactorily as a mine inspector for a minimum period of one year and who has terminated his employment as a mine inspector, upon successfully passing a physical examination, may be reinstated as a mine inspector within two years after terminating his employment with the approval of the examining board and the director of the department of mines.

(e) A mine inspector, after having received a permanent appointment, shall be removed from office only for physical or mental impairment, incompetency, neglect of duty, drunkenness, malfeasance in office, or other good cause.

Proceedings for the removal of a mine inspector may be initiated by the director of the department of mines whenever he has reasonable cause to believe and does believe that adequate cause exists, warranting removal. Such a proceeding shall be initiated by a verified petition, filed with the board by the director of the department of mines, setting forth with particularity the facts alleged.
Not less than twenty reputable citizens, who are operators or employees in mines in the state, may petition the director of the department of mines for the removal of a mine inspector. If such petition is verified by at least one of the petitioners, based on actual knowledge of the affiant and alleged facts, which, if true, warrant the removal of the inspector, the director of the department of mines shall cause an investigation of the facts to be made. If, after such investigation, the director finds that there is substantial evidence, which, if true, warrants removal of the inspector, he shall file a petition with the board requesting removal of the inspector.

On receipt of a petition by the director of the department of mines seeking removal of a mine inspector, the board shall promptly notify the inspector to appear before it at a time and place designated in said notice, which time shall be not less than fifteen days thereafter. There shall be attached to the copy of the notice served upon the inspector a copy of the petition filed with the board.

At the time and place designated in said notice, the board shall hear all evidence offered in support of the petition and on behalf of the inspector. Each witness shall be sworn, and a transcript shall be made of all evidence taken and proceedings had at any such hearing. No continuance shall be granted except for good cause shown. The chairman of the board and the director of the department of mines shall have power to administer oaths and subpoena witnesses.

Any mine inspector who shall wilfully refuse or fail to appear before the board, or having appeared, shall refuse to answer under oath any relevant question on the ground that his testimony or answer might incriminate him, or shall refuse to waive immunity from prosecution on account of any relevant matter about which he may be asked to testify at any such hearing before the board, shall forfeit his position.

If, after hearing, the board finds that the inspector should be removed, it shall enter an order to that effect. The decision of the board shall be final and shall not be subject to judicial review.
§22-1-12. Mine inspectors' examining board.

1 There shall be a mine inspectors' examining board consisting of five members who, except for the public representative on such board, shall be appointed by the governor, by and with the advice and consent of the Senate. Members so appointed may be removed only for the same causes and in like manner as elective state officers. One of the members of the board shall be a representative of the public, who shall be the director of the school of mines at West Virginia University. Two members of the board shall be persons who by reason of previous training and experience may reasonably be said to represent the viewpoint of coal mine operators and two members shall be persons who by reason of previous training and experience may reasonably be said to represent the viewpoint of coal mine workers.

The director of the department of mines shall be an ex officio member of the board and shall serve as secretary of the board, without additional compensation; but he shall have no right to vote with respect to any matter before the board.

The members of the board, except the public representative, shall be appointed for overlapping terms of eight years, except that the original appointments shall be for terms of two, four, six and eight years, respectively. Any member whose term expires may be reappointed by the governor.

Each member of the board shall receive fifty dollars per diem while actually engaged in the performance of the work of the board; and shall receive mileage at the rate of ten cents for each mile actually traveled going from the home of the member to the place of the meeting of the board and returning therefrom, which shall be paid out of the state treasury upon a requisition upon the state auditor, properly certified by such members of the board.

The public member shall serve as chairman of the board. Members of the board, before performing any duty, shall take and subscribe to the oath required by
The mine inspectors' examining board shall meet at such times and places as shall be designated by the chairman. It shall be the duty of the chairman to call a meeting of the board on the written request of three members or the director of the department of mines. Notice of each meeting shall be given in writing to each member by the secretary at least five days in advance of the meeting. Three members shall constitute a quorum for the transaction of business.

In addition to other duties expressly set forth elsewhere in this article, the board shall:

1. Establish, and from time to time revise, forms of application for employment as mine inspectors and forms for written examinations to test the qualification of candidates for that position;

2. Adopt and promulgate reasonable rules and regulations relating to the examination, qualification and certification of candidates for appointment as mine inspectors, and hearings for removal of inspectors, required to be held by this article. All of such rules and regulations shall be printed and a copy thereof furnished by the secretary of the board to any person upon request;

3. Conduct, after public notice of the time and place thereof, examinations of candidates for appointment as mine inspector. By unanimous agreement of all members of the board, one or more members of the board or an employee of the department of mines may be designated to give a candidate the written portion of the examination;

4. Prepare and certify to the director of the department of mines a register of qualified eligible candidates for appointment as mine inspectors. The register shall list all qualified eligible candidates in the order of their grades, the candidate with the highest grade appearing at the top of the list. After each meeting of the board held to examine such candidates, and at least annually, the board shall prepare and submit to the director of the department of mines a revised and corrected register
of qualified eligible candidates for appointment as mine inspector, deleting from such revised register all persons (a) who are no longer residents of West Virginia, (b) who have allowed a calendar year to expire without, in writing, indicating their continued availability for such appointment, (c) who have been passed over for appointment for three years, (d) who have become ineligible for appointment since the board originally certified that such person was qualified and eligible for appointment as mine inspector, or (e) who, in the judgment of at least four members of the board, should be removed from the register for good cause;

(5) Cause the secretary of the board to keep and preserve the written examination papers, manuscripts, grading sheets, and other papers of all applicants for appointment as mine inspector for such period of time as may be established by the board. Specimens of the examinations given, together with the correct solution of each question, shall be preserved permanently by the secretary of the board;

(6) Issue a letter or written notice of qualification to each successful eligible candidate;

(7) Hear and determine proceedings for the removal of mine inspectors in accordance with the provisions of this article;

(8) Hear and determine appeals of mine inspectors from suspension orders made by the director pursuant to the provisions of section four of this article: Provided, That an aggrieved inspector, in order to appeal from any order of suspension, shall file such appeal in writing with the mine inspectors' examining board not later than ten days after receipt of notice of suspension. On such appeal the board shall affirm the act of the director unless it be satisfied from a clear preponderance of the evidence that the director has acted arbitrarily;

(9) Make an annual report to the governor and the director of the department of mines concerning the administration of mine inspection personnel in the state service, making such recommendations as the board considers to be in the public interest.
§22-1-13. Director and inspectors authorized to enter mines; duties of inspectors to examine mines; no advance notice; reports after fatal accidents.

1 The director of the department of mines shall have authority to visit, enter, and examine any mine, whether underground or on the surface, and may call for the assistance of any district mine inspector or inspectors whenever such assistance is necessary in the examination of any mine. The operator of every coal mine shall furnish the director of the department of mines or mine inspector proper facilities for entering such mine and making examination or obtaining information.

If miners at any mine or one of their authorized representatives have reason to believe that dangerous conditions are existing or that the law is not being complied with, they may request the director to have an immediate investigation made.

Mine inspectors shall devote their full time and undivided attention to the performance of their duties, and they shall examine all of the mines in their respective districts at least four times annually, and as often, in addition thereto, as the director of the department of mines may direct, or the necessities of the case or the condition of the mine or mines may require, with no advance notice of inspection provided to any person, and they shall make a personal examination of each working face and all entrances to abandoned parts of the mine where gas is known to liberate, for the purpose of determining whether a danger, described in section fourteen of this article, exists in any such mine, or whether any provision of article two of this chapter is being violated in any such mine.

The mine inspector shall visit the scene of each fatal accident occurring in any mine within his district and shall make an examination into the particular facts of such accident; make a report to the director of the department of mines, setting forth the results of such examination, including the condition of the mine and the cause or causes of such fatal accident, if known,
and all such reports shall be made available to the interested parties, upon written requests.

At the commencement of any inspection of a coal mine by an authorized representative of the director, the authorized representative of the miners at the mine at the time of such inspection shall be given an opportunity to accompany the authorized representative of the director on such inspection.

§22-1-14. Findings, orders and notices.

(a) If, upon any inspection of a coal mine, an authorized representative of the director finds that an imminent danger exists, such representative shall determine the area throughout which such danger exists, and thereupon shall issue forthwith an order requiring the operator of the mine or his agent to cause immediately all persons, except those referred to in subdivisions (1), (2), (3) and (4), subsection (c) of this section, to be withdrawn from and to be prohibited from entering such area until an authorized representative of the director determines that such imminent danger no longer exists.

All employees on the inside and outside of a mine who are idled as a result of the posting of a withdrawal order by a mine inspector shall be compensated by the operator at their regular rates of pay for the period they are idled, but not more than the balance of such shift. If such order is not terminated prior to the next working shift, all such employees on that shift who are idled by such order shall be entitled to full compensation by the operator at their regular rates of pay for the period they are idled, but for not more than four hours of such shift.

(b) If, upon any inspection of a coal mine, an authorized representative of the director finds that there has been a violation of the law, but the violation has not created an imminent danger, he shall issue a notice to the operator or his agent, fixing a reasonable time for the abatement of the violation. If, upon the expiration of the period of time, as originally fixed or subsequently extended, an authorized representative of the director of the department of mines finds that the violation has not been totally abated, and if he also finds
that the period of time should not be further extended,
he shall find the extent of the area affected by the vio-
lation and shall promptly issue an order requiring the
operator of such mine or his agent to cause immediately
all persons, except those referred to in subdivisions (1),
(2), (3) and (4), subsection (c) of this section, to be with-
drawn from, and to be prohibited from entering such area
until an authorized representative of the director deter-
 mines that the violation has been abated.

(c) The following persons shall not be required to
be withdrawn from or prohibited from entering any area
of the coal mine subject to an order issued under this
section:

(1) Any person whose presence in such area is
necessary, in the judgment of the operator or an autho-
rized representative of the director, to eliminate the con-
dition described in the order;

(2) any public official whose official duties require
him to enter such area;

(3) any representative of the miners in such mine who
is, in the judgment of the operator or an authorized
representative of the director, qualified to make coal
mine examinations or who is accompanied by such a
person and whose presence in such area is necessary
for the investigation of the conditions described in the
order; and

(4) any consultant to any of the foregoing.

(d) Notices and orders issued pursuant to this section
shall contain a detailed description of the conditions or
practices which cause and constitute an imminent danger
or a violation of any mandatory health or safety standard
and, where appropriate, a description of the area of the
coal mine from which persons must be withdrawn and
prohibited from entering.

(e) Each notice or order issued under this section
shall be given promptly to the operator of the coal mine
or his agent by an authorized representative of the di-
rector issuing such notice or order, and all such notices
and orders shall be in writing and shall be signed by
such representative and posted on the bulletin board at
the mine.

(f) A notice or order issued pursuant to this section
may be modified or terminated by an authorized represen-
tative of the director.

(g) Each finding, order, and notice made under this
section shall promptly be given to the operator of the
mine to which it pertains by the person making such
finding, order, or notice.

§22-1-15. Powers and duties of electrical inspectors as to in-
spections, findings and orders; reports of electrical
inspectors.

In order that the electrical inspector may properly per-
form the duties required of him, he shall devote his whole
time and attention to the duties of his office, and he shall
have the right to enter any coal mine for the purpose of
inspecting electrical equipment, and if he finds during his
inspection any defects in the electrical equipment which
are covered by law and may be detrimental to the lives
or health of the workmen, he shall have the authority
to order the operator, in writing, to remedy such defects
within a prescribed time, and to prohibit the continued
operation of such electrical equipment after such time,
unless such defects have been corrected.

The electrical inspector shall examine each mine in his
division at least once each year or as often as the director
may deem necessary.

It shall be the duty of the electrical inspector, after
completing his examination of a mine, to prepare a report
describing his findings in said mine in a manner and form
designated by the director. The original report shall be
forwarded to the operator or his representative whose
duty it shall be to post it in some conspicuous place open
to examination by any interested person or persons. The
report shall show the date of inspection, a list of equip-
ment, and any other information that the director may
deem necessary.

§22-1-16. Review of orders and notices by the director.

(a) (1) An operator, issued an order pursuant to the
provisions of section fourteen of this article, or any rep-
resentative of miners in any mine affected by such order or by any modification or termination of such order, may apply to the director for review of the order within thirty days of receipt thereof or within thirty days of its modification or termination. An operator, issued a notice pursuant to subsection (b), section fourteen of this article, or any representative of miners in any mine affected by such notice, may, if he believes that the period of time fixed in such notice for the abatement of the violation is unreasonable, apply to the director for review of the notice within thirty days of the receipt thereof. The applicant shall send a copy of such application to the representative of miners in the affected mine, or the operator, as appropriate. Upon receipt of such application, the director shall cause such investigation to be made as he deems appropriate. Such investigation shall provide an opportunity for a public hearing, at the request of the operator or the representative of miners in such mine, to enable the operator and the representative of miners in such mine to present information relating to the issuance and continuance of such order or the modification or termination thereof or to the time fixed in such notice. The filing of an application for review under this law shall not operate as a stay of any order or notice.

(2) The operator and the representative of the miners shall be given written notice of the time and place of the hearing at least five days prior to the hearing.

(b) Upon receiving the report of such investigation, the director shall make findings of fact, and he shall issue a written decision, incorporating therein an order vacating, affirming, modifying, or terminating the order, or the modification or termination of such order, or the notice complained of and incorporate his findings therein.

(c) In view of the urgent need for prompt decision of matters submitted to the director under this law, all actions which the director takes under this section shall be taken as promptly as practicable, consistent with adequate consideration of the issues involved.

(d) Pending completion of the investigation required by this section, the applicant may file with the director a written request that the director grant temporary relief
from any modification or termination of any order, or from any order issued under section fourteen of this article, except an order issued under section fifteen of this article, together with a detailed statement giving reasons for granting such relief. The director may grant such relief, under such conditions as he may prescribe, if

(1) A hearing has been held in which all parties were given an opportunity to be heard;

(2) the applicant shows that there is substantial likelihood that the findings of the director will be favorable to the applicant; and

(3) such relief will not adversely affect the health and safety of miners in the coal mine.

No temporary relief shall be granted in the case of a notice issued under section fourteen of this article.

§22-1-17. Posting of notices, orders, and decisions; delivery to agent of operator; names and addresses to be filed by operators.

(a) At each coal mine there shall be maintained an office with a conspicuous sign designating it as the office of the mine, and a bulletin board at such office or at some conspicuous place near an entrance of the mine, in such manner that notices, orders, and decisions required by this law or regulation to be posted on the mine bulletin board may be posted thereon, be easily visible to all persons desiring to read them, and be protected against damage by weather and against unauthorized removal. A copy of any notice, order, or decision required by this law to be given to an operator shall be delivered to the office of the affected mine, and a copy shall be immediately posted on the bulletin board of such mine by the operator or his agent.

(b) The director shall cause a copy of any notice, order, or decision required by this law to be given to an operator to be mailed immediately to a representative of the miners. Such notice, order, or decision shall be available for public inspection.

(c) In order to insure prompt compliance with any notice, order, or decision issued under this law, the au-
Authorized representative of the director may deliver such notice, order, or decision to an agent of the operator and such agent shall immediately take appropriate measures to insure compliance with such notice, order, or decision.

(d) Each operator of a coal mine shall file with the director the name and address of such mine and the name and address of the person who controls or operates the mine. Any revisions in such names or addresses shall be promptly filed with the director. Each operator of a coal mine shall designate a responsible official at such mine as the principal officer in charge of health and safety at such mine, and such official shall receive a copy of any notice, order, or decision issued under this law affecting such mine. In any case, where the coal mine is subject to the control of any person not directly involved in the daily operations of the coal mine, there shall be filed with the director the name and address of such person and the name and address of a principal official of such person who shall have overall responsibility for the conduct of an effective health and safety program at any coal mine subject to the control of such person and such official shall receive a copy of any notice, order, or decision issued affecting any such mine. The mere designation of a health and safety official under this subsection shall not be construed as making such official subject to any penalty under this law.


(a) Any order or decision issued by the director under this law, except an order or decision under section fourteen of this article shall be subject to judicial review by the circuit court of the county in which the mine affected is located or the circuit court of Kanawha county upon the filing in such court or with the judge thereof in vacation of a petition by any person aggrieved by the order or decision praying that the order or decision be modified or set aside in whole or in part, except that the court shall not consider such petition unless such person has exhausted the administrative remedies available under this law and files within thirty days from date of such order or decision.
(b) The party making such appeal shall forthwith send a copy of such petition for appeal, by registered mail, to the other party. Upon receipt of such petition for appeal, the director of the department of mines shall promptly certify and file in such court a complete transcript of the record upon which the order or decision complained of was issued. The court shall hear such petition on the record made before the director. The findings of the director, if supported by substantial evidence on the record considered as a whole, shall be conclusive. The court may affirm, vacate, or modify any order or decision or may remand the proceedings to the director for such further action as it may direct.

(c) In the case of a proceeding to review any order or decision issued by the director under this law, except an order or decision pertaining to an order issued under subsection (a), section fourteen of this article or an order or decision pertaining to a notice issued under subsection (b), section fourteen of this article, the court may, under such conditions as it may prescribe, grant such temporary relief as it deems appropriate pending final determination of the proceeding if

(A) All parties to the proceeding have been notified and given an opportunity to be heard on a request for temporary relief;

(B) The person requesting such relief shows that there is a substantial likelihood that he will prevail on the merits of the final determination of the proceeding; and

(C) Such relief will not adversely affect the health and safety of miners in the coal mine.

(d) The judgment of the court shall be subject to review only by the supreme court of appeals of West Virginia upon a writ of certiorari filed in such court within sixty days from the entry of the order and decision of the circuit court upon such appeal from the director.

(e) The commencement of a proceeding under this section shall not, unless specifically ordered by the court, operate as a stay of the order or decision of the director.
Subject to the direction and control of the attorney general, attorneys appointed for the director may appear for and represent him in any proceeding instituted under this section.

§22-1-19. Injunctions.

The director may institute a civil action for relief, including a permanent or temporary injunction, restraining order, or any other appropriate order in the circuit court of the county in which the mine is located or the circuit court of Kanawha county, whenever the operator or his agent (a) violates or fails or refuses to comply with any order or decision issued under this law, or (b) interferes with, hinders, or delays the director or his authorized representative in carrying out the provisions of this law, or (c) refuses to admit such representatives to the mine, or (d) refuses to permit the inspection of the mine, or the investigation of an accident or occupational disease occurring in, or connected with, such mine, or (e) refuses to furnish any information or report requested by the director in furtherance of the provisions of this law, or (f) refuses to permit access to, and copying of, such records as the director determines necessary in carrying out the provisions of this law. Each court shall have jurisdiction to provide such relief as may be appropriate. Except as otherwise provided herein, any relief granted by the court to enforce an order under clause (a) of this section shall continue in effect until the completion or final termination of all proceedings for review of such order under this law, unless, prior thereto, the circuit court granting such relief sets it aside or modifies it. In any action instituted under this section to enforce an order or decision issued by the director after a public hearing, the findings of the director, if supported by substantial evidence on the record considered as a whole, shall be conclusive.

§22-1-20. Penalties.

(a)(1) Any operator of a coal mine in which a violation occurs of a health or safety standard or who violates any other provision of this law, shall be assessed a civil
penalty by the director under subdivision (3) of this subsection, which penalty shall be not more than three thousand dollars for each such violation. Each occurrence of a violation of a health or safety standard may constitute a separate offense. In determining the amount of the penalty, the director shall consider the operator's history of previous violations, the appropriateness of such penalty to the size of the business of the operator charged, the gravity of the violation, and the demonstrated good faith of the operator charged in attempting to achieve rapid compliance after notification of a violation.

(2) Any miner who wilfully violates any health and safety standards shall be subject to a civil penalty assessed by the director under subdivision (3) of this subsection which penalty shall not be more than two hundred fifty dollars for each occurrence of such violation.

(3) A civil penalty shall be assessed by the director only after the person charged with a violation under this law has been given an opportunity for a public hearing and the director has determined, by decision incorporating his findings of fact therein, that a violation did occur, and the amount of the penalty which is warranted, and incorporating, when appropriate, an order therein requiring that the penalty be paid. Any hearing under this section shall be of record.

(4) If the person against whom a civil penalty is assessed fails to pay the penalty within the time prescribed in such order, the director shall file a petition for enforcement of such order in any appropriate circuit court. The petition shall designate the person against whom the order is sought to be enforced as the respondent. A copy of the petition shall forthwith be sent by registered or certified mail to the respondent and to the representative of the miners at the affected mine or the operator, as the case may be, and thereupon the director shall certify and file in such court the record upon which such order sought to be enforced was issued.
The court shall have jurisdiction to enter a judgment enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order and decision of the director or it may remand the proceedings to the director for such further action as it may direct. The court shall consider and determine de novo all relevant issues, except issues of fact which were or could have been litigated in review proceedings before a circuit court under section eighteen of this article, and upon the request of the respondent, such issues of fact which are in dispute shall be submitted to a jury. On the basis of the jury's findings, the court shall determine the amount of the penalty to be imposed. Subject to the direction and control of the attorney general, attorneys appointed for the director may appear for and represent him in any action to enforce an order assessing civil penalties under this subdivision.

(b) Any operator who wilfully violates a health or safety standard, or knowingly violates or fails or refuses to comply with any order issued under section fourteen of this article, or any order incorporated in a final decision issued under this article, except an order incorporated in a decision under subsection (a) of this section or subsection (b), section twenty-one of this article, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than five thousand dollars or imprisoned in the county jail not more than one year, or both fined and imprisoned, except that if the conviction is for a violation committed after the first conviction of such operator under this law, he shall be fined not more than ten thousand dollars or imprisoned in the penitentiary not more than three years, or both fined and imprisoned.

(c) Whenever a corporate operator wilfully violates a health or safety standard, or knowingly violates or fails or refuses to comply with any order issued under this law or any order incorporated in a final decision issued under this law, except an order incorporated in a decision issued under subsection (a) of this section or subsection (b), section twenty-one of this article, any director, officer, or
agent of such corporation who knowingly authorized,
ordered, or carried out such violation, failure, or refusal
shall be subject to the same civil penalties, fines, and
imprisonment that may be imposed upon a person under
 subsections (a) and (b) of this section.

(d) Whoever knowingly makes any false statement, rep-
resentation, or certification in any application, record, re-
port, plan, or other document filed or required to be main-
tained pursuant to this law or any order or decision issued
under this law shall be guilty of a misdemeanor, and, upon
conviction thereof, shall be fined not more than five thou-
sand dollars or imprisoned in the county jail not more
than six months, or both fined and imprisoned.

(e) Whoever knowingly distributes, sells, offers for
sale, introduces or delivers in commerce any equipment
for use in a coal mine, including, but not limited to,
components and accessories of such equipment, which
is represented as complying with the provisions of this
law, or with any specification or regulation of the direc-
tor applicable to such equipment, and which does not so
comply, shall be guilty of a misdemeanor, and, upon con-
viction thereof, shall be subject to the same fine and
imprisonment that may be imposed upon a person under
subsection (d) of this section.


(a) No person shall discharge or in any other way dis-
criminate against or cause to be discharged or discrimi-
nated against any miner or any authorized representative
of miners by reason of the fact that such miner or repre-
sentative (1) has notified the director or his authorized
representative of any alleged violation or danger, (2) has filed, instituted or caused to be filed or instituted
any proceeding under this law, or (3) has testified or is
about to testify in any proceeding resulting from the
administration or enforcement of the provisions of this
law.

(b) Any miner or a representative of miners who be-
lieves that he has been discharged or otherwise discrimi-
nated against, or any miner who has not been compen-
sated by an operator for lost time due to the posting of a withdrawal order, may, within thirty days after such violation occurs, apply to the appeals board for a review of such alleged discharge, discrimination, or failure to compensate. A copy of the application shall be sent to such person who shall be the respondent. Upon receipt of such application, the appeals board shall cause such investigation to be made as it deems appropriate. Such investigation shall provide an opportunity for a public hearing at the request of any party to enable the parties to present information relating to such violation. The parties shall be given written notice of the time and place of the hearing at least five days prior to the hearing. Any such hearing shall be of record. Upon receiving the report of such investigation, the board shall make findings of fact. If it finds that such violation did occur, it shall issue a decision, incorporating an order therein, requiring the person committing such violation to take such affirmative action to abate the violation as the board deems appropriate, including, but not limited to, the rehiring or reinstatement of the miner or representative of miners to his former position with back pay, and also pay compensation for idle time as a result of a withdrawal order. If it finds that there was no such violation, it shall issue an order denying the application. Such order shall incorporate the board's findings therein.

(c) Whenever an order is issued under this subsection, at the request of the applicant, a sum equal to the aggregate amount of all costs and expenses including the attorney's fees as determined by the board to have been reasonably incurred by the applicant for, or in connection with, the institution and prosecution of such proceedings, shall be assessed against the person committing such violation.

§22-1-22. Records and reports.

In addition to such records as are specifically required by this law, every operator of a coal mine shall establish and maintain such records, make such reports, and provide such information, as the director may reasonably require from time to time to enable him to perform his
functions under this law. The director is authorized to compile, analyze, and publish, either in summary or detailed form, such reports or information so obtained. Except to the extent otherwise specifically provided by this law, all records, information, reports, findings, notices, orders, or decisions required or issued pursuant to or under this law may be published from time to time, may be released to any interested person, and shall be made available for public inspection.

§22-1-23. Mine foreman examiner for mine foremen, assistant mine foremen and fire bosses; salary.

The director of the department of mines shall appoint a mine foreman examiner to examine and certify mine foremen, assistant mine foremen and mine examiners or fire bosses. Such mine foremen examiners shall be paid a minimum salary of twelve thousand dollars per year.

§22-1-24. Duties of the mine foreman examiner.

The duties of the mine foreman examiner shall be to:

(a) Prepare and conduct examinations of mine foremen, assistant mine foremen, and fire bosses;

(b) Prepare and certify to the director of the department of mines a register of all persons who successfully completed the examination with a passing grade of eighty percent.

§22-1-25. Place and time for examinations.

The director of the department of mines shall determine the location where the mine foreman examiner shall meet for the purpose of holding examinations, and at least two weeks' notice of the time and place where the examinations are to be held shall be given.

§22-1-26. Preparation of examinations; notice of intention to take examination; investigation of applicants.

The mine foreman examiner shall, with the approval of the director, prepare, and from time to time, modify examinations to be administered applicants for certification as mine foreman and fire bosses.
All persons who desire to appear for examination shall notify the mine foreman examiner of their intentions to appear, if possible, not less than ten days prior to the date set for the examination. The mine foreman examiner shall inquire into the character and qualifications of the applicants who present themselves for examination.

§22-1-27. Certificates of qualification heretofore granted.

Certificates of qualification of service heretofore granted shall have equal value with certificates of qualifications granted under this law.

§22-1-28. Mine foreman examiner to certify successful applicants to director.

The mine foreman examiner shall certify to the director, on a form furnished by him, every person whose examination shall disclose his fitness for the duties of mine foreman, assistant mine foreman, and fire boss, as above classified, and the director shall prepare certificates of qualification for the successful applicants and send them to the mine foreman examiner for distribution.

§22-1-29. Record of examinations.

The mine foreman examiner shall send to the director the answers and all other papers of the applicants, together with the tally sheets and a list of the questions and answers as prepared by the mine foreman examiner which shall be filed in the department as public documents.

§22-1-30. Withdrawal of certification.

If a mine foreman, assistant mine foreman or fire boss is charged by a mine inspector that he has neglected or failed to perform his prescribed duties in accordance with the mining laws of the state, then such charge of neglect of prescribed duties shall be filed with the director of the department of mines.

Upon receipt of the charge, it shall be the duty of the director to make a thorough investigation of the allegations; and if he finds substantial evidence to sustain
the charge, he shall promptly notify the individual
and shall file a petition with the board of appeals re-
questing the withdrawal or suspension of his certificate.

On receipt of a petition from the director of the depart-
ment of mines seeking the withdrawal or suspension of a
certificate, the board shall promptly notify the person
so affected to appear before it at a time and place design-
ated in said notice, which time shall be not less than
fifteen days thereafter. There shall be attached to such
notice a copy of the petition filed with the board.

The board shall hear all evidence offered in support of
the petition and on behalf of the person so charged at
the time and place designated in said notice. Each wit-
ness shall be sworn and a transcript shall be made of all
evidence presented at any such hearing. No continuance
shall be granted except for good cause shown.

The chairman of the board shall have the power to
administer oaths and subpoena witnesses and require pro-
duction of any books, papers, records or other docu-
ments relevant or material to the inquiry.

Any person so charged who shall refuse or fail to
appear before the board shall forfeit his certificate for
three years and such certificate cannot be renewed ex-
cept upon the successful completion of the examination
prescribed by law for mine foreman, assistant mine
foreman and fire boss.

If after the hearing the board finds by a preponder-
ance of the evidence that the certificate of the charged
person should be suspended (time shall be fixed by the
board not to exceed three years) or revoked for a period
of three years, it shall enter an order to that effect.

No renewal of the certificate shall be granted except
as herein provided.

§22-1-31. Board of appeals.

There is hereby created a board of appeals, consisting
of three members. Two members of the board shall be
appointed by the governor, one person who by reason of
previous training and experience may reasonably be said
to represent the viewpoint of miners, and one person
who by reason of previous training and experience may reasonably be said to represent the viewpoint of the operators. The third person, who shall be chairman of the board and who must not have had any connection at any time with the coal industry or an organization representing miners, shall be selected by the two members appointed by the governor. The term of office of members of the board shall be five years.

The function and duties of the board shall be to hear appeals, make determinations on questions of miners' entitlements due to withdrawal orders and appeals from discharge or discrimination, and suspension of certification certificates.

The chairman of the board shall have the power to administer oaths and subpoena witnesses and require production of any books, papers, records or other documents relevant or material to the appeal inquiry.

Each member of the board shall receive fifty dollars per diem while actually engaged in the performance of the work of the board and shall receive mileage at the rate of ten cents for each mile actually traveled going from home of the member to the place of the meeting of the board and returning therefrom, which shall be paid out of the state treasury upon a requisition upon the state auditor, properly certified by such members of the board.

Board members, before performing any duty, shall take and subscribe to the oath required by article four, section five of the constitution of West Virginia.

§22-1-32. Mine rescue stations; equipment.

The director of the state department of mines is hereby authorized to purchase, equip and operate for the use of said department such mine rescue stations and equipment as he may deem necessary.

§22-1-33. Mine rescue crews.

The director of the state department of mines is hereby authorized to have trained and employed at the rescue stations, operated by the department within the state, such rescue crews as he may deem necessary. Each member of a rescue crew shall devote four hours each
month for training purposes and shall be available at all times to assist in rescue work at explosions and mine fires. Regular members shall receive for such services the sum of thirty-two dollars per month, and captains shall receive thirty-five dollars per month, payable on requisition approved by the director of the department of mines. The director of the department of mines may remove any member of a rescue crew at any time.

After the effective date of this article, it shall be the duty and responsibility of the department of mines to see that all rescue teams be properly trained by a qualified instructor of the department of mines or such persons who have a certificate of training from the United States bureau of mines.

To qualify for membership of a mine rescue crew, an applicant shall (a) be not more than fifty years of age; (b) pass a physical examination by a licensed physician at least annually; a record that such examination was taken together with pertinent data relating thereto shall be kept on file by the operator, and a copy shall be furnished to the director of the department of mines. All rescue or recovery teams performing recovery work shall be under the jurisdiction of the department of mines guided by the mine rescue apparatus and auxiliary equipment manual.

When engaged in rescue work required by an explosion, fire or other emergency at a mine, all members of mine rescue teams assigned to rescue operations shall, during the period of their rescue work, be employees of the operator of the mine where the emergency exists, and shall be compensated by the operator at the rate established in the area for such work. In no case shall this rate be less than the prevailing wage rate in the industry for the most skilled class of inside mine labor.

During the period of their emergency employment, members of mine rescue teams shall be protected by the workmen's compensation subscription of such emergency employer.

During recovery work and prior to entering any mine at the start of each shift, all rescue or recovery teams
shall be properly informed of existing conditions and work to be performed by the designated company official in charge.

For every two teams performing rescue or recovery work underground, one six-member team shall be stationed at the mine portal.

Two-way communication and lifeline or its equivalent shall be provided in by the fresh air base to all rescue or recovery teams, and no team member shall be permitted to advance beyond such communication system.

Each rescue or recovery team performing work with breathing apparatus shall be provided with a backup team of equal strength, stationed at each fresh air base.

A rescue or recovery team shall immediately return to the fresh air base when any team member's atmospheric pressure depletes to sixty atmospheres.

§22-1-34. Mine rescue teams.

It shall be the duty of any mine operator employing fifty or more employees to have available for mine rescue work a trained mine rescue team, the members of which shall work in the general area of the mine. In the event of any fire, explosion or recovery operations in or about any mine, the director of the department of mines is hereby authorized to call and assign any rescue team for the protection of employees and the preservation of property. The director also may assign mine rescue and recovery work to inspectors, instructors, or other qualified employees of the department of mines as he may deem desirable.

§22-1-35. Provisions of article severable.

The various provisions of this article shall be construed as separable and severable, and should any of the provisions, sentences, clauses, or parts thereof be construed or held unconstitutional or for any reason be invalid, the remaining provisions of this article shall not be thereby affected.

ARTICLE 2. COAL MINES.

Mine Maps

§22-2-1. Supervision by professional engineer or licensed land surveyor; seal and certification; contents; extensions; reposi-
tory; availability; traversing; copies; archive; final survey and map; penalties.

**VENTILATION**

§22-2-2. Plan of ventilation; approval by director of department of mines.


§22-2-5. Unused and abandoned parts of mine.

**MOVEMENT OF EQUIPMENT**

§22-2-6. Movement of mining equipment.

**MINE FOREMAN**

§22-2-7. When mine foreman to be employed; qualifications; assistants.

§22-2-8. Duties; ventilation; loose coal, slate or rocks; props; drainage of water; man doors.


§22-2-10. Signals on haulways; lights at mouth and bottom of shaft; operation of cages.


§22-2-12. Instruction of employees; annual examination of persons using flame safety lamps; records of examination.


§22-2-16. Examinations of reports of fire bosses.

§22-2-17. Ascertainment, record and removal of all dangers.

§22-2-18. Duty of mine foreman to notify operator when unable to comply with law; duty of operator.

§22-2-19. Death or resignation of mine foreman; successor.

**FIRE BOSS**

§22-2-20. When fire boss to be employed; qualifications.

§22-2-21. Preparation of danger signal by fire boss or certified person acting as such prior to examination; report; records open for inspection.

§22-2-22. Fire bosses to have no superior officers.

§22-2-23. Unlawful to enter mine until fire boss reports it safe; exceptions.

§22-2-24. Authority of fire boss to perform other duties.

**COAL DUST AND ROCK DUST**

§22-2-25. Control of coal dust; rock dusting.

**ROOF—FACE—RIBS**

§22-2-26. Roof control programs and plans.

§22-2-27. Roof support; examination and testing; correction of dangerous condition; roof bolt recovery.

§22-2-28. Canopies or cabs; electric face equipment.

**EXPLOSIVES AND BLASTING**

§22-2-29. Use of authorized explosives; storage or use of unauthorized explosives.

§22-2-30. Surface magazines for explosives.

§22-2-31. Transportation of explosives.


§22-2-33. Preparation of shots; blasting practices.

§22-2-34. Misfires of explosives.

§22-2-35. Other blasting devices.
HOISTING

§22-2-36. Hoisting machinery; telephones; safety devices; hoisting engineers and drum runners.

TRANSPORTATION

§22-2-37. Haulage roads and equipment; shelter holes; prohibited practices; signals; inspection.
§22-2-38. Transportation of men by cars; self-propelled equipment; belts.
§22-2-39. Belt conveyor; installation; maintenance.

ELECTRICITY

§22-2-41. Bonding track used as power conductor.
§22-2-42. Telephone service or communication facilities.
§22-2-43. Electric equipment in mines.
§22-2-44. Hand-held electric drills and rotating tools; trailing cables.
§22-2-45. Installation of lighting.
§22-2-46. Welding and cutting.
§22-2-47. Responsibility for care and maintenance of face equipment.
§22-2-48. When respiratory equipment to be worn; control of dust.

SAFEGUARDS FOR MECHANICAL EQUIPMENT

§22-2-49. Safeguards for mechanical equipment.

SURFACE STRUCTURES AND PRACTICES

§22-2-50. Procurement of dust-tight electrical equipment; fireproof construction; dust control; repairs; welding; handrails and toeboards; protection of personnel on conveyors; back guards on ladders; walkways or safety devices around thickeners.
§22-2-51. Housekeeping.
§22-2-52. Storage of flammable liquids in lamphouse.
§22-2-53. Smoking in and around surface structures.

MISCELLANEOUS SAFETY PROVISIONS AND REQUIREMENTS

§22-2-54. Duties of persons subject to article; rules and regulations of operators.
§22-2-55. Protective equipment and clothing.
§22-2-56. Checking systems.
§22-2-57. No act permitted endangering security of mine; search for intoxicants, matches, etc.
§22-2-59. First-aid equipment.
§22-2-60. Accessible outlets; safe roadways for emergencies.
§22-2-61. Coal storage bins; recovery tunnels; coal storage piles.
§22-2-62. Thermal coal dryers and plants.
§22-2-63. No mine to be opened or reopened without prior approval of director of department of mines; approval fee; extension of certificate of approval; certificates not transferable; section to be printed on certificates.
§22-2-64. Sealing; permanently closed or abandoned mines.
§22-2-65. Mining close to abandoned workings.
§22-2-66. Explosion or accident; notice; investigation by department of mines.
§22-2-68. Preservation of evidence following accident or disaster.
§22-2-69. Fire in and about mine; notification of director and district mine inspector.
§22-2-70. Shafts and slopes.
GENERAL PROVISIONS
§22-2-71. Reopening old or abandoned mines.
§22-2-72. Monthly report by operator of mine.
§22-2-73. Examinations to determine compliance with permits.

MINE MAPS
§22-2-1. Supervision by professional engineer or licensed land surveyor; seal and certification; contents; extensions; repository; availability; traversing; copies; archive; final survey and map; penalties.

1 The mapping of all coal mines shall be supervised by a competent engineer or land surveyor. The work of such engineer or land surveyor shall be supervised by either a civil engineer or a mining engineer certified by the board of engineers, which exists by authority of section three, article thirteen, chapter thirty of this code, or a licensed land surveyor approved by the board of examiners of land surveyors as provided by section three, article thirteen-a of said chapter thirty. To each map supervised by the engineer or land surveyor there shall be affixed thereto the seal of a certified or professional engineer or licensed land surveyor, which shall be identical to the design authorized by the board of engineers, as provided in section nine, article thirteen of said chapter thirty or board of examiners of land surveyors as provided by section eleven, article thirteen-a of said chapter thirty. Every map certified shall have the professional engineer's or land surveyor's signature and certificate, in addition to his seal, in the following form:

"I, the undersigned, hereby certify that this map is correct and shows all the information, to the best of my knowledge and belief, required by the laws of this State, and covers the period ending ____________________________ P. E.

(Either Civil or Mining Engineer or Land Surveyor)."

27 The operator of every underground coal mine shall make, or cause to be made, an accurate map of such mine, on a scale of not less than one hundred, and not more than five hundred feet to the inch. The map of such mine shall show:
(1) Name and address of the mine;
(2) The scale and orientation of the map;
(3) The property or boundary lines of the mine;
(4) The shafts, slopes, drifts, tunnels, entries, rooms, crosscuts and all other excavations and auger and strip mined areas of the coalbed being mined;
(5) All drill holes that penetrate the coalbed being mined;
(6) Dip of the coalbed;
(7) The outcrop of the coalbed within the bounds of the property assigned to the mine;
(8) The elevations of tops and bottoms of shafts and slopes, and the floor at the entrance to drift and tunnel openings;
(9) The elevation of the floor at intervals of not more than two hundred feet in:
   (a) At least one entry of each working section, and main and cross entries;
   (b) The last line of open crosscuts of each working section, and main and cross entries before such sections and main and cross entries are abandoned; and
   (c) Rooms advancing toward or adjacent to property or boundary lines or adjacent mines;
(10) Contour lines passing through whole number elevations of the coalbed being mined, the spacing of such lines not to exceed ten-foot elevation levels, except that a broader spacing of contour lines may be approved for steeply-pitching coalbeds by the person authorized so to do under the federal act; and contour lines may be placed on overlays or tracings attached to mine maps;
(11) As far as practicable the outline of existing and extracted pillars;
(12) Entries and air courses with the direction of air-flow indicated by arrows;
(13) The location of all surface mine ventilation fans, which location may be designated on the mine map by symbols;
(14) Escapeways;
(15) The known underground workings in the same coalbed on the adjoining properties within one thousand feet of such mine workings and projections;
(16) The location of any body of water dammed in the mine or held back in any portion of the mine, but such bodies of water may be shown on overlays or tracings attached to the mine maps used to show contour lines, as provided under subdivision ten of this section;
(17) The elevation of any body of water dammed in the mine or held back in any portion of the mine;
(18) The abandoned portion or portions of the mine;
(19) The location and description of at least two permanent base line points coordinated with the underground and surface mine traverses, and the location and description of at least two permanent elevation bench marks used in connection with establishing or referencing mine elevation surveys;
(20) Mines above or below;
(21) Water pools above;
(22) The location of the principal streams and bodies of water on the surface;
(23) Either producing or abandoned oil and gas wells located within five hundred feet of such mine and any underground area of such mine;
(24) The location of all high pressure pipelines, high voltage power lines and principal roads;
(25) The location of railroad tracks and public highways leading to the mine, and mine buildings of a permanent nature with identifying names shown;
(26) Where the overburden is less than one hundred feet, occupied dwellings; and
(27) Such other information as may be required under the federal act or by the department of mines.

The operator of every underground coal mine shall extend, or cause to be extended, on or before the first day of March and on or before the first day of September of each year, such mine map thereof to accurately show the progress of the workings as of the first day of July and the first day of January of each year. Such map shall
be kept up to date by temporary notations, which shall include:

1. The location of each working face of each working place;
2. Pillars mined or other such second mining;
3. Permanent ventilation controls constructed or removed, such as seals, overcasts, undercasts, regulators and permanent stoppings, and the direction of air currents indicated; and
4. Escapeways designated by means of symbols.

Such map shall be revised and supplemented at intervals prescribed under the federal act on the basis of a survey made or certified by such engineer or surveyor, and shall be kept by the operator in a fireproof repository located in an area on the surface chosen by the operator to minimize the danger of destruction by fire or other hazard.

Such map and any revision and supplement thereof shall be available for inspection by a federal mine inspector, by mine health and safety instructors, by miners in the mine and their representatives and by operators of adjacent coal mines and by persons owning, leasing or residing on surface areas of such mines or areas adjacent to such mines, and a copy of such map and any revision and supplement thereof shall be promptly filed with the department of mines. The operator shall also furnish to persons expressly entitled thereto under the federal act, upon request, one or more copies of such maps and any revision and supplement thereof. Such map or revision and supplement thereof shall be kept confidential and its contents shall not be divulged to any other person, except to the extent necessary to carry out the provisions of the federal act and this chapter and in connection with the functions and responsibilities of the secretary of housing and urban development.

Surveying calculations and mapping of underground coal mines which were or are opened or reopened after July one, one thousand nine hundred sixty-nine, shall be done by the rectangular coordinate traversing method and meridians carried through and tied between at least
two parallel entries of each development panel and panels or workings adjacent to mine boundaries or abandoned workings. These surveys shall originate from at least three permanent survey monuments on the surface of the mine property. The monuments shall be clearly referenced and described in the operator's records. Elevations shall be tied to either the United States geological survey or the United States coast and geodetic survey bench mark system, be clearly referenced and described on such map.

Underground coal mines operating on July one, one thousand nine hundred sixty-nine, and not using the rectangular coordinate traversing method shall, within two years of such date, convert to this procedure for surveying calculations and mapping. Meridians shall be carried through and tied between at least two parallel entries of each development panel and panels or workings adjacent to mine boundaries or abandoned workings. These surveys shall originate from at least three permanent survey monuments on the surface of the mine property. The monuments shall be clearly referenced and described in the coal mine operator's records. Elevations shall be tied to either the United States geological survey or the United States coast and geodetic survey bench mark system, be clearly referenced and described on such map.

The operator of such underground coal mine shall, by reasonable proof, demonstrate to the director of the department of mines or to any federal mine inspector concerned, at any time, that a diligent search was made for all existing and available maps and survey data for the workings on the adjoining properties. The operator shall further be able to show proof to the director of the department of mines or to any federal mine inspector concerned, that a suitable method was used to insure accuracy in the methods used in transposing other workings to the map of such mine.

There shall be an archive of underground coal mine maps maintained at the office of the director of the department of mines. The archive shall:
Whenever an operator permanently closes or abandons an underground coal mine, or temporarily closes an underground coal mine for a period of more than ninety days, he shall promptly notify the department of mines and the federal mine inspector of the district in which such mine is located of such closure. Within sixty days of the permanent closure or abandonment of an underground coal mine, or, when an underground coal mine is temporarily closed, upon the expiration of a period of ninety days from the date of closure, the operator shall file with the department of mines and such federal mine inspector a copy of the mine map revised and supplemented to the date of the closure. Such copy of the mine map shall be certified by a certified or professional engineer or licensed surveyor as aforesaid and shall be available for public inspection.

Any person having a map or surveying data of any worked out or abandoned underground coal mine shall make such map or data available to the department of mines to copy or reproduce such material.

Any person who fails or refuses to discharge any duty imposed upon him by this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than five hundred dollars nor more than one thousand dollars.

**VENTILATION**

§22-2-2. Plan of ventilation; approval by director of department of mines.

Every operator of a coal mine, before making any new or additional openings, shall submit to the director of the department of mines, for his information and approval, a general plan showing the proposed system of ventilation and ventilating equipment of the openings, with their location and relative positions to adjacent developments; no such new or additional openings shall be made until approved by the director of the department of mines.
The director of the department of mines shall promptly approve any such plans submitted, if the proposed system of ventilation and ventilating equipment meet the requirements of this article.


(a) The ventilation of mines, the systems for which extend for more than two hundred feet underground and which are opened after the effective date of this article, shall be produced by a mechanically operated fan or mechanically operated fans. Ventilation by means of a furnace is prohibited in any mine. The fan or fans shall be kept in continuous operation, unless written permission to do otherwise be granted by the director of the department of mines. In case of interruption to a ventilating fan or its machinery whereby the ventilation of the mine is interrupted, immediate action shall be taken by the mine operator or his management personnel, in all mines, to cut off the power and withdraw the men from the face regions or other areas of the mine affected. If ventilation is restored in fifteen minutes, the face regions and other places in the affected areas where gas (methane) is likely to accumulate, shall be reexamined by a certified person; and if found free of explosive gas, power may be restored and work resumed. If ventilation is not restored in fifteen minutes, all underground employees shall be removed from the mine, all power shall be cut off in a timely manner, and the underground employees shall not return until ventilation is restored and the mine examined by certified persons, mine examiners, or other persons holding a certificate to make preshift examination.

(b) All main fans installed after the effective date of this article shall be located on the surface in fireproof housings offset not less than fifteen feet from the nearest side of the mine opening, equipped with fireproof air ducts, provided with explosion doors or a weak wall, and operated from an independent power circuit. In lieu of the requirements for the location of fans and pressure-relief facilities, a fan may be directly in front of, or over
a mine opening: *Provided*, That such opening is not in
direct line with possible forces coming out of the mine if
an explosion occurs: *Provided, however*, That there is
another opening having a weak-wall stopping or ex-
plosion doors that would be in direct line with forces
coming out of the mine. All main fans shall be provided
with pressure-recording gauges or water gauges. A daily
inspection shall be made of all main fans and machinery
connected therewith by a certified electrician and a rec-
ord kept of the same in a book prescribed for this pur-
pose or by adequate facilities provided to permanently
record the performance of the main fans and to give warn-
ing of an interruption to a fan.

(c) Auxiliary fans and tubing shall be permitted to be
used in lieu of or in conjunction with line brattice to
provide adequate ventilation to the working faces:
*Provided*, That auxiliary fans be so located and oper-
ated to avoid recirculation of air at any time. Auxiliary
fans shall be approved and maintained as permissible.

(d) If the auxiliary fan is stopped or fails, the elec-
trical equipment in the place shall be stopped and the
power disconnected at the power source until ventilation
in the working place is restored. During such stoppage,
the ventilation shall be by means of the primary air
current conducted into the place in a manner to pre-
vent accumulation of methane.

(e) In places where auxiliary fans and tubing are used,
the ventilation between shifts, weekends, and idle shifts
shall be provided to face areas with line brattice or the
equivalent to prevent accumulation of methane.

(f) If the air passing through the auxiliary fan or
tubing contains gas in excess of one percent, the current
shall at once be switched off and the trailing cable shall
forthwith be disconnected from the power supply until
the place is pronounced safe.

(g) The director may require that when continuous
mine equipment is being used, all face ventilating sys-
tems using auxiliary fans and tubing shall be provided
with machine-mounted diffuser fans, and such fans shall
be continuously operated during mining operations.
In the event of a fire or explosion in any coal mine, the ventilating fan or fans shall not intentionally be started, stopped, speed increased or decreased or the direction of the air current changed without the approval of the general mine foreman, and, if he is not immediately available, a representative of the state department of mines. A duly authorized representative of the employees should be consulted if practical under the circumstances.


(a) The operator or mine foreman of every coal mine, whether worked by shaft, slope, or drift, shall provide and hereafter maintain for every such mine adequate ventilation. In all mines the quantity of air passing through the last open crosscut between the intake and return in any pair or set of entries shall be not less than nine thousand cubic feet of air per minute and as much more as is necessary to dilute and render harmless and carry away flammable and harmful gases. All working faces in a working section between the intake and return airway entries shall be ventilated with a minimum quantity of three thousand cubic feet of air per minute and as much more as is necessary to dilute and render harmless and carry away flammable and harmful gases. The quantity of air reaching the last crosscut in pillar sections may be less than nine thousand cubic feet of air per minute if at least nine thousand cubic feet of air per minute is being delivered to the intake of the pillar line. The air current shall under any conditions have a sufficient volume and velocity to reduce and carry away smoke from blasting and any flammable or harmful gases. All active underground working places in a mine shall be ventilated by a current of air containing not less than nineteen and five-tenths percent of oxygen, not more than five-tenths percent of carbon dioxide, and no harmful quantities of other noxious or poisonous gases.

(b) Airflow shall be maintained in all intake and return air courses of a mine, and where multiple fans are used, neutral areas created by pressure equalization between main fans shall not be permitted. Production activities in working faces shall cease while tubing, line
brattice, or other ventilation devices are being installed inby the machine operator.

(c) Properly installed and adequately maintained line brattice or other approved devices shall be continuously used from the last open crosscut of an entry or room of each working section to provide adequate ventilation to the working faces for the miners and to remove flammable, explosive, and noxious gases, dust, and explosive fumes. When damaged by falls or otherwise, such line brattice or other devices shall be repaired immediately.

(d) Brattice cloth used underground shall be of flame-resistant material. The space between the line brattice or other approved device and the rib shall be large enough to permit the flow of a sufficient volume and velocity of air to keep the working face clear of flammable, explosive, and noxious gases, dust and explosive fumes.

(e) Each working unit newly developed in virgin coal hereafter, shall be ventilated by a separate split of air: Provided, That areas already under development and in areas where physical conditions prevent compliance with this provision, the director of the department of mines may grant temporary relief from compliance until such time as physical conditions make compliance possible. The quantity of air reaching the last crosscut shall not be less than nine thousand cubic feet of air per minute and shall under any condition have sufficient volume and velocity to reduce and carry away smoke and flammable or harmful gases from each working face in the section.

(f) As working places advance, crosscuts for air shall be made not more than eighty feet apart. Where necessary to render harmless and carry away noxious or flammable gases, line brattice or other approved methods of ventilation shall be used so as to properly ventilate the face. All crosscuts between the main intake and return airways not required for passage of air and equipment shall be closed with stoppings substantially built with incombustible or fire-resistive material
so as to keep working places well ventilated. In mines where it becomes necessary to provide larger pillars for adequate roof support, working places shall not be driven more than two hundred feet without providing a connection that will allow the free flow of air currents. In such cases, a minimum of twelve thousand cubic feet of air a minute shall be delivered to the last open crosscut and as much more as is necessary to dilute and render harmless and carry away flammable and noxious gases.

(g) In special instances for the construction of sidetracks, haulageways, airways, or openings in shaft bottom or slope bottom layouts where the size and strength of pillars is important, the director of the department of mines may issue a permit approving greater distances. The permit shall specify the conditions under which such places may be driven.

(h) In all mines a system of bleeder openings or air courses designed to provide positive movement of air through and/or around abandoned or caved areas, sufficient to prevent dangerous accumulation of gas in such areas and to minimize the effect of variations in atmospheric pressure shall be made a part of pillar recovery plans projected after the effective date of this article.

(i) If a bleeder return is closed as a result of roof falls or water during pillar recovery operations, pillar operations may continue without reopening the bleeder return if at least twenty thousand cubic feet of air per minute is delivered to the intake of the pillar line.

(j) No operator or mine foreman shall permit any person to work where he is unable to maintain the quantity and quality of the air current as heretofore required: Provided, That such provisions shall not prohibit the employment of men to make place of employment safe.

(k) The ventilation of any mine shall be so arranged by means of airlocks, overcasts, or undercasts, that the use of doors on passageways where men or equipment travel may be kept to a minimum. Where doors are used in a mine they shall be erected in pairs so as to pro-
vide a ventilated airlock unless the doors are operated mechanically.

(l) A crosscut shall be provided at or near the face of each entry or room before such places are abandoned.

(m) Overcasts or undercasts shall be constructed of incombustible material and maintained in good condition.

§22-2-5. Unused and abandoned parts of mine.

(a) In any mine, all workings which are abandoned after the effective date of this article shall be sealed or ventilated. If such workings are sealed, the sealing shall be done with incombustible material in a manner prescribed by the director of the department of mines, and one or more of the seals of every sealed area shall be fitted with a pipe and cap or valve to permit the sampling of gases and measuring of hydrostatic pressure behind the seals. For the purpose of this section, working within a panel shall not be deemed to be abandoned until such panel is abandoned.

(b) Air that has passed through an abandoned area or an area which is inaccessible or unsafe for inspection or air that has been used to ventilate seals shall not be used to ventilate any working place in any mine. No air which has been used to ventilate an area from which the pillars have been removed shall be used to ventilate any working place in a mine, except that such air, if it does not contain 0.25 volume percent or more of methane, may be used to ventilate enough advancing working places immediately adjacent to the line of retreat to maintain an orderly sequence of pillar recovery on a set of entries. Before sealed areas, temporary or permanent are reopened, the director of the department of mines shall be notified.

MOVEMENT OF EQUIPMENT

§22-2-6. Movement of mining equipment.

Mining equipment being transported or trammed underground, other than ordinary sectional movements, shall be transported or trammed by qualified personnel.
under the supervision of a certified foreman. When equipment is being transported or trammed, no person shall be permitted to be in by the equipment in the ventilating split that is passing over such equipment. To avoid accidental contact with power lines, face equipment shall be insulated and assemblies removed, if necessary, so as to provide clearance.

MINE FOREMAN

§22-2-7. When mine foreman to be employed; qualifications; assistants.

In every coal mine where five or more persons are employed in a period of twenty-four hours, the operators shall employ a mine foreman who shall be a competent and practical person, holding a certificate of competency for such position issued to him by the department of mines after an examination by such department. In order to receive a certificate of competency to qualify as mine foreman, he shall at the time he takes the examination, be a citizen, resident or employed in a mine in this state, of good moral character and temperate habits, having had at least three years' experience in the underground working, ventilation and drainage of coal mines, or be a graduate of the school of mines of West Virginia University or of another accredited mining engineering school and have had one year's practical experience in coal mines: Provided, however, That in order to serve as a mine foreman he shall have had at least five years' practical experience, and if such service be at a gassy mine then at least two years of such experience shall have been in a gassy mine: Provided further, That any person holding a mine foreman’s certificate issued by any other state may act in the capacity of mine foreman in any mine in this state until the next regular mine foreman’s examination held by the department, but not to exceed a maximum of ninety days.

In mines in which the operations are so extensive that all the duties devolving upon the mine foreman cannot be discharged by one man, competent persons having had at least three years' experience in coal mines may be designated as assistants, who shall act under the mine
foreman's instructions and the mine foreman shall be responsible for their conduct in the discharge of their duties under such designation.

§22-2-8. Duties; ventilation; loose coal, slate or rocks; props; drainage of water; man doors.

(a) The duties of the mine foreman shall be to keep a careful watch over the ventilating apparatus, the airways, traveling ways, pumps and drainage. He shall see that, as the miners advance their excavations, proper break-throughs are made so as to ventilate properly the mine; that all loose coal, slate and rock overhead in the working places and along the haulways are removed or carefully secured so as to prevent danger to persons employed in such mines, and that sufficient suitable props, caps, timbers, roof bolts, or other approved methods of roof supports are furnished for the places where they are to be used and delivered at suitable points. The mine foreman shall have all water drained or hauled out of the working places where practicable, before the miners enter, and such working places shall be kept dry as far as practicable while the miners are at work. It shall be the duty of the mine foreman to see that proper crosscuts are made, and that the ventilation is conducted by means of such crosscuts through the rooms by means of checks or doors placed on the entries or other suitable places, and he shall not permit any room to be opened in advance of the ventilation current. The mine foreman or other certified persons designated by him, shall measure the air current with an anemometer or other approved device at least weekly at the inlet and outlet at or near the faces of the advanced headings, and shall keep a record of such measurements in a book or upon a form prescribed by the director of the department of mines. Signs directing the way to outlets or escapeways shall be conspicuously placed throughout the mine.

(b) After the effective date of this article, hinged man doors, at least thirty inches square or the height of the coal seam, shall be installed between the intake and the return at intervals of three hundred feet when the height of the coal is below forty-eight inches and at intervals
of five hundred feet when the height of the coal is above forty-eight inches.


The mine foreman shall require that all slopes, incline planes and haulage roads used by any person in the mine shall conform to the provisions of this article.

§22-2-10. Signals on haulways; lights at mouth and bottom of shaft; operation of cages.

On all haulways, where hauling is done by machinery of any kind, the mine foreman shall provide for a proper system of signals, and a conspicuous light or approved trip reflector on the rear of every trip or train of cars when in motion in a mine. When hoisting or lowering of men occurs in the morning before daylight, or in the evening after darkness, at any mine operated by shaft, the mine foreman shall provide and maintain at the shaft mouth a light of stationary character, sufficient to show the landing and all surrounding objects distinctly, and sufficient light of a stationary character shall be located at the bottom of the shaft so that persons coming to the bottom may clearly discern the cages and other objects contiguous thereto. The mine foreman shall require that no cages on which men are riding shall be lifted or lowered at a rate of speed greater than one thousand feet per minute and that no mine cars, either empty or loaded, shall be hoisted while men are being lowered, and no cage having an unstable self-dump platform shall be used for the carrying of workmen unless the same is provided with some device by which it may be securely locked when men are being hoisted or lowered into the mine. Provided, however, That during the initial development of a mine, and only until the shafts are joined, men shall be permitted to ride cages with one empty car which has been bolted or strapped to the cage.


It shall further be the duty of the mine foreman to have boreholes kept not less than twenty feet in advance of the face, one each twenty feet on sides of the working
places that are being driven toward and in dangerous
proximity to an abandoned mine or part of a mine which
may contain inflammable gases or which is filled with
water. These holes shall be drilled whenever any work-
ing place in an underground mine approaches within fifty
feet of abandoned workings in such mine, as shown by
surveys made and certified by a competent engineer or
surveyor, or within two hundred feet of any abandoned
workings of such mine which cannot be inspected.

§22-2-12. Instruction of employees; annual examination of per-
sons using flame safety lamps; records of exami-
nation.

The department of mines shall prescribe and establish
a course of instruction in mine safety and particularly in
dangers incident to such employment in mines and in
mining laws and rules, which course of instruction shall
be successfully completed within twelve weeks after any
person shall be first employed as a miner. It shall further
be the duty and responsibility of the department of
mines to see that such course shall be given to all per-
sons as above provided after their first being employed
in any mine in this state.

It shall be the duty of the mine foreman or the assistant
mine foreman of every coal mine in this state to see that
every person employed to work in such mine shall, before
beginning work therein, be instructed in the particular
danger incident to his work in such mine, and be fur-
nished a copy of the mining laws and rules of such mine.
Every inexperienced person so employed shall work
under the direction of the mine foreman, his assistant, or
such other experienced worker as may be designated by
the mine foreman or assistant, until he is familiar with
the danger incident to his work.

Persons whose duties require them to use a flame safety
lamp or other approved methane detectors shall be
examined at least annually as to their competence by a
qualified official from the West Virginia department of
mines and a record of such examination shall be kept
by the operator and the department of mines.

1 The mine foreman or his assistants shall visit and carefully examine each working place in the mine at least once every two hours each shift while the miners of such places are at work, and shall direct that each working place shall be secured by props, timbers, roof bolts, or other approved methods of roof support or both where necessary to the end that the working places shall be made safe. Should the mine foreman or his assistants find a place to be in a dangerous condition, they shall not leave the place until it is made safe, or shall remove the persons working therein until the place is made safe by some competent person designated for that purpose.

He shall place his initials, time and the date at or near each place he examines. He shall also record any dangerous conditions and practices found during his examination in a book provided for that purpose.


1 It shall be the duty of the mine foreman, or other certified person designated by him, to examine all working places under his supervision for hazards at least once every two hours during each coal-producing shift, or oftener if necessary for safety. In all mines such examinations shall include tests with a permissible flame safety lamp or other approved detector for methane and oxygen deficiency. It shall also be his duty to remove as soon as possible after its discovery any accumulations of explosive or noxious gases in active workings, and where practicable, any accumulations of explosive or noxious gases in the worked out and abandoned portions of the mine.


1 The mine foreman shall direct and see that all dangerous places and the entrance or entrances to worked out and abandoned places in all mines are properly dangered off across the openings.

§22-2-16. Examinations of reports of fire bosses.

1 The mine foreman shall also, each day, read carefully and countersign with ink or indelible pencil all reports
3 entered in the record book of the fire bosses, and he shall supervise the fire boss or fire bosses, except as hereinafter provided in section twenty-two of this article.

§22-2-17. Ascertainment, record and removal of all dangers.
1 The mine foreman shall give prompt attention to the removal of all dangers reported to him by his assistants, the fire boss, or any other person working in the mine, and in case it is impracticable to remove the danger at once, he shall notify all persons whose safety is menaced thereby to remain away from the area where the dangerous condition exists. He or his assistants or certified persons designated by him, shall at least once each week travel and examine the air courses, roads and openings that give access to old workings or falls, and make a record of the condition of all places where danger has been found, with ink or indelible pencil in a book provided for that purpose.

§22-2-18. Duty of mine foreman to notify operator when unable to comply with law; duty of operator.
1 The mine foreman shall notify, in writing, the operator or superintendent of the mine, and the director of the department of mines, of his inability to comply with any of the requirements of this law, and it shall then become the duty of such operator or superintendent promptly to attend to the matter complained of by the mine foreman so as to enable him to comply with the provisions hereof. Every operator of a mine shall furnish all supplies necessary for the mine foreman to comply with the requirements of this law after being requested to do so in writing by the mine foreman.

§22-2-19. Death or resignation of mine foreman; successor.
1 In case of the death or resignation of a mine foreman, the superintendent or manager shall appoint a certified man to act as mine foreman.

FIRE BOSS

§22-2-20. When fire boss to be employed; qualifications.
1 Every operator shall employ a mine examiner known as a fire boss, who shall hold a certificate of competency for
such position issued to him by the department of mines after taking an examination held by the department of mines. In order to receive a certificate of competency to qualify as a fire boss, he shall at the time he takes the examination, be a citizen, resident or employed in a mine in this state, having had at least three years' experience in the underground working, ventilation and drainage of coal mines; he shall have such knowledge of methane and other dangerous gas or gases as to be able to detect the same with a permissible flame safety lamp; he shall have a practical knowledge of the subject of ventilation of mines and the machinery and appliances used for that purpose; and he shall also be a person of good moral character and temperate habits.

§22-2-21. Preparation of danger signal by fire boss or certified person acting as such prior to examination; report; records open for inspection.

It shall be the duty of the fire boss, or a certified person acting as such, to prepare a danger signal (a separate signal for each shift) with red color at the mine entrance at the beginning of his shift or prior to his entering the mine to make his examination and, except for those persons already on assigned duty, no person except the mine owner, operator, or agent, and only then in the case of necessity, shall pass beyond this danger signal until the mine has been examined by the fire boss or other certified person and the mine or certain parts thereof reported by him to be safe. When reported by him to be safe, the danger sign or color thereof shall be changed to indicate that the mine is safe in order that employees going on shift may begin work. Each person designated to make such fire boss examinations shall be assigned a definite underground area of such mine, and, in making his examination shall examine all active working places in the assigned area and make tests with a permissible flame safety lamp for accumulations of methane and oxygen deficiency; examine seals and doors; examine and test the roof, face, and ribs in the working places and on active roadways and travelways, approaches to abandoned workings and accessible falls in active sections. He shall place his
initials and the date at or near the face of each place he examines. Should he find a condition which he considers dangerous to persons entering such areas, he shall place a conspicuous danger sign at all entrances to such place or places. Only persons authorized by the mine management to enter such places for the purpose of eliminating the dangerous condition shall enter such place or places while the sign is posted. Upon completing his examination he shall report by suitable communication system or in person the results of this examination to a certified person designated by mine management to receive and record such report, at a designated station on the surface of the premises of the mine or underground, before other persons enter the mine to work in such coal-producing shifts. He shall also record the results of his examination with ink or indelible pencil in a book prescribed by the director of the department of mines kept for such purpose at a place on the surface of the mine designated by mine management. All records of daily and weekly reports, as prescribed herein, shall be open for inspection by interested persons.

§22-2-22. Fire bosses to have no superior officers.

In the performance of the duties devolving upon fire bosses, or certified persons acting as such, they shall have no superior officers, but all the employees working inside of such mine or mines shall be subordinate to them in their particular work.

§22-2-23. Unlawful to enter mine until fire boss reports it safe; exceptions.

No person shall enter such mine or mines for any purpose at the beginning of work upon each shift therein until such signal or warning has been given by the fire boss or bosses as to the safety thereof, as by statute provided, except under the direction of the fire boss or bosses, and then for the purpose of assisting in making the mine safe: Provided, however, That men regularly employed on a shift during which the mine is being preshift examined by a fire boss or certified person shall be permitted to leave or enter the mine in the performance of their duties.
§22-2-24. Authority of fire boss to perform other duties.

1 Notwithstanding any other provision in this article contained, any person who holds a certificate issued by the state department of mines certifying his competency to act as fire boss may perform the duties of a fire boss and any other duties, statutory or otherwise, for which he is qualified, in the same mine or section and on the same day or shift.

COAL DUST AND ROCK DUST

§22-2-25. Control of coal dust; rock dusting.

1 (a) In all mines, dangerous accumulations of fine, dry coal and coal dust shall be removed from the mine, and all dry and dusty operating sections and haulageways and conveyors and back entries shall be rock dusted or dust allayed by such other methods as may be approved by the director of the department of mines.

7 (b) All mines or locations in mines that are too wet or too high in incombustible content for a coal dust explosion to initiate or propagate are not required to be rock dusted during the time any of these conditions prevail. Coal dust and other dust in suspension in unusual quantities shall be allayed by sprinkling or other dust allaying devices.

14 (c) In all dry and dusty mines or sections thereof, rock dust shall be applied and maintained upon the roof, floor and sides of all operating sections, haulageways and parallel entries connected thereto by open crosscuts. Back entries shall be rock dusted. Rock dust shall be so applied to include the last open crosscut of rooms and entries, and to within forty feet of faces. Rock dust shall be maintained in such quantity that the incombustible content of the mine dust that could initiate or propagate an explosion shall not be less than sixty-five percent, but the incombustible content in back entries shall not be less than eighty percent.

26 (d) Rock dust shall not contain more than five percent by volume of quartz or free silica particles and shall be pulverized so that one hundred percent will pass
through a twenty mesh screen and seventy percent or more will pass through a two hundred mesh screen.

ROOF—FACE—RIBS

§22-2-26. Roof control programs and plans.

(a) Each operator shall undertake to carry out on a continuing basis a program to improve the roof control system of each coal mine and the means and measures to accomplish such system. The roof and ribs of all active underground roadways, travelways, and working places shall be supported or otherwise controlled adequately to protect persons from falls of the roof or ribs. A roof control plan and revisions thereof suitable to the roof conditions and mining system of each coal mine and approved by the director of the department of mines shall be adopted and set out in printed form on or before the first day of July, one thousand nine hundred seventy-one. The plan shall show the type of support and spacing approved by the director. Such plan shall be reviewed periodically, at least every six months by the director, taking into consideration any falls of roof or rib or inadequacy of support of roof or ribs. No person shall proceed beyond the last permanent support unless adequate temporary support is provided or unless such temporary support is not required under approved roof control plan and the absence of such support will not pose a hazard to the miners. A copy of the plan shall be furnished to the director of the department of mines or his authorized representative and shall be available to the miners and their representatives.

(b) The operator, in accordance with the approved plan, shall provide at or near each working face and at such other locations in the coal mines as the director may prescribe, an ample supply of suitable materials of proper size with which to secure the roof of all working places in a safe manner. Safety posts, jacks, or other approved devices shall be used to protect the workmen when roof material is being taken down, crossbars are being installed, roof bolt holes are being drilled, roof bolts are being installed, and in such other circumstances as may be appropriate. Loose roof and overhanging or loose
faces and ribs shall be taken down or supported. Except in the case of recovery work, supports knocked out shall be replaced promptly.

§22-2-27. Roof support; examination and testing; correction of dangerous condition; roof bolt recovery.

(a) The method of mining followed in any coal mine shall not expose the miner to unusual dangers from roof falls. The width of roadways shall not exceed fourteen feet unless additional support is added cross sectional. During the development of intersections, the roof between the tangents of the arches in the entry or room shall be supported with artificial roof supports prior to the development of such intersections. All areas where the arch is broken shall be considered as having unsupported roof and such roof should have artificial roof supports installed prior to any other work being performed in the area.

(b) Where miners are exposed to danger from falls of roof, face, and ribs, the operator shall examine and test the roof, face, and ribs before any work or machine is started, and as frequently thereafter as may be necessary to insure safety. When dangerous conditions are found, they shall be corrected immediately.

(c) Roof bolts shall not be recovered where complete extraction of pillars is attempted, where adjacent to clay veins or at the locations of other irregularities, whether natural or otherwise, that induce abnormal hazards. Where roof bolt recovery is permitted, it shall be conducted only in accordance with methods prescribed in the approved roof control plan, and shall be conducted by experienced miners and only where adequate temporary support is provided.

§22-2-28. Canopies or cabs; electric face equipment.

An authorized representative of the director may require in any coal mine where the height of the coal bed permits that electric face equipment, including shuttle cars, be provided with substantially constructed canopies or cabs to protect the miners operating such equipment from roof falls and from rib and face rolls.
EXPLOSIVES AND BLASTING

§22-2-29. Use of authorized explosives; storage or use of unauthorized explosives.
1 Permissible explosives or permissible blasting devices only shall be used in blasting coal or other material in underground coal mines. It shall be unlawful to have, use or store any nonpermissible explosives or nonpermissible blasting devices in any coal mine or on the premises of the mine, without a permit from the director.

§22-2-30. Surface magazines for explosives.
1 Separate surface magazines shall be provided for storage of explosives, detonators and blasting heater elements. Surface magazines shall be constructed of incombustible materials, be reasonably bulletproof and with no metal or sparking material exposed inside the magazine. Surface magazines shall be provided with doors constructed of at least one-fourth inch steel plate lined with a two-inch thickness of wood or the equivalent, properly screened ventilators, and with no openings except for entrances and ventilation, and shall be kept locked securely when unattended. The area for a distance of at least twenty-five feet in all directions shall be kept free of materials of a combustible nature; suitable warning signs shall be erected, so located that a bullet passing directly through the face of the sign will not strike the magazine. The location of magazines shall be not less than two hundred feet from any mine openings, occupied buildings or public roads unless barricaded. If magazines are illuminated electrically, the lamps shall be of vapor-proof type, properly installed and wired, and smoking and open lights shall be prohibited in or near any magazine.

§22-2-31. Transportation of explosives.
1 Individual containers used to carry permissible explosives or detonators shall be constructed of substantial, nonconductive materials, kept closed and maintained in good condition. When explosives or detonators are transported underground in cars moved by means of locomo-
tives, ropes, or other motive power, they shall be in sub-
stantially covered cars or in special substantially-built
covered containers used specifically for transporting
detonators or explosives. Any container used for trans-
portation or storage of explosives shall be properly identi-
fied or marked. Explosives or detonators shall not be
hauled into or out of a mine within five minutes pre-
ceding or following a man trip. Where explosives and
detonators are transported underground by belts, they
shall be handled in the following manner: In the original
and unopened cases, in special closed cases constructed
of nonconductive material, or in suitable, individual
containers. Clearance requirements shall be a minimum
of eighteen inches; stop controls shall be provided at load-
ing and unloading points, and an attendant shall super-
vise the loading and unloading. Neither explosives nor
detonators shall be transported on flight or shaking con-
veyors, mechanical loading machines, locomotives,
scrapers, cutting machines, drill trucks, or any self-
propelled mobile equipment. If explosives and detonators
are transported in the same explosives car or in the same
special container, they shall be separated by at least four
inches of hardwood partition or the equivalent; the bodies
of such cars or containers shall be constructed or lined
with nonconductive material. No hand loader shall take
into any mine any larger quantity of explosives or deto-
nators than he may reasonably expect to use in any one
shift.


Explosives and detonators stored underground shall
be kept in section boxes or magazines of substantial con-
struction with no metal exposed on the inside, and be
located at least fifteen feet from roadways and power
wires in a well rock-dusted location, protected from falls
of roof. If not kept in separate boxes or magazines not
less than five feet apart, they may be kept in the same
box or magazine if separated by at least a four-inch
hardwood partition or the equivalent. Not more than a
forty-eight hour supply of explosives or detonators shall
be stored underground in section boxes or magazines.
12 These boxes or magazines shall be kept at least one hundred feet from the faces and out of the direct line of blasting.

§22-2-33. Preparation of shots; blasting practices.

(a) Only a certified “shot firer” designated by mine management shall be permitted to handle explosives and do blasting. Only electric detonators of proper strength fired with permissible shot firing units shall be used except under special permits as hereinafter provided, and drillholes shall be stemmed with at least twenty-four inches of incombustible material, or at least one half of the length of the hole shall be stemmed if the hole is less than four feet in depth, unless other permissible stemming devices or methods are used. Drillholes shall not be drilled beyond the limits of the cut, and as far as practicable, cuttings and dust shall be cleaned from the holes before the charge is inserted. Charges of explosives exceeding one and one-half pounds, but not exceeding three pounds, shall be used only if drillholes are six feet or more in depth. Ample warning shall be given before shots are fired, and care shall be taken to determine that all persons are in the clear before firing. Men shall be removed from adjoining places and other places when there is danger of shots blowing through. No shots shall be fired in any place known to liberate explosive gas, until such place has been properly examined by a competent person who is designated by mine management for that purpose, and no shots shall be fired in any place where gas is detected with a permissible flame safety lamp until such gas has been removed by means of ventilation. After firing any shot, or shots, the person firing the same shall not return to the working face until the smoke has been cleared away and then he shall make a careful examination of working face before leaving the place or before performing any other work in the place.

(b) Multiple shooting in coal or rock or both is authorized only under permit issued by the director of the department of mines. Permission to shoot more than ten shots simultaneously may be granted by the director
only after consultation with interested persons, and such
shooting will be performed by special methods and under
precautions prescribed by the director. All multiple
shooting in bottom or roof rock shall be performed in
intake air, except by special permit from the director
of the department of mines, after consultation with in-
terested persons as heretofore provided. Multiple blast-
ing of more than ten shots performed under any permit
granted by the director under this section shall be done
only on noncoal-producing shifts or idle days, except as
may be provided as a condition of the permit granted.

(c) Regular or short interval delay detonators may
be used for blasting purposes with written permission
from the director of the department of mines. Regular
delay detonators shall not be used for blasting coal, but
may be used for grading above or below coal seams and
during shaft, slope, tunnel work and in faults or wants.
Where short-interval delay detonators are permitted by
said director to be used, the shot firing circuit must be
tested with a blasting galvanometer before firing, and
the leg wires connected in series. No instantaneous,
regular, or zero-delay detonators are to be fired in con-
junction with short-interval delay detonators. The delay
interval between dependent rows must not be less than
twenty-five milliseconds or more than one hundred milli-
seconds, and the entire series of any one round shall
not provide a delay of more than five hundred milli-
seconds between the first and last shot. The total number
of charged holes to be fired during any one round must
not exceed the limit permitted by the director. Misfires
must be tested with a blasting galvanometer before
removing.

(d) Electrical equipment shall not be operated in the
face areas, and only work in connection with timbering
and general safety shall be performed while boreholes
are being charged. Shots shall be fired promptly after
charging. Mudcaps (adobes) or any other unconfined
shots shall not be permitted in any coal mine. No solid
shooting shall be permitted without written permission
of the department of mines.
Blasting cables shall be well insulated and shall be as long as may be necessary to permit persons authorized to fire shots to get in a safe place out of the line of fire. The cable, when new, shall be at least one hundred twenty-five feet in length and never less than one hundred feet. Shooting cables shall be kept away from power wires and all other sources of electric current, connected to the leg wires by the person who fires the shot, staggered as to length or well separated at the detonator leg wires, and shunted at the battery until ready to connect to the blasting unit.

§22-2-34. Misfires of explosives.

(a) Where misfires occur with electric detonators, a waiting period of at least five minutes shall elapse before anyone returns to the shot. After such failure, the blasting cable shall be disconnected from the source of power and the battery ends short-circuited before electric connections are examined.

(b) Explosives shall be removed by firing a separate charge at least two feet away from and parallel to the misfired charge or by washing the stemming and the charge from the borehole with water, or by inserting and firing a new primer after the stemming has been washed out.

(c) A careful search of the working place, and, if necessary, of the coal after it reaches the tipple shall be made after blasting a misfired hole, to recover any undetonated explosive.

(d) The handling of a misfired shot shall be under the direct supervision of the mine foreman or a certified person designated by him.

§22-2-35. Other blasting devices.

(a) The provisions governing the handling, storage, transportation and use of permissible explosives shall apply to all other blasting devices employing a heater element when used underground.

(b) Where compressed air is used for blasting, the airlines shall be grounded at the compressor and, if prac-
tical, at other low-resistant ground connections along the lines. They shall not be connected in any way to rails, waterlines, or other electric return conductors and shall be adequately insulated and protected where they cross electric wires, underneath track, or at places where equipment passes over or under. Steel, copper, or other air-lines connected therewith shall not be handled or repaired when air pressure is in the line. Shutoff valves shall be installed every thousand feet in all compressed-air blasting lines and at all points where branch lines leave the main line and blowdown valves shall not be less than fifty feet from the face and shall be around a corner.

(c) When misfires occur with any other blasting devices, they shall be handled in a safe manner and under the supervision of the mine foreman or a certified person designated by him.

HOISTING

§22-2-36. Hoisting machinery; telephones; safety devices; hoisting engineers and drum runners.

(a) The operator of every coal mine worked by shaft shall provide and maintain a metal tube, telephone or other approved means of communication from the top to the bottom and intermediate landings of such shafts, suitably adapted to the free passage of sound, through which conversation may be held between persons at the top and at the bottom of the shaft; a standard means of signaling; an approved safety catch, bridle chains, automatic stopping device, or automatic overwind; a sufficient cover overhead on every cage used for lowering or hoisting persons; an approved safety gate at the top of the shaft; and an adequate brake on the drum of every machine used to lower or hoist persons in such shaft. Such operator shall have the machinery used for lowering and hoisting persons into or out of the mine kept in safe condition, equipped with a reliable indicator, and inspected once in each twenty-four hours by a qualified electrician. Where a hoisting engineer is required, he shall be readily available at all times when men are in the mine. He shall operate the empty cage up and down the shaft at least one round trip at the beginning of each shift, and
after the hoist has been idle for one hour or more before
hoisting or lowering men; there shall be cut out around
the side of the hoisting shaft or driven through the solid
strata at the bottom thereof, a traveling way, not less
than five feet high and three feet wide to enable a per-
tson to pass the shaft in going from one side of it to the
other without passing over or under the cage or other
hoisting apparatus. Positive stop blocks or derails shall
be placed near the top and at all intermediate landings
of slopes and surface inclines and at approaches to all
shaft landings. A waiting station with sufficient room,
ample clearance from moving equipment, and adequate
seating facilities shall be provided where men are re-
quired to wait for man trips or man cages, and the men
shall remain in such station until the man trip or man
cage is available.

(b) No operator of any coal mine worked by shaft,
slope, or incline, shall place in charge of any engine or
drum used for lowering or hoisting persons employed in
such mine any but competent and sober engineers or drum
runners; and no engineer or drum runner in charge of
such machinery shall allow any person, except such as
may be designated for this purpose by the operator, to
interfere with any part of the machinery; and no person
shall interfere with any part of the machinery; and no
person shall interfere with or intimidate the engineer or
drum runner in the discharge of his duties. Where the
mine is operated or worked by shaft or slope, a minimum
space of two and one-half square feet per person shall be
available for each person on any cage or car where men
are transported. In no instance shall more than twenty
men be transported on a cage or car without the ap-
proval of the director of the department of mines. No
person shall ride on a loaded cage or car in any shaft,
slope, or incline: Provided, That this shall not prevent
any trip rider from riding in the performance of his au-
 thorized duties. No engineer shall be required for auto-
matically operated cages, elevators, or platforms. Cages
and elevators shall have an emergency power source un-
less provided with other escapeway facilities.

(c) Each automatic elevator shall be provided with a
telephone or other effective communication system by
which aid or assistance can be obtained promptly.
(d) A "stop" switch shall be provided in the automatic
elevator compartment that will permit the elevator to be
stopped at any location in the shaft.

TRANSPORTATION

§22-2-37. Haulage roads and equipment; shelter holes; pro-
hibited practices; signals; inspection.

(a) The roadbed, rails, joints, switches, frogs, and
other elements of all haulage roads shall be constructed,
installed and maintained in a manner consistent with
speed and type of haulage operations being conducted to
insure safe operation.
(b) Track switches, except room and entry develop-
ment switches, shall be provided with properly installed
throws, bridle bars, and guard rails; switch throws and
stands, where possible, shall be placed on the clearance
side.
(c) Haulage roads on entries developed after the effec-
tive date of this article shall have a continuous, un-
obstructed clearance of at least twenty-four inches from
the farthest projection of any moving equipment on the
clearance side.
(d) On haulage roads where trolley lines are used, the
clearance shall be on the side opposite the trolley lines.
(e) On the trolley wire or "tight" side, after the effec-
tive date of this article, there shall be at least twelve
inches of clearance from the farthest projection of any
moving equipment.
(f) Warning lights or reflective signs or tapes shall be
installed along haulage roads at locations of abrupt or
sudden changes in the overhead clearance.
(g) The clearance space on all haulage roads shall be
kept free of loose rock, coal, supplies or other material:
Provided, That not more than twenty-four inches need
be kept free of such obstructions.
(h) Ample clearance shall be provided at all points
where supplies are loaded or unloaded along haulage roads or conveyors.

(i) Shelter holes shall be provided along haulage entries driven after the effective date of this article where locomotive, rope or animal haulage is used. Such shelter holes shall be spaced not more than one hundred feet apart; they shall be on the side of the entry opposite the trolley wire.

(j) Shelter holes made after the effective date of this article shall be at least five feet in depth, not more than four feet in width, and as high as the traveling space. Room necks and crosscuts may be used as shelter holes even though their width exceeds four feet.

(k) Shelter holes shall be kept clear of refuse and other obstructions.

(l) After the effective date of this article, shelter holes shall be provided at switch throws and manually operated permanent doors.

(m) No steam locomotive shall be used in mines where men are actually employed in the extraction of coal, but this shall not prevent operation of a steam locomotive through any tunnel haulway or part of a mine that is not in actual operation and producing coal.

(n) Underground equipment powered by internal combustion engines using petroleum products, alcohol, or any other compound shall not be used in a coal mine.

(o) Locomotives, personnel carriers, mine cars, supply cars, shuttle cars, and all other haulage equipment shall be maintained in a safe operating condition. Each locomotive shall be equipped with a suitable lifting jack and handle. An audible warning device and headlights shall be provided on each locomotive and each shuttle car. All other mobile equipment, using the face areas of the mine, purchased after the effective date of this article, shall be provided with a conspicuous light or other approved device so as to reduce the possibility of collision.

(p) No persons other than those necessary to operate a trip or car shall ride on any loaded car or on the outside of any car. Where pusher locomotives are not used, the
locomotive operator shall have an assistant to assist him in his duties.

(q) The pushing of trips, except for switching purposes, is prohibited on main haulage roads: Provided, That this does not prohibit the use of a pusher locomotive to assist the locomotive pulling a trip. Motormen and trip riders shall use care in handling locomotives and cars. It shall be their duty to see that there is a conspicuous light on the front and rear of each trip or train of cars when in motion: Provided, That trip lights need not be used on cars being shifted to and from loading machines, on cars being handled at loading heads during gathering operations at working faces, or on trips being pulled by animals. No person except the operator or his assistant shall ride on locomotives or loaded cars.

(r) No motorman, trip rider or brakeman shall get on or off cars, trips, or locomotives while they are in motion, except that a trip rider or brakeman may get on or off the rear end of a slowly moving trip or the stirrup of a slowly moving locomotive to throw a switch, align a derail or open or close a door.

(s) Flying or running switches and riding on the front bumper of a car or locomotive are prohibited. Back poling shall be prohibited except with precaution to the nearest turning point (not over eighty feet), or when going up extremely steep grades and then only at slow speed. The operator of a shuttle car shall face in the direction of travel except during the loading operation when he shall face the loading machine.

(t) (1) A system of signals, methods, or devices shall be used to provide protection for trips, locomotives and other equipment coming out onto tracks used by other equipment.

(2) In a mine where more than one thousand tons of coal are produced daily and where coal is transported by track haulage, a dispatcher shall be on duty when there is movement of traffic underground, including times when there is no coal in transit.

(3) Traffic shall move only at the direction of the dispatcher.
(4) The dispatcher's only duty shall be to direct traffic.

(5) Any dispatcher's station provided after the effective date of this article shall be on the surface.

(6) All self-propelled equipment shall be equipped with two-way communications.

(u) Motormen shall inspect locomotives, and report any mechanical defects found to the proper supervisor before a locomotive is put in operation.

(v) A locomotive following another trip shall maintain a distance of at least three hundred feet from the rear end of the trip ahead, unless such locomotive is coupled to the trip ahead.

(w) Positive stopblocks or derails shall be installed on all tracks near the top and at landings of shafts, slopes, and surface inclines. Positive-acting stopblocks or derails shall be used where necessary to protect persons from danger of runaway haulage equipment.

§22-2-38. Transportation of men by cars; self-propelled equipment; belts.

(a) Man trips shall be pulled, unless self-propelled, at safe speeds consistent with the condition of roads and type of equipment used, but not to exceed twelve miles an hour, except where special substantially covered man-trip cars are used. Each man trip shall be under the charge of a certified person or other competent person designated by a mine foreman or assistant mine foreman. It shall be operated independently of any loaded trip of coal or other heavy material, but may transport tools, small machine parts and supplies. When mine cars are used for man trips on steep grades, a locomotive shall be used on each end of the trip.

(b) Cars on the man trip shall not be overloaded, and sufficient cars in good mechanical condition shall be provided.

(c) No person shall ride under the trolley wire unless suitably covered man cars are used.

(d) Men shall not load or unload before the cars in which they are to ride, or are riding, come to a full stop.
Men shall proceed in an orderly manner to and from man trips.

(e) When belts are used for transporting men, a minimum clearance of eighteen inches shall be maintained between the belt and the roof or crossbars, projecting equipment, cap pieces, overhead cables, wiring and other objects. Where the height of the coal seam permits, the clearance shall not be less than twenty-four inches.

(f) The belt speed shall not exceed two hundred fifty feet per minute where the minimum overhead clearance is eighteen inches, or three hundred feet per minute where the minimum overhead clearance is twenty-four inches, while men are loading, unloading, or being transported. A signaling system or method shall be provided for stopping the belt and men shall ride not less than six feet apart.

(g) An assistant mine foreman or some other person designated by the mine foreman shall supervise the loading and unloading of belts and man trips. Where men are required to regularly cross over belts, adequate and safe facilities shall be provided.

(h) Positive-acting stop controls shall be installed along all belt conveyors used to transport men, and such controls shall be readily accessible, and maintained so that the belt can be stopped or started at any location.

(i) Belt conveyors used for regularly scheduled man trips shall be stopped while men are loading or unloading.

(j) There shall be at least thirty-six inches of side clearance where men board or leave such belt conveyors.

(k) Adequate illumination including colored lights or reflective signs shall be installed at all loading and unloading stations. Such colored lights and reflective signs shall be so located as to be observable to all persons riding the belt conveyor.

(l) Telephone or other suitable communications shall be provided at points where men are regularly loaded on or unloaded from belt conveyors.
(m) After supplies have been transported on man-
trip cars, such cars shall be examined for unsafe condi-
tions prior to the transportation of men.

§22-2-39. Belt conveyor; installation; maintenance.

(a) On or after July 1, 1971, all conveyor belts ac-
quired for use underground shall be flame-resistant con-
veyor belts.

(b) A clear travelway at least twenty-four inches 
wide shall be provided on both sides of all belt conveyors 
installed after July 1, 1971. Where roof supports are 
installed within twenty-four inches of a belt conveyor, a 
clear travelway at least twenty-four inches wide shall 
be provided on the side of such support farthest from 
the conveyor.

(c) On belt conveyors that do not transport men, 
stop and start controls shall be installed at intervals not 
to exceed one thousand feet. Such controls shall be 
properly installed and positioned so as to be readily 
accessible.

(d) Persons shall not cross moving belt conveyors, 
except where suitable crossing facilities are provided.

(e) All belt conveyors shall be inspected for frozen 
rollers, rock falls, and fires, following the last produc-
tion shift each week, also before holidays, vacation peri-
ods, and each production shift, with records kept of daily 
inspection.

(f) Deluge-type water sprays, water sprinklers, dry 
chemical sprinkler system or foam generators (designed 
to be automatically activated in the event of a fire or rise 
in the temperature at or near the belt drive) shall be in-
stalled at each main and secondary conveyor drive.

(g) All underground belt conveyors shall be equipped 
with slippage and sequence switches.

(h) Telephones or other suitable communications 
shall be provided at points where supplies are regularly 
loaded or unloaded from the belt conveyors.

(i) After supplies have been transported on belt con-
veyors, such belts shall be examined for unsafe condi-
tions prior to the transportation of men.

1. (a) Operators of coal mines in which electricity is used as a means of power shall comply with the following provisions:

2. (1) All surface transformers, unless of a construction which will eliminate shock hazards, or unless installed at least eight feet above ground, shall be enclosed in a house or surrounded by a fence at least six feet high. If the enclosure is of metal, it shall be grounded effectively. The gate or door to the enclosure shall be kept locked at all times, unless authorized persons are present.

3. (2) Underground transformers shall be air cooled or cooled with noninflammable liquid or inert gas.

4. (3) Underground stations containing transformers or circuit breakers filled with inflammable oil shall be provided with doorsills or their equivalent, which will confine the oil if leakage or explosion occurs, and shall be of fireproof construction.

5. (4) Transformers shall be provided with adequate overload protection.

6. (5) “Danger—High Voltage” signs shall be posted conspicuously on all transformer enclosures, high-potential switchboards and other high-potential installations.

7. (6) Insulating platforms of rubber or other suitable nonconductive material shall be kept in place at each switchboard and at stationary machinery where shock hazards exist.

8. (7) Capacitors used for power factor connection shall be noninflammable liquid filled. Suitable drain-off resistors or other means to protect workmen against electric shock following removal of power shall be provided.

9. (8) All unattended underground loading points where electric driven hydraulic systems are used shall utilize a fireproof oil or emulsion.

10. (9) Before electrical changes are made to permissible equipment for use in a mine, they shall be approved by the director of the department of mines.

11. (10) Reverse current protection shall be provided at
storage battery charging stations to prevent the storage
cell batteries from energizing the power circuits in the event
of power failure.

(11) On and after July 1, 1971:

(A) All junction or distribution boxes used for
making multiple power connections in the last open
crosscut shall be permissible.

(B) All hand-held electric drills, blowers and ex-
haust fans, electric pumps, and such other low horse-
power electric face equipment which are taken into or
used in the last open crosscut of any coal mine shall
be permissible.

(C) All electric face equipment which is taken
into or used in the last open crosscut of any coal mine
classified gassy prior to July 1, 1972, shall be permissible.

(D) All other electric face equipment which is taken
into or used in the last crosscut of any coal mine,
after March 30, 1974, which has not been classified under
any provision of law as a gassy mine prior to July 1, 1970,
shall be permissible.

(12) Permissible electric face equipment; coal seams
above water table. On and after March 30, 1974, all electric
face equipment, which is taken into and used in the
last open crosscut of any coal mine which is operated
entirely in coal seams located above the water table and
which has not been classified under any provision of law
as a gassy mine prior to March 30, 1970, and in which
one or more openings were made prior to December 30,
1970, shall be permissible.

(13) The phrase “coal seams above the water table”
means coal seams in a mine which are located at an ele-
vation above a river or the tributary of a river into which
a local surface water system naturally drains.

(14) On and after July 1, 1971, in mines operated in
coal seams which are located at elevations above the
water table:

(A) All junction or distribution boxes used for
making multiple power connections in the last open
crosscut shall be permissible; and
(B) All hand-held electric drills, blower and exhaust fans, electric pumps, and all other electric-driven mine equipment, except low horsepower rock dusting equipment, that employs an electric current supplied by either a power conductor or battery and consumes not more than two thousand two hundred fifty watts of electricity, which is taken into or used in by the last open crosscut, shall be permissible. On and after March 30, 1974, in mines operated entirely in coal seams which are located at elevations above the water table, all electric face equipment which is taken into or used in by the last crosscut shall be permissible.

(15) The operator of each coal mine shall maintain in permissible condition all electric face equipment, which is taken into or used in by the last open crosscut of any mine after March 30, 1974.

(16) Except where permissible power connection units are used, all power-connection points out by the last open crosscut shall be in intake air.

(17) All power circuits and electric equipment shall be deenergized before work is done on such circuits and equipment, except when necessary for trouble shooting or testing.

(18) Energized trolley wires may be repaired only by a person trained to perform electrical work and to maintain electrical equipment and the operator of a mine shall require that such persons wear approved and tested insulated shoes and wireman's gloves.

(19) No electrical work shall be performed on low-, medium-, or high-voltage distribution circuits or equipment, except by a qualified person or by a person trained to perform electrical work and to maintain electrical equipment under the direct supervision of a qualified person. Disconnecting devices shall be locked out and suitably tagged by the persons who perform such work, except that in cases where locking out is not possible, such devices shall be opened and suitably tagged by such persons. Locks or tags shall be removed only by the persons who installed them, or, if such persons are un-
available, by persons authorized by the operator or his
agent.

(20) All electric equipment shall be frequently ex-
amined, tested, and properly maintained by a qualified
person to assure safe operating conditions. When a poten-
tially dangerous condition is found on electric equip-
ment, such equipment shall be removed from service until
such condition is corrected. A record of such examinations
shall be kept and made available to an authorized repre-
sentative of the director of the department of mines and
to the miners in such mine.

(21) All electric conductors shall be sufficient in size
and have adequate current-carrying capacity and be of
such construction that a rise in temperature resulting
from normal operation will not damage the insulating
material.

(22) All electrical connections or splices in conductors
shall be mechanically and electrically efficient, and suit-
able connectors shall be used. All electrical connections
or splices in insulated wire shall be reinsulated at least
to the same degree of protection as the remainder of the
wire.

(23) Cables shall enter metal frames of motors, splice
boxes, and electric compartment only through proper
fittings. When insulated wire, other than cables pass
through metal frames, the holes shall be substantially
bushed with insulated bushings.

(24) All power wire (except trailing cables on mobile
equipment, specially designed cables conducting high-
voltage power to underground rectifying equipment or
transformers, or bare or insulated ground and return
wires) shall be supported on well-installed insulators and
shall not contact combustible material, roof or ribs.

(25) Power wires and cables, except trolley wires,
trolley feeder wires and bare signal wires, shall be in-
sulated adequately and fully protected.

(26) Automatic circuit-breaking devices or fuses of the
correct type and capacity shall be installed so as to
protect all electric equipment and circuits against short
circuit and overloads. Three-phase motors on all electric
equipment shall be provided with overload protection that will deenergize all three phases in the event that any phase is overloaded.

(27) Incandescent lamps installed along haulageways and at other locations shall not contact combustible material, and if powered from trolley or direct current feeder circuits, need not be provided with separate short circuits or overload protection, if the lamp is not more than eight feet in distance from such circuits.

(28) In all main power circuits, disconnecting switches shall be installed underground within five hundred feet of the bottoms of shafts and boreholes through which main power circuits enter the underground area of the mine and within five hundred feet of all other places where main power circuits enter the underground area of the mine.

(29) All electric equipment shall be provided with switches or other controls that are safely designed, constructed and installed.

(30) Each underground, exposed power conductor that leads underground shall be equipped with suitable lightning arrestors of approved type within one hundred feet of the point where the circuit enters the mine. Lightning arrestors shall be connected to a low-resistance grounding medium on the surface which shall be separated from neutral ground by a distance of not less than twenty-five feet.

(31) Except for areas of a coal mine inby the last open crosscut, incandescent lamps may be used to illuminate underground areas. When incandescent lamps are used in a track entry or belt entry or near track entries to illuminate special areas other than structures, the lamps shall be installed in weatherproof sockets located in positions such that the lamps will not come in contact with any combustible material. Lamps used in all other places must be of substantial construction and be fitted with a glass enclosure.

(32) An authorized representative may require in any mine that electric face equipment be provided with de-
vices that will permit the equipment to be deenergized quickly in the event of an emergency.

(33) On and after July 1, 1971, an authorized representative of the director shall require manually operated emergency stop switches, designed to deenergize the traction motor circuit when the contactors or controller fail to open, to be installed on all battery powered tractors, taken into or used in by the last open crosscut of any entry or room.

(34) Trailing cables used in coal mines shall meet the requirements for flame-resistant cables.

(35) Short circuit protection for trailing cables shall be provided by an automatic circuit breaker or other no less effective device approved by the director of the department of mines of adequate current-interrupting capacity in each ungrounded conductor. Disconnecting devices used to disconnect power from trailing cables shall be plainly marked and identified and such devices shall be equipped or designed in such a manner that it can be determined by visual observation that the power is disconnected.

(36) When two or more trailing cables junction to the same distribution center, means shall be provided to assure against connecting a trailing cable to the wrong size circuit breaker.

(37) One temporary splice may be made in any trailing cable. Such trailing cable may only be used for the next twenty-four-hour period. No temporary splice shall be made in a trailing cable within twenty-five feet of the machine, except cable reel equipment. Temporary splices in trailing cables shall be made in a workmanlike manner and shall be mechanically strong and well insulated. Trail ing cables or hand cables which have exposed wires or which have splices that heat or spark under load shall not be used. As used in this section, the term “splice” means a mechanical joining of one or more conductors that have been severed.

(38) When permanent splices in trailing cables are made, they shall be:
(A) Mechanically strong with adequate electrical conductivity and flexibility,

(B) Effectively insulated and sealed so as to exclude moisture, and

(C) Vulcanized or otherwise treated with suitable materials to provide flame-resistant qualities and good bonding to the outer jacket.

(39) Trailing cables shall be clamped to machines in a manner to protect the cables from damage and to prevent strain on the electrical connections.

(40) Trailing cables shall be adequately protected to prevent damage by mobile equipment.

(41) Trailing cable and power cable connections to junction boxes shall not be made or broken under load.

(42) All metallic sheaths, armors, and conduits enclosing power conductors shall be electrically continuous throughout and shall be grounded by methods approved by an authorized representative of the director of the department of mines.

(43) Metallic frames, casings and other enclosures of electric equipment that can become alive through failure of insulation or by contact with energized parts shall be grounded.

(44) In instances where single-phase 110-220-volt circuits are used to feed electrical equipment, the only method of grounding that will be approved is the connection of all metallic frames, casings and other enclosures of such equipment to a separate grounding conductor which establishes a continuous connection to a grounded center tap of the transformer.

(45) The attachment of grounding wires to a mine track or other grounded power conductor will be approved if separate clamps, suitable for such purpose, are used and installed to provide a solid connection.

(46) The frames of all offtrack direct-current machines and the enclosures of related detached components shall be effectively grounded or otherwise maintained at no less safe voltages.
272 (47) Installation of silicon diodes shall be restricted to 273 electric equipment receiving power from a direct-current 274 system with one polarity grounded. Where such diodes 275 are used on circuits having a nominal voltage rating of 276 two hundred fifty, they must have a forward current 277 rating of four hundred amperes or more, and have a 278 peak inverse voltage rating of four hundred or more. 279 Where such diodes are used on circuits having nominal 280 voltage rating of five hundred fifty, they must have a for- 281 ward current rating of two hundred fifty amperes or more, 282 and have a peak inverse voltage rating of eight hundred 283 or more.

284 (48) In addition to the grounding diode, a polarizing 285 diode must be installed in the machine control circuit to 286 prevent operation of the machine when the polarity of a 287 trailing cable is reversed.

288 (49) When installed on permissible equipment, all 289 grounding diodes, over-current devices, and polarizing 290 diodes must be placed in explosion-proof compartments.

291 (50) High-voltage lines, both on the surface and under- 292 ground, shall be deenergized and grounded before work 293 is performed on them, except that repairs may be per- 294 mitted, in the case of energized surface high-voltage lines, 295 if such repairs are made by a qualified person in accor- 296 dance with procedures and safeguards, including, but not 297 limited to, a requirement that the operator of such mine 298 provide, test, and maintain protective devices in making 299 such repairs.

300 (51) When two or more persons are working on an 301 energized high-voltage surface line simultaneously, and 302 any one of them is within reach of another, such persons 303 shall not be allowed to work on different phases or on 304 equipment with different potentials.

305 (52) All persons performing work on energized high- 306 voltage surface lines shall wear protective rubber gloves, 307 sleeves, and climber guards if climbers are worn. Pro- 308 tective rubber gloves shall not be worn wrong side out 309 or without protective leather gloves. Protective devices 310 worn by a person assigned to perform repairs on high- 311 voltage surface lines shall be worn continuously from the
time he leaves the ground until he returns to the ground, and, if such devices are employed for extended periods, such person shall visually inspect the equipment assigned him for defects before each use, and, in no case, less than twice each day.

(53) Disconnecting or cutout switches on energized high-voltage surface lines shall be operated only with insulated sticks, fuse tongs, or pullers which are adequately insulated and maintained to protect the operator from the voltage to which he is exposed. When such switches are operated from the ground, the person operating such devices shall wear protective rubber gloves.

(54) Solely for purposes of grounding ungrounded high-voltage power systems, grounded messenger wires used to suspend the cables of such systems may be used as a grounding medium.

(55) When not in use, power circuits underground shall be deenergized on idle days and idle shifts, except that rectifiers and transformers may remain energized.

(56) High-voltage circuits entering the underground area of any coal mine shall be protected by suitable circuit breakers of adequate interrupting capacity. Such breakers shall be equipped with devices to provide protection against undervoltage, grounded phase, short circuit, and overcurrent.

(57) Circuit breakers protecting high-voltage circuits entering an underground area of any coal mine shall be located on the surface and in no case installed either underground or within a drift.

(58) One circuit breaker may be used to protect two or more branch circuits, if the circuit breaker is adjusted to afford overcurrent protection for the smallest conductor.

(59) The grounding resistor, where required, shall be of the proper ohmic value to limit the voltage drop in the grounding circuit external to the resistor to not more than one hundred volts under fault conditions. The grounding resistor shall be rated for maximum fault current continuously and insulated from ground for a voltage equal to the phase-to-phase voltage of the system.

(60) High-voltage circuits extending underground and
supplying portable mobile or stationary high-voltage equipment shall contain either a direct or derived neutral which shall be grounded through a suitable resistor at the source transformers, and a grounding circuit, originating at the grounded side of the grounding resistor, shall extend along with the power conductors and serve as a grounding conductor for the frames of all high-voltage equipment supplied power from that circuit, except that the director or his authorized representative may permit ungrounded high-voltage circuits to be extended underground to feed stationary electrical equipment if such circuits are either steel armored or installed in grounded, rigid steel conduit throughout their entire length, and upon his finding that such exception does not pose a hazard to the miners. Within one hundred feet of the point on the surface where high-voltage circuits enter the underground portion of the mine, disconnecting devices shall be installed and so equipped or designed in such a manner that it can be determined by visual observation that the power is disconnected, except that the director or his authorized representative may permit such devices to be installed at a greater distance from such area of the mine if he determines, based on existing physical conditions, that such installation will be more accessible at a greater distance and will not pose any hazard to the miners.

(61) On and after July 1, 1971, high-voltage resistance grounded systems serving portable or mobile equipment shall include a fail-safe ground check circuit to monitor continuously the grounding circuit to assure continuity, and the fail-safe ground check circuit shall cause the circuit breaker to open when either the ground or pilot check wire is broken, or other no less effective device approved by the director or his authorized representative to assure such continuity.

(62) Underground high-voltage cables used in resistance grounded systems shall be equipped with metallic shields around each power conductor with one or more ground conductors having a total cross-sectional area of not less than one half the power conductor, and with an insulated internal or external conductor not smaller than No. 10 (A.W.G.) for the ground continuity check circuit.
(63) All such cables shall be adequate for the intended current and voltage. Splices made in such cables shall provide continuity of all components.

(64) Single-phase loads, such as transformer primaries, shall be connected phase-to-phase.

(65) All underground high-voltage transmission cables shall be installed only in regularly inspected air courses and haulageways, and shall be covered, buried, or placed so as to afford protection against damage, guarded where men regularly work or pass under them unless they are six and one-half feet or more above the floor or rail, securely anchored, properly insulated, and guarded at ends, and covered, insulated, or placed to prevent contact with trolley wires and other low-voltage circuits.

(66) Disconnecting devices shall be installed at the beginning of branch lines in underground high-voltage circuits and equipped or designed in such a manner that it can be determined by visual observation that the circuit is deenergized when the switches are open.

(67) Circuit breakers and disconnecting switches underground shall be marked for identification.

(68) In the case of high-voltage cables used as trailing cables, temporary splices shall not be used and all permanent splices shall be made in accordance with the manufacturers' specifications.

(69) Frames, supporting structures and enclosures of stationary, portable, or mobile underground high-voltage equipment and all high-voltage equipment supplying power to such equipment receiving power from resistance grounded systems shall be effectively grounded to the high-voltage ground.

(70) Low- and medium-voltage power circuits serving three-phase alternating current equipment serving portable or mobile equipment shall be protected by suitable circuit breakers of adequate interrupting capacity which are properly tested and maintained as prescribed by the director. Such breakers shall be equipped with devices to provide protection against undervoltage, grounded phase, short circuit, and overcurrent.

(71) Power centers and portable transformers shall be
433 deenergized before they are moved from one location to
434 another, except that, when equipment powered by sources
435 other than such centers or transformers is not available,
436 the director may permit such centers and transformers to
437 be moved while energized, if he determines that another
438 equivalent or greater hazard may otherwise be created,
439 and if they are moved under the supervision of a qualified
440 person, and if such centers and transformers are examined
441 prior to such movement by such person and found to be
442 grounded by methods approved by an authorized repre-
443 sentative of the director and otherwise protected from
444 hazards to the miner. A record shall be kept of such exam-
445 inations. High-voltage cables, other than trailing cables,
446 shall not be moved or handled at any time while ener-
447 gized, except that such centers and transformers are mov-
448 ed while energized as permitted under this section, ener-
449 gized high-voltage cables attached to such centers and
450 transformers may be moved only by a qualified person
451 and the operator of such mine shall require that such per-
452 son wear approved and tested insulated wireman’s gloves.

453 (72) Low- and medium-voltage three-phase alternating-current
454 circuits used underground shall contain either
455 a director or derived neutral which shall be grounded
456 through a suitable resistor at the power center, and a
457 grounding circuit, originating at the grounded side of
458 the grounding resistor, shall extend along with the
459 power conductors and serve as a grounding conductor
460 for the frames of all the electrical equipment supplied
461 power from the circuit, except that the director or his
462 authorized representative may permit ungrounded low-
463 and medium-voltage circuits to be used underground to
464 feed such stationary electrical equipment if such cir-
465 cuits are either steel armored or installed in grounded
466 rigid steel conduit throughout their entire length. The
467 grounding resistor, where required, shall be of the proper
468 ohmic value to limit the ground fault current to twenty-
469 five amperes. The grounding resistor shall be rated for
470 maximum fault current continuously and insulated from
471 ground for a voltage equal to the phase-to-phase voltage
472 of the system.
(73) On or before July 1, 1972, low- and medium-voltage resistance grounded systems serving portable or mobile equipment shall include a fail-safe ground check circuit to monitor continuously the grounding circuit to assure continuity which ground check circuit shall cause the circuit breaker to open when either the ground or pilot check wire is broken, or other not less effective device approved by the director or his authorized representative to assure such continuity, except that an extension of time, not in excess of twelve months, may be permitted by the director on a mine-to-mine basis if he determines that such equipment is not available. Cable couplers shall be constructed so that the ground check continuity conductor shall be broken first and the ground conductors shall be broken last when the coupler is being uncoupled.

(74) Disconnecting devices shall be installed in conjunction with circuit breakers serving portable or mobile equipment to provide visual evidence that the power is connected.

(75) Circuit breakers shall be marked for identification.

(76) Single-phase loads shall be connected phase-to-phase.

(77) Trailing cables for medium-voltage circuits shall include grounding conductors, a ground check conductor, and grounded metallic shields around each power conductor or a ground metallic shield over the assembly, except that on equipment employing cable reels, cables without shields may be used if the insulation is rated two thousand volts or more.

(78) Trolley wires and trolley feeder wires shall be provided with cutout switches at intervals of not more than two thousand feet and near the beginning of all branch lines.

(79) Trolley wires and trolley feeder wires shall be provided with overcurrent protection.

(80) Trolley wires and trolley feeder wires, high-voltage cables, and transformers shall not be located within fifteen feet of the last open crosscut and shall be kept at least one hundred fifty feet from pillar workings.

(81) Trolley wires, trolley feeder wires, and bare sig-
nal wires shall be insulated adequately where they pass
through doors and stoppings and where they cross other
power wires and cables. Trolley wires and trolley feeder
wires shall be guarded adequately:

(A) At all points where men are required to work
or pass regularly under the wires.

(B) On both sides of all doors and stoppings.

(C) At man-trip stations.

(82) Temporary guards shall be provided where track-
men and other persons work in proximity to trolley
wires and trolley feeder wires.

(83) Adequate precaution shall be taken to insure that
equipment being moved along haulageways will not come
in contact with trolley wires or trolley feeder wires.

(84) Trolley and feeder wires shall be installed as fol-
lows: Where installed on permanent haulage, they shall
be:

(A) At least six inches outside the track gauge line.

(B) Kept taut and not permitted to touch the roof,
rib, or crossbars. Particular care shall be taken where
they pass through door openings to preclude bare wires
from coming in contact with combustible material.

(C) Installations of trolley wire hangers shall be
provided within three feet of each splice in a trolley wire.

§22-2-41. Bonding track used as power conductor.

1 Where track is used as a power conductor, rails and
2 switches on main entries shall be bonded and cross-
3 bonded in such manner as to assure adequate return. At
4 least one rail on secondary track-haulage roads shall be
5 welded or bonded at every joint, and cross bonds shall be
6 installed at intervals of not more than two hundred feet:
7 Provided, however, That rail joints in such secondary
8 haulage roads need not be bonded where a copper feeder
9 adequate in size parallels the track and is electrically
10 connected thereto at intervals of not more than two
11 hundred feet by cross bonds.

§22-2-42. Telephone service or communication facilities.

1 Telephone service or equivalent two-way communica-
2 tion facilities shall be provided in all mines between the
surface and each working section that is more than one thousand five hundred feet from the main portal.

Telephone lines, other than cables, shall be carried on insulators, installed on the opposite side from power or trolley wires, and where they cross power or trolley wires, they shall be insulated adequately.

Lightning arresters shall be provided at the points where telephone circuits enter the mine.

§22-2-43. Electric equipment in mines.

(a) Electric equipment shall not be taken into or operated in any place where methane can be detected with a flame safety lamp or other approved methane detector at any point not less than eight inches from the roof, face, or rib.

(b) In all mines, electric haulage locomotives operated from trolley wire and other electrical equipment or devices which may ignite gas shall not be used in return air, unless permission is granted by the director of the department of mines for a specified area. For the purpose of this provision, air used to ventilate a section of a mine shall not be considered return air until such time as the air has ventilated all of the workings in the section.

(c) No person shall be placed in charge of a coal-cutting machine in any mine who is not a qualified person, capable of determining the safety of the roof and sides of the working places and of detecting the presence of explosive gas, unless they are accompanied by a certified or qualified person who has passed such an examination.

(d) In any mine no machine shall be brought in by the last breakthrough next to the working face until the machine man shall have made an inspection for gas in the place where the machine is to work. If explosive gas in excess of one percent is found in the place, the machine shall not be taken in until the danger is removed.

(e) In working places a safety lamp, or other suitable approved apparatus for the detection of explosive gas, shall be provided for use with each mining machine when working, and should any indication of explosive
gas in excess of one percent appear on the flame of the safety lamp, or on other apparatus used for the detection of explosive gas, the person in charge shall immediately stop the machine, cut off the current at the nearest switch and report the condition to the mine foreman or supervisor. The machine shall not again be started in such place until the condition found has been corrected and been pronounced safe by a certified person.

(f) No electric equipment shall be operated in a mine for a longer period than twenty minutes without an examination as above described being made for gas; and if gas is found in excess of one percent, the current shall at once be switched off the machine, and the trailing cable shall forthwith be disconnected from the power supply until the place is pronounced safe.

(g) Machine runners and helpers shall use care while operating mining machines. They shall not permit any person to remain near the machine while it is in operation. They shall examine the roof of the working place to see that it is safe before starting to operate the machine. They shall not move the machine while the cutter chain is in motion.

§22-2-44. Hand-held electric drills and rotating tools; trailing cables.

1 Electric drills and other electrically operated rotating tools intended to be held in the hand shall have the electric switch constructed so as to break the circuit when the hand releases the switch and shall be equipped with friction or safety clutches.

§22-2-45. Installation of lighting.

1 Electric lights or other approved methods of lighting shall be installed so that they do not come in contact with combustible materials, and the wires shall be supported by suitable insulators and fastened securely to the power conductors.

§22-2-46. Welding and cutting.

1 (a) A record shall be kept of oxygen and gas tanks or cylinders taken into a mine and the date shall be
recorded when they are removed from the mine. No
more tanks or cylinders than necessary to perform effi-
ciently the work shall be permitted underground at one
time.

(b) Propane torches may be used in lieu of blow-
torches.

(c) Welding and cutting may be done in mines: Pro-
vided, That all equipment and gauges are maintained in
safe condition and not abused, that suitable precautions
are taken against ignition of methane, coal dust, or com-
bustible materials, that means are provided for prompt
extinguishment of fires accidentally started, and that
only persons who have demonstrated competency in
welding and cutting are entrusted to do this work. Ade-
quate eye protection shall be used by all persons doing
welding or cutting, and precautions shall be taken to
prevent other persons from exposure that might be harm-
ful to their eyes.

(d) Transportation of oxygen and gas tanks or cylinders
shall be permitted on self-propelled machinery or belt con-
veyors specially equipped for safe holding of the contain-
ers in transportation. In no instance, shall such transporta-
tion be permitted in conjunction with any man trip.

(e) Empty oxygen and gas tanks or cylinders shall be
marked "empty" and shall be removed from the mine
promptly in safe containers provided for transportation
of the same.

(f) When tanks and cylinders are not in use and when
they are being transported, valve protection caps and
plugs shall be placed on all tanks or cylinders for which
caps and plugs are available. No oxygen tanks, gas tanks
or cylinders shall be transported with the hoses and
gauges attached thereto.

(g) In all mines a certified person shall examine for
gas with permissible flame safety lamps or other ap-
proved detectors before and during welding or cutting
in, at or near working faces. The safety of the equipment
and methods used in such cases shall be subject to ap-
proval of the director of the department of mines. If
equipment is mobile, it shall be removed out by the last
open breakthrough before cutting and welding may be performed on such equipment.

§22-2-47. Responsibility for care and maintenance of face equipment.

Mine operators shall maintain face equipment in safe operating condition. Equipment operators shall exercise reasonable care in the operation of the equipment entrusted to them and shall promptly report defects known to them.

§22-2-48. When respiratory equipment to be worn; control of dust.

Men exposed for short periods to gas-, dust-, fume-, and mist-inhalation hazards shall wear permissible respiratory equipment. Dust shall be controlled by the use of permissible dust collectors or other approved methods.

SAFEGUARDS FOR MECHANICAL EQUIPMENT

§22-2-49. Safeguards for mechanical equipment.

(a) The cutter chains of mining machines shall be locked securely by mechanical means or electrical interlocks while such machines are parked or being trammed. Loading machines shall not be trammed with loading arms in motion, except when loading materials.

(b) Belt, chain or rope drives and the moving parts of machinery which are within seven feet of the floor, ground or platform level, unless isolated, shall be guarded adequately. Repair pits shall be kept covered or guarded at all times when not in use. Machinery shall not be lubricated or repaired while in motion, except where safe remote lubricating devices are used. Machinery shall not be started until the person lubricating or repairing it has given a clear signal. Guards which have been removed shall be replaced before the machinery is again put into use. Provision shall be made to prevent accumulations of spilled lubricants.

(c) Mechanically operated grinding wheels shall be equipped with safety washers, substantial retaining hoods, and, unless goggles are used, eye shields.
SURFACE STRUCTURES AND PRACTICES

§22-2-50. Procurement of dust-tight electrical equipment; fire-proof construction; dust control; repairs; welding; handrails and toeboards; protection of personnel on conveyors; back guards on ladders; walkways or safety devices around thickeners.

(a) In unusually dusty locations, electric motors, switches and controls shall be of dust-tight construction, or enclosed with reasonably dust-tight housings or enclosures.

(b) After July 1, 1971, all structures erected on the surface within one hundred feet of any mine opening shall be of fireproof construction.

(c) Means and methods shall be provided to assure that structures and the immediate area surrounding the same shall be reasonably free of coal dust accumulations.

(d) Where coal is dumped at or near air intake openings, reasonable provisions shall be made to prevent dust from entering the mine.

(e) Where repairs are being made to the plant, proper scaffolding and proper overhead protection shall be provided for workmen wherever necessary.

(f) Welding shall not be done in dusty atmospheres and dusty locations shall be well cleaned, and fire-fighting apparatus shall be readily available during welding.

(g) Stairways, elevated platforms and runways shall be equipped with handrails. Railroad car trimmer platforms are excepted from such requirement.

(h) Elevated platforms and stairways shall be provided with toeboards where necessary, and they shall be kept clear of refuse and ice and maintained in good repair.

(i) Personnel who are required frequently and regularly to travel on belts or chain conveyors extended to heights of more than ten feet shall be provided with adequate space and protection in order that they may work safely. Permanent ladders extending more than ten feet shall be provided with back guards. Walkways around thickeners that are less than four feet above the
walkway shall be adequately guarded. Employees required to work over thickeners shall wear a safety harness adequately secured, unless walkways or other suitable safety devices are provided.

§22-2-51. Housekeeping.

1 Good housekeeping shall be practiced in and around mine buildings and yards. Such practices include cleanliness, orderly storage of materials, and the removal of possible sources of injury, such as stumbling hazards, protruding nails and broken glass.

§22-2-52. Storage of flammable liquids in lamphouse.

1 Naphtha or other flammable liquids in lamphouses shall be kept in approved containers or other safe dispensers.

§22-2-53. Smoking in and around surface structures.

1 Smoking in or about surface structures shall be restricted to places where it will not cause fire or an explosion.

MISCELLANEous SAFETY PROVISIONS AND REQUIREMENTS

§22-2-54. Duties of persons subject to article; rules and regulations of operators.

1 (a) It shall be the duty of the operator, mine foreman, supervisors, mine examiners, and other officials to comply with and to see that others comply with the provisions of this article.

5 (b) It shall be the duty of all employees and checkweighmen to comply with this article and to cooperate with management and the department of mines in carrying out the provisions hereof.

9 (c) Reasonable rules and regulations of an operator for the protection of employees and preservation of property that are in harmony with the provisions of this article and other applicable laws shall be complied with. They shall be printed on cardboard or in book form in the English language and posted at some conspicuous
place about the mine or mines, and given to each employee upon request.

§22-2-55. Protective equipment and clothing.

(a) Welders and helpers shall use proper shields or goggles to protect their eyes. All employees shall have approved goggles or shields and use the same where there is a hazard from flying particles, or other eye hazards.

(b) Employees engaged in haulage operations and all other persons employed around moving equipment on the surface and underground shall wear snug-fitting clothing.

(c) Protective gloves shall be worn when material which may injure hands is handled, but gloves with gauntleted cuffs shall not be worn around moving equipment.

(d) Safety hats and safety-toed shoes shall be worn by all men while in or around a mine.

(e) Approved safety goggles or eyeshields shall be worn by all persons while being transported in open-type man trips.

(f) A self-rescue device approved by the director of the department of mines shall be worn by each person underground or kept within his immediate reach, and such device shall be provided by the operator. The self-rescue device shall be adequate to protect such miner for one hour or longer. Each operator shall train each miner in the use of such device, and refresher training courses for all underground employees shall be held during each calendar year.

§22-2-56. Checking systems.

Each mine shall have a check-in and check-out system that will provide positive identification upon the person of every individual underground. An accurate record of the men in the mine, which shall consist of a written record, a check board, or a time-clock record, shall be kept on the surface in a place that will not be affected in the event of an explosion. Said record shall bear a number or name identical to the identification check fastened to the belt of all persons going underground.
§22-2-57. No act permitted endangering security of mine; search for intoxicants, matches, etc.

(a) No miner, workman or other person shall knowingly injure any shaft, lamp, instrument, air course, or brattice, or obstruct or throw open airways, or carry matches or open lights in the places worked by safety lights, or disturb any part of the machinery or appliances, open a door closed for directing ventilation and not close it again, or enter any part of a mine against caution, or disobey any order of any mine foreman or assistant mine foreman given in carrying out any of the provisions of this section.

(b) Open lights, smoking, and smokers' articles, including matches, are prohibited in all mines. No person shall at any time enter mines with or carry therein any matches, pipes, cigars, cigarettes, or any device for making lights or fire not authorized or approved. The operator shall at frequent intervals search, or cause to be searched, any person, including his clothing and material belongings, entering or about to enter the mine, or inside the mine, to prevent such person from taking or carrying therein any of the above-mentioned articles.

(c) No person shall at any time carry into any mine any intoxicants or enter any mine while under the influence of intoxicants.


(a) Suitable fire protection shall be provided at surface installations of fans, shops, tipples, and preparation plants, substations, hoist rooms and compressor stations.

(b) Fire drills and demonstration of various types of available fire-fighting equipment shall be held for employees at least every six months.

(c) The location of pipelines, locations of valves, and fire taps shall be shown on a map of the mine and kept available at the mine office at all times.

(d) Each coal mine shall be provided with suitable fire-fighting equipment adapted for the size and condition of the mine. Fire-fighting equipment required under this article shall meet the following requirements:
14 (1) Waterlines shall be capable of delivering fifty gallons of water at a nozzle pressure of fifty pounds per square inch.

17 (2) A portable water car shall be of at least one thousand gallons capacity, and shall have at least three hundred feet of fire hose with nozzles. A portable water car shall be capable of providing a flow through the hose of fifty gallons of water per minute at a nozzle pressure of fifty pounds per square inch.

23 (3) A portable chemical car shall carry enough chemicals to provide a fire extinguishing capacity equivalent to that of a portable water car.

26 (4) A portable foam-generating machine shall have facilities and equipment for supplying the machine with thirty gallons of water per minute at thirty pounds per square inch for a period of thirty-five minutes.

30 (5) A portable fire extinguisher shall be either a multipurpose dry chemical type, containing a nominal weight of five pounds of dry powder and enough expellant to apply the powder; or a foam-producing type containing at least two and one-half gallons of foam-producing liquid and enough expellant to supply the foam. Only fire extinguishers approved by the Underwriters Laboratories, Inc. or Factor Mutual Laboratories, carrying appropriate labels as to type and purpose shall be used after July 1, 1971, and all new portable fire extinguishers acquired for use in a coal mine shall be of the multipurpose dry chemical type, having a 2A 10BC or higher rating.

42 (6) The fire hose shall be rubber-lined, mildew-proof and the cover shall be of flame-resistant qualities, meeting requirements for hose in Bureau of Mines Schedule 2G, except that the test flame shall be applied to the outer surface rather than to an open end. The bursting pressure shall be at least four times higher than the static water at the mine location; the maximum water pressure in the hose nozzle shall not exceed 100 p.s.i.g.

50 (e) Each working section of coal mines producing three hundred tons or more per shift shall be provided with two portable fire extinguishers and two hundred forty pounds of bagged rock dust; waterlines shall ex-
tend to each section loading point and be equipped with
enough fire hose to reach each working face unless the
section loading point is provided with one of the fol-
lowing: (1) Two portable water cars or (2) two portable
chemical cars, or (3) one portable water car or one
portable chemical car and either a portable foam-gener-
ating machine or a portable high-pressure rock-dusting
machine, fitted with at least two hundred fifty feet of
hose and supplied with at least sixty sacks of rock dust.

(f) In all coal mines, waterlines shall be installed
parallel to the entire length of belt conveyors and shall
be equipped with fire hose outlets with valves at three-
hundred-foot intervals along each belt conveyor and at
tailpieces. At least five hundred feet of fire hose with
 fittings suitable for connection with each belt conveyor
waterline system shall be stored at strategic locations
along the belt conveyor. Waterlines may be installed in
entries adjacent to the conveyor entry belt as long as
the outlets project into the belt conveyor entry. Each
working section of coal mines producing less than three
hundred tons of coal per shift shall be provided with
two portable fire extinguishers, two hundred forty pounds
of bagged rock dust and at least five hundred gallons
of water and at least three pails of ten-quart capacity.
In lieu of the five hundred gallon water supply, a water-
line with sufficient hose to reach the working places, a
portable water car of five hundred fifty gallons capac-
ity, or a portable all-purpose dry powder chemical car
of at least one hundred twenty-five pounds capacity may
be provided.

(g) In mines producing three hundred tons of coal
or more per shift, waterlines shall be installed parallel
to all haulage tracks using mechanized equipment in the
track or adjacent entry and shall extend to the loading
point of each working section. Waterlines shall be
equipped with outlet valves at intervals of not more
than five hundred feet, and five hundred feet of fire hose
with fittings suitable for connection with such water-
lines shall be provided at strategic locations. Two porta-
bale water cars, readily available, may be used in lieu
of waterlines prescribed under this subsection.
(h) In mines producing less than three hundred tons of coal per shift, there shall be provided at five-hundred-foot intervals in all main and secondary haulage roads:
1. A tank of water of at least fifty-five gallon capacity with at least three pails of not less than ten-quart capacity, or
2. not less than two hundred forty pounds of bagged rock dust.

(i) Each track or off-track locomotive, self-propelled man-trip car, or personnel carrier shall be equipped with one portable fire extinguisher.

(j) Two portable fire extinguishers shall be provided at each permanent electrical installation. One portable fire extinguisher and two hundred forty pounds of rock dust shall be provided at each temporary electrical installation.

(k) Two portable fire extinguishers and two hundred forty pounds of rock dust shall be provided at each permanent underground oil storage station. One portable fire extinguisher shall be provided at each working section where twenty-five gallons or more of oil are stored in addition to extinguishers required under subsection (e) of this section.

(l) One portable fire extinguisher or two hundred forty pounds of rock dust and water shall be provided at locations where welding, cutting, or soldering with arc or flame is being done.

(m) At each wooden door through which power lines pass there shall be one portable fire extinguisher or two hundred forty pounds of rock dust within twenty-five feet of the door on the intake air side.

(n) At each mine producing three hundred tons of coal or more per shift, there shall be readily available the following materials at locations not exceeding two miles from each working section:
1. One thousand board feet of brattice boards
2. Two rolls of brattice cloth
3. Two handsaws
4. Twenty-five pounds of 8° nails
5. Twenty-five pounds of 10° nails
(6) Twenty-five pounds of 16° nails
(7) Three claw hammers
(8) Twenty-five bags of wood fiber plaster or ten bags of cement (or equivalent material for stoppings)
(9) Five tons of rock dust.

(10) At each mine producing less than three hundred tons of coal per shift, the above materials shall be available at the mine: Provided, however, That the emergency materials for one or more mines may be stored at a central warehouse or building supply company and such supply must be the equivalent of that required for all mines involved and within one hour's delivery time from each mine. This exception shall not apply where the active working sections are more than two miles from the surface.

§22-2-59. First-aid equipment.

(a) Each operator of an underground coal mine shall maintain a supply of first-aid equipment at each of the following locations:

(1) At the mine dispatcher's office and on the surface in close proximity to the mine entry.
(2) At the bottom of each regularly traveled slope or shaft; however, where the bottom of such slope or shaft is not more than one thousand feet from the surface, such first-aid supplies may be maintained on the surface at the entrance of the mine.
(3) At a point in each working section not more than five hundred feet outby the active working face or faces.

(b) The first-aid equipment required to be maintained shall include at least the following:

(1) One stretcher
(2) One broken-back board
(3) Twenty-four triangular bandages
(4) Eight four-inch bandage compresses
(5) Sixteen two-inch bandage compresses
(6) Twelve one-inch adhesive compresses
(7) One foil
Two cloth blankets
(9) One rubber blanket
(10) Two tourniquets
(11) One one-ounce bottle of aromatic spirits of ammonia
(12) Two inflatable plastic arm splints
(13) Two inflatable plastic leg splints
(14) Six small splints, metal or wooden
(15) Two cold packs
(c) All first-aid supplies required to be maintained under the section shall be stored in suitable sanitary, dust-tight, moisture-proof containers and such supplies shall be accessible to the miners.
(d) No first-aid material shall be removed or diverted without authorization, except in case of accident in or about the mine.
(e) On all occasions when a person becomes sick or injured underground to the extent that he must go to the surface, he shall be accompanied by one or more persons.

§22-2-60. Accessible outlets; safe roadways for emergencies.
(a) No operator or mine foreman of any coal mine shall employ any person to work in such mine, or permit any persons to be in the mine for the purpose of working therein unless they are provided with two openings or outlets to each seam, separated by natural strata, such openings to be not less than three hundred feet apart, if the mine be worked by shaft; if the mine be worked by shaft and slope, such openings shall be separated by one hundred feet of natural strata; and not less than fifty feet apart at the outlets, if worked by slope or drift; but this requirement of a distance of three hundred feet between openings or outlets to shaft mines shall not apply where such openings or outlets have been made prior to the effective date of this article.
(b) At least two separate and distinct travelable passageways shall be maintained to insure passage at all
times to any person, including disabled persons, and which shall be designated as escapeways; at least one which is ventilated with intake air shall be provided from each working section continuous to the nearest available opening on the surface, and shall be main-
tained in safe condition and properly marked. Mine openings shall be adequately protected to prevent the entrance into the underground area of the mine of sur-
face fires, fumes, smoke and floodwater. Escape facilities approved by the director of the department of mines, properly maintained and frequently tested, shall be present at or in each escape shaft or slope to allow all persons, including disabled persons to escape quickly to the surface in event of an emergency. Return airways entries designated as escapeways shall be provided with permissible two-way communication systems to the sur-
face, and such systems shall be located at points not to exceed every four thousand feet.

(c) Escapeways shall be inspected and traveled at least once each week by a certified mine examiner who shall place his initials and the date in a conspicuous place or places and who shall file a written report thereon which shall be kept on the surface.

(d) When new coal mines are opened, not more than twenty men shall be allowed at any one time in any mine until a connection has been made between the two mine openings, and such connections shall be made as soon as possible.

(e) When only one opening is available because of final mining of pillars, not more than twenty miners shall be allowed in such mine at any one time, and the distance between the mine opening and working face shall not exceed five hundred feet.

§22-2-61. Coal storage bins; recovery tunnels; coal storage piles.

(a) Coal storage bins hereafter constructed with verti-
cal sides fifty feet or over in height shall be pro-
vided with ventilators or louvers or both to provide adequate ventilation. Where roofs are constructed over
coal storage bins, adequate ventilation shall be provided by stacks, ventilators, louvers or mechanical means.

(b) Where cutting or welding is performed at any location where coal is stored, means of prompt extinguishment of any fire accidentally started shall be provided, and the area where cutting or welding is performed shall be adequately watered down and rock-dusted.

(c) A qualified person shall test for methane with a methane detector prior to and during cutting and welding operations inside or underneath a coal storage bin.

(d) Electric motors, switches and controls for coal storage bins hereafter acquired shall be of dust-tight construction.

(e) Repairs to electric equipment shall not be made when the surrounding atmosphere contains dangerous amounts of gas or dust.

(f) Where electric lights are used in recovery tunnels of over one hundred feet in length, the wiring shall be in rigid conduit and shall be enclosed in waterproof receptacles.

(g) An escapeway shall be provided from any recovery tunnel hereafter constructed to a safe place on the surface; such escapeway shall be at least thirty inches in diameter and where inclined, a ladder shall be provided to extend full length of the escapeway to facilitate emergency exit.

(h) Extreme caution shall be exercised by all employees required to work at or near coal storage piles during coal recovery operations to avoid injury by coal slides or by being in or drawn into a chute.

§22-2-62. Thermal coal dryers and plants.

Thermal coal dryer plants shall be hereafter constructed, maintained and operated in compliance with the following provisions:

(1) Good housekeeping shall be practiced in and around thermal dryer plants.

(2) Adequate fire-fighting facilities shall be provided on all floors.
When welding and cutting operations are to be performed in a dryer structure, the area shall be wetted down thoroughly and adequate fire-fighting apparatus shall be readily available during the operation.

(4) Only qualified persons shall be permitted to operate dryers; however, this provision shall not prohibit qualified persons from training other persons to become qualified operators.

(5) Dryer control panels shall be provided with audible and visible alarm devices; such devices should be adjusted to function at somewhat less than maximum dryer temperature.

(6) A bypass or relief stack equipped with an automatically operated damper shall be provided for bypassing gases from the heating units to the outside atmosphere during emergency or normal shutdown operations.

(7) Thermal coal dryers hereafter installed shall not be enclosed except that roofs may be used. Whenever it is deemed necessary to enclose thermal dryers, such equipment shall be in a fireproof structure.

(8) Dryer installations and discharge stacks shall be protected with adequate explosion release vents that open to the outside atmosphere.

(9) Thermal coal dryers shall be located at a safe distance from tipples, cleaning plants, mine openings and surface buildings, such as oil storage areas, explosive magazines, and other buildings where coal dust, sparks and flames are likely to enter and become ignited or otherwise cause danger of fires.

(10) Dryers shall be equipped with quick-response heat control devices which, in the event of superelevated temperatures, will automatically divert the hot inlet gases into a bypass stack, thereby bypassing the drying chamber and at the same time stopping the fuel from being supplied to the air heater.

(11) All dryers, conveyors and other fine coal transporting machines shall be constructed as dust-tight as practicable. Where necessary, such equipment shall be provided with removable covers for inspection and
cleaning and shall be provided with vent pipes to the outside atmosphere to permit the escape of distilled gases.

(12) Dryers shall be examined thoroughly after normal and emergency shutdown for fires and coal dust accumulations.

(13) Dryer controls, valves, and mechanical equipment shall be frequently inspected, and no dryer shall be operated with defective mechanical equipment.

(14) The gauges of temperature control instruments shall be of the recording type.

(15) Operating rules suitable for the characteristics of each dryer system and the materials processed shall be developed and shall be available at the control panel.

(16) Electrical equipment, electrical wiring and lighting fixtures shall be of dust-tight construction.

(17) Adequate illumination shall be provided.

(18) Dryers shall not be operated beyond their rated evaporation capacity.

(19) Fluid bed dryers shall be provided with water sprays of sufficient capacity for use in event of fire.

(20) After shutdowns, thermal dryers shall be cleared of hot coals so as to minimize ignitions on succeeding startups.

(21) Thermal coal dryers previously installed in a tipple or cleaning plant shall be separated where practicable from other working areas by substantial partitions capable of providing greater resistance to explosion pressures than an exterior wall or walls.

(22) When it is necessary to use extension cables for emergency illumination, such lighting devices shall be dust-tight and adequately guarded. When it becomes necessary to perform work in dryer system bins or any other dusty areas, permissible cap lamps shall be used for illumination.

§22-2-63. No mine to be opened or reopened without prior approval of director of department of mines; approval fee; extension of certificate of approval;
certificates not transferable; section to be printed on certificates.

(a) After the effective date of this section, no mine shall be opened or reopened unless prior approval has been obtained from the director of the department of mines, which approval shall not be unreasonably withheld. The operator shall pay for such approval a fee of ten dollars, which payment shall be tendered with the operator's application for such approval: Provided, That mines producing coal solely for the operator's use shall be issued a permit without charge if coal production will be less than fifty tons a year.

(b) Within thirty days after January first of each year, the operator of each mine holding a certificate evidencing approval of the director to open a mine, shall apply for the extension of such certificate of approval for an additional year. Such approval, evidenced by a certificate of the director, shall be granted as a matter of right and without charge if, at the time such application is made, the operator is in compliance with the provisions of section seventy-two of this article. Applications for extension of such certificates of approval not submitted within the time required shall be processed as an application to open or reopen a mine and shall be accompanied by a fee of ten dollars.

(c) Certificates of approval issued pursuant to this section shall not be transferable.

(d) The provisions of this section shall be printed on the reverse side of every certificate issued hereunder.

(e) On or after July 1, 1971, no mine shall be opened or reopened unless a surface disturbed reclamation bond in the amount of five hundred dollars per acre is submitted to the department of mines for the removal of unused surface structures and the sealing of abandoned mine openings. The district mine inspector shall be contacted for a preinspection of the area proposed for underground mining prior to the issuance of any new opening approval. The above-mentioned bond shall go into a separate fund and must be submitted separate, when application is made for the issuance of a deep mine permit.
§22-2-64. Sealing; permanently closed or abandoned mines.

(a) After July 1, 1971, when any coal mine is worked out or indefinitely closed, such mine openings shall be properly sealed within ninety days after the mine is abandoned.

(b) Mines temporarily inactive for less than ninety days shall be adequately fenced with conspicuous signs prohibiting the possible entrance of unauthorized persons.

(c) Shaft openings shall be effectively capped or filled. Filling shall be for the entire depth of the shaft. Caps shall consist of a six inch thick concrete cap or other equivalent means approved by the director of the department of mines.

(d) Caps shall be equipped with a vent pipe at least two inches in diameter extending for a distance of at least fifteen feet above the surface shaft.

§22-2-65. Mining close to abandoned workings.

Any operator working up to an abandoned coal mine may be permitted to work to his property line, if approved by the director of the department of mines, but in such cases precaution must be taken as provided in this article.

§22-2-66. Explosion or accident; notice; investigation by department of mines.

Whenever, by reason of any explosion or other accident in or about any coal mine or the machinery connected therewith, loss of life, or serious personal injury shall occur, it shall be the duty of the superintendent of the mine, and in his absence, the mine foreman in charge of the mine, to give immediate notice to the director of the department of mines and the inspector of the district, stating the particulars of such accident. If anyone is killed, the inspector shall immediately go to the scene of such accident and make such recommendations and render such assistance as he may deem necessary for the future safety of the men, and investigate the cause of such explosion or accident and make a record thereof which he shall preserve with the other records in his office, the cost of such records to be paid by the depart-
ment of mines, and a copy shall be furnished to the operator and other interested parties. To enable him to make such investigation, he shall have the power to compel the attendance of witnesses and to administer oaths or affirmations. The director of the department of mines shall have the right to appear and testify and to offer any testimony that may be relevant to the question and to cross-examine witnesses.


Whenever any accident occurs in or about any coal mine to any employee or person connected with the mining operation, resulting in personal injury or death, the operator shall, within twenty-four hours, report the same in writing to the director of the department of mines and to the district mine inspector of the district in which the accident occurs, giving full details thereof upon forms furnished by the department of mines.

§22-2-68. Preservation of evidence following accident or disaster.

Following a mine accident resulting in the death of one or more persons and following any mine disaster, the evidence surrounding such occurrence shall not be disturbed after recovery of bodies or injured persons until an investigation by the department of mines has been completed.

§22-2-69. Fire in and about mine; notification of director and district mine inspector.

The operator or mine foreman, upon the discovery of fire in or about a mine, shall immediately notify the director of the department of mines and the district mine inspector in whose district the mine is located.

§22-2-70. Shafts and slopes.

(a) When mine examiner to be employed; qualifications.

During the sinking of a shaft or the driving of a slope to a coal bed or while engaged in underground construction work, or relating thereto, the operator shall assign
a mine examiner to such project areas. Such mine examiner shall have a certificate of competency valid only for the type of work stipulated thereon and issued to him by the department of mines after he has passed an examination given by the department of mines. He shall, at the time he takes the examination, have a minimum of five years' experience in shaft sinking, slope driving and underground construction; moreover, he shall be able to detect methane with a flame safety lamp and have a thorough knowledge of the ventilation of shafts, slopes, and mines, and the machinery connected therewith, and finally, he shall be a person of good moral character with temperate habits.

(b) Mine examiner or certified person acting as such; duties generally; records open for inspection.

In all shafts and slopes within three hours immediately preceding the beginning of a work shift and before any workmen in such shift, other than those who may be designated to make the examinations, enter the underground areas of such shafts or slopes, a certified foreman or mine examiner, designated by the operator of such shaft or slope to do so, shall make an examination of such areas. Each person designated to make such examinations shall make tests with a permissible flame safety lamp for accumulations of methane and oxygen deficiency, and examine sides of shafts and ribs and roof of all slopes. Should he find a condition which he considers dangerous to persons, he shall place a conspicuous danger sign at all entrances to such places. He shall record the results of his examination with ink or indelible pencil in a book prescribed by the director of the department of mines, kept at a place on the surface designated by mine management. All records as prescribed herein shall be open for inspection by interested persons.

c) Approvals and permits.

An approval shall be obtained from the department of mines before work is started. A permit shall be obtained from the department of mines (1) to stop fan when men are in shafts or slopes; (2) to use electrical machinery in shafts or slopes; (3) to use electric lights in shafts or
slopes; (4) to use welders, torches and like equipment in
shafts or slopes; (5) to hoist more than four men at one
time in buckets or cars; (6) to shoot more than fifteen
shots in one series.

(d) Records.

The foreman in charge on each shift shall keep a daily
report of conditions and practices. The foreman in charge
on each shift shall read and countersign the reports of
the previous shift. Unsatisfactory conditions and prac-
tices reported shall be repeated on daily reports until
corrected. Hoists, buckets, cars, ropes and appliances
thereto shall be examined by a qualified person before
the start of each shift and a written record kept. Deaths
from accidents or previous injuries shall be reported
immediately by wire to the office of the director of the
department of mines and to the district mine inspector
or the inspector-at-large. A written report of all injuries
and deaths shall be mailed to the department of mines
and district mine inspector promptly. Immediate notice
shall be given the office of the director of the department
of mines, the district mine inspector and the inspector-
at-large in the event of an ignition of gas, or serious acci-
dent to men or equipment. All permits and approvals
must be available for inspection by all interested per-
sons.

(e) General.

The foreman on shift shall have at least five years' ex-
perience in shafts or slopes. New employees shall be
instructed in the dangers and rules incident to their
work. Conspicuous bulletin boards and warning signs
shall be maintained. Unauthorized persons shall not be
permitted around shafts or slopes. First-aid material shall
be maintained at the operation as required by section
fifty-nine of this article. The scene of a fatal acci-
dent shall be left unchanged until an investigation is
made by all interested persons. All employees and others
around the operation shall wear hard-toe shoes and hard-
top hats. Goggles or other eye protection shall be worn
when cutting, welding, or striking where particles may
fly. Gears, belts, and revolving parts of machinery shall
be properly guarded. Hand tools shall be in good condition. Sides of shafts, ribs and roof of all slopes shall be closely observed for loose and dangerous conditions. Loose brows, ribs and top in slopes shall be taken down or supported; loose ribs in shafts shall be scaled. Men shall be hoisted and lowered under power in shafts and slopes. All hoists must have two positive breaking devices. At least three wraps of rope shall remain on the hoist drum at all times. Wire ropes shall not be less than three-fourths inches in diameter, and of a design to prevent excessive spinning or turning when hoisting.

When heavy materials are hoisted, a large rope shall be used if necessary. A hoisting engineer shall be in constant attendance while men are in shaft. Head frames shall be constructed substantially. Noise from machinery shall not interfere with signals. The standard signal code, whistle or bell shall be used for hoisting:

One signal __________________________________________________________________________Hoist
One signal __________________________________________________________________________Stop
Two signals __________________________________________________________________________Lower
Three signals __________________________________________________________________________Man cage

One signal from hoisting engineer________Men board cage

Hoist signals shall be posted in front of the hoisting engineer. The shaft opening shall be enclosed by a fence five feet high. Buckets shall not be loaded within six inches of the top rim. Buckets shall have a positive lock on the handle or bale to prevent bucket from crumpling while being hoisted. Positive coupling devices shall be used on buckets or cars (hooks with safety catches or threaded clevis). Emergency devices for escape shall be provided while shafts are under construction. Men shall not ride on or work from rims of buckets. Buckets or cars shall not be lowered without a signal from working area. Only sober and competent engineers shall be permitted to operate hoists. No intoxicating liquors or intoxicated persons shall be permitted in or around any shaft, slope or machinery. Lattice type platforms shall be used.

(f) Explosives.
Explosives and blasting caps being taken into or removed from the operation shall be transported and kept in approved nonconducting receptacles (unopened cartons or cases are permissible). Explosives shall not be primed until ready to be inserted into holes. Handling of explosives and loading of holes shall be under the strict supervision of a qualified person or shotfirer. No more explosives or caps than are required to shoot one round shall be taken into shafts. Adobe, mudcapped or unconfined shots shall not be fired. Holes shall be stemmed tightly and full to the mouth. Blasting caps shall be inserted in line with the explosive. Leg wires of blasting caps and buss wires shall be kept shunted until connected. Shooting cables shall be shunted at firing devices and before connecting to leg wires. Only approved shooting devices shall be used. Shots shall be fired promptly after the round of holes are charged. Warnings shall be given before shots are fired by shouting “Fire” three times slowly after those notified have withdrawn. The blasting circuit shall be wired in series or parallel series. All shooting circuits shall be tested with a galvonometer by a qualified person before shooting. A careful examination for misfires shall be made after each shot. Persons shall not return to the face until smoke and dust have cleared away. The shooting cable shall be adequately insulated and have a substantial covering; be connected by the person firing the shot; and be kept away from power circuits. Misfires shall be removed by firing separate holes or by washing; shall not be drilled out; and shall be removed under supervision of a foreman or qualified person. Separate magazines for the storage of explosives and detonators shall be located not less than three hundred feet from openings or other structures. Magazines for the storage of explosives and detonators shall be separated at least fifty feet. Magazines shall be located behind barricades. The outside of magazines shall be constructed of incombustible material. Rubbish and combustible material shall not be permitted to accumulate around or in magazine. Warning signs, to be seen in all directions, shall be posted near magazines. (g) Electrical.
Power cables installed in slopes shall be placed in conduit away from the belt as far as possible. Surface transformers shall be elevated at least eight feet from the ground or enclosed by a fence six feet high, grounded if metal; shall be properly grounded; shall be installed so that they will not present a fire hazard; and shall be guarded by sufficient danger signs.

Electric equipment shall be in good condition, clean and orderly; shall be equipped with guards around moving parts; and shall be grounded with effective frame grounds on motors and control boxes.

All electric wires shall be installed and supported on insulators. All electric equipment shall be protected by dual element fuse or circuit breakers.

(h) Ventilation.

Ventilating fans shall be offset from portal at least fifteen feet; shall be installed so that the ventilating current is not contaminated by dust, smoke or gases; shall be effectively frame grounded; and shall be provided with fire extinguishers.

All shafts and slopes shall be ventilated adequately and continuously with fresh air. Air tubing shall deliver not less than nine thousand feet per minute at the working area or as much more as the inspector may require.

(i) Gases.

A foreman shall be in attendance at all times in shafts and slopes who has passed an examination given by the department of mines as to his competency in the use of flame safety lamps.

An examination shall be made before and after shooting by the foreman on shift. The foreman shall have no superior in the performance of his duties. A lighted flame safety lamp or other approved detector shall be carried at all times by the foreman when in the working area and weekly gas analysis made. In all shafts and slopes within three hours immediately preceding the beginning of a work shift and before any workmen in such shift, other than those who may be designated to make the examinations, enter the underground areas of such shafts or slopes, a certified mine foreman or mine exam-
iner designated by the operator of such shaft or slope to
do so, shall make an examination of such area. Evidence
of official examination shall be left at the face by marking
date and initials.

Gases shall be removed under the supervision of the
foreman in charge. Smoking shall not be permitted in-
side of shafts or slopes.

(j) Drilling.

Dust allaying or dust collecting devices shall be used
while drilling.

(k) Lights to be used in shafts.

Only approved electric cap lights shall be used in
shafts. Other lights shall be of explosive-proof type.
Lights shall be suspended in shafts by cable or chain
other than the power conductor. In slopes lights must be
substantially installed. Power cables shall be of an ap-
proved type. Power cables shall not be taut from shaft
collar to light. Power cables shall be in good condition
and free of improper splices. Lights shall be suspended
not less than twenty feet above where men are working.
Lights shall be removed from shaft and power cut off
when shooting. In slopes lights must be removed a safe
distance when shots are fired. Lights shall not be replaced
in shafts or slopes until examination has been made for
gas by the mine examiner and found clear. Front of light
shall be protected by a substantial metal-type guard.
Lights shall be protected from falling objects from above
by a metal hood. The lighting circuit shall be properly
fused. Electric lights shall not be used in gaseous atmos-
pheres. A lighted flame safety lamp or approved detector
shall be kept for use at the face while men are at work.

GENERAL PROVISIONS

§22-2-71. Reopening old or abandoned mines.

No person, without first giving to the director of the
department of natural resources ten days' written notice
thereof, shall reopen for any purposes any old or aban-
donned mine wherein water or mine seepage has collected
or become impounded or exists in such manner or quantity that upon the opening of such mine, such water or seepage may drain into any stream or watercourse. Such notice shall state clearly the name or names of the owner or owners of the mine proposed to be opened, its exact location, and the time of the proposed opening thereof.

Upon receipt of such notice, the director of the department of natural resources shall have his representative present at the mine at the time designated in the notice for such opening, who shall have full supervision of the work of opening such mine with full authority to direct the work in such manner as to him seems proper and necessary to prevent the flow of mine water or seepage from such mine in such manner or quantity as will kill or be harmful to the fish in any stream or watercourse into which such mine water seepage may flow directly or indirectly.

§22-2-72. Monthly report by operator of mine.

The operator of every coal mine shall, on or before the end of each calendar month, file with the director a report covering the preceding calendar month on forms furnished by the director. Such reports shall state the number of accidents which have occurred, the number of persons employed, the days worked and the actual tonnage of coal mined.

§22-2-73. Examinations to determine compliance with permits.

Whenever permits are issued by the department of mines, frequent examinations shall be made by the mine inspector during the tenure of the permit to determine that the requirements and limitations of the permit are complied with.


The various provisions of this article shall be construed as separable and severable, and should any of the provisions, sentences, clauses, or parts thereof be construed or held unconstitutional or for any reason be invalid, the remaining provisions of this article shall not be thereby affected.
AN ACT to amend and reenact section one, article six, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to certification of coal miners, certificate of competency and qualification required of miners, apprentices, identification, and employment of apprentices.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. CERTIFICATION OF COAL MINERS.

§22-6-1. Certificate of competency and qualification required of miners; apprentices; identification; employment of apprentices.

1 Except as hereinafter provided no person shall be employed or work as a coal miner in any mine in this state, without first having obtained a certificate of competency and qualification.

2 Any miner holding a certificate may have one person working with him, and under his direction, as an apprentice, and any foreman, assistant foreman or mine examiner may have not more than five persons working with him and under his immediate supervision and direction, as apprentices, for the purpose of learning and being instructed in the duties and calling of mining.

3 Apprentice miners shall wear red hats which will identify them as being noncertified.

4 On and after the effective date of this section, no person shall be employed as an apprentice miner for a period in excess of eight months, except in the event of illness
or injury, time extensions shall be permitted as estab-
lished by the director of the department of mines.

For the purposes of this article the term "coal miner"
or "miner" shall mean all underground workers in
bituminous coal mines, except as hereinafter provided.

CHAPTER 91

(House Bill No. 1031—By Mr. Speaker, Mr. Boiarsky,
and Mr. Seibert)

[Passed March 12, 1971; in effect April 1, 1971. Approved by the Governor.]

AN ACT to amend and reenact section four, article three, chap-
ter seventeen-a, of the code of West Virginia, one thou-
sand nine hundred thirty-one, as amended, relating to the
application for certificate of title and tax for privilege of
certification of title.

Be it enacted by the Legislature of West Virginia:
That section four, article three, chapter seventeen-a of the
code of West Virginia, one thousand nine hundred thirty-one,
as amended, be amended to read as follows:

ARTICLE 3. ORIGINAL AND RENEWAL OF REGISTRATION; IS-
SUANCE OF CERTIFICATES OF TITLE.

§17A-3-4. Application for certificate of title; tax for privi-
lege of certification of title.

Certificates of registration of any vehicle or registration
plates therefor, whether original issues or duplicates,
shall not be issued or furnished by the department of
motor vehicles or any other officer charged with such
duty, unless the applicant therefor already has received,
or shall at the same time make application for and be
granted, an official certificate of title of such vehicle.
Such application shall be upon a blank form to be
furnished by the department of motor vehicles and shall
contain a full description of the vehicle, which descrip-
tion shall contain the manufacturer's serial or identifica-
tion number or other number as determined by the
motor vehicle to the state of West Virginia. The tax imposed by this section shall not apply to vehicles to be used in interstate commerce, nor shall the tax imposed by this section apply to titling of

Ch. 91] MOTOR VEHICLES

commissioner and any distinguishing marks, together with a statement of the applicant's title and of any liens or encumbrances upon such vehicle, the names and addresses of the holders of such liens and such other information as the department of motor vehicles may require. The application shall be signed and sworn to by the applicant. A tax is hereby imposed upon the privilege of effecting the certification of title of each vehicle in the amount equal to five percent of the value of said motor vehicle at the time of such certification. If the vehicle is new, the actual purchase price or consideration to the purchaser thereof shall be the value of said vehicle; if the vehicle is a used or secondhand vehicle, the present market value at time of transfer or purchase shall be deemed the value thereof for the purpose of this section: Provided, That so much of the purchase price or consideration as is represented by the exchange of other vehicles on which the tax herein imposed has been paid by the purchaser shall be deducted from the total actual price or consideration paid for said vehicle, whether the same be new or secondhand; if the vehicle be acquired through gift, or by any manner whatsoever, unless specifically exempted in this section, the present market value of the vehicle at the time of the gift or transfer shall be deemed the value thereof for the purposes of this section. No certificate of title for any vehicle shall be issued to any applicant unless such applicant shall have paid to the department of motor vehicles the tax imposed by this section which shall be five percent of the true and actual value of said vehicle whether the vehicle be acquired through purchase, by gift, or by any other manner whatsoever except gifts between husband and wife or between parents and children: Provided, That husband or wife, or parents or children previously have paid said tax on the vehicle so transferred to the state of West Virginia. The tax imposed by this section shall not apply to vehicles to be registered as Class H vehicles or Class S vehicles, as defined in section one, article ten of this chapter, which are used or to be used in interstate commerce, nor shall the tax imposed by this section apply to titling of
vehicles by a registered dealer of this state for resale
only, nor shall the tax imposed by this section apply
to titling of vehicles by this state or any political sub-
division thereof, or by any volunteer fire department
organized and incorporated under the laws of the state
of West Virginia for protection of life or property. The
total amount of revenue collected by reason of this tax
shall be paid into the state road fund and expended by
the state road commissioner for matching federal aid
funds allocated for West Virginia. In addition to said
tax, there shall be a charge of two dollars for each origi-
nal certificate of title or duplicate certificate of title so
issued: Provided, however, That this state or any politi-
cal subdivision thereof, or any such volunteer fire depart-
ment, shall be exempted from payment of such charge.
Such certificate shall be good for the life of the vehicle,
so long as the same is owned or held by the original
holder of such certificate, and need not be renewed an-
ually, or any other time, except as herein provided.
If, by will or direct inheritance, a person becomes the
owner of a motor vehicle and the tax herein imposed
previously has been paid, to the department of motor
vehicles on that vehicle, he shall not be required to pay
such tax.
A person who has paid the tax imposed by this section
shall not be required to pay the tax a second time for
the same motor vehicle, but he shall be required to pay
a charge of two dollars for the certificate of retitle of that
motor vehicle, except that such tax shall be paid by such
person when the title to such vehicle has been transferred
either in this or another state from such person to another
person and transferred back to such person.
Notwithstanding any provisions of this code to the
contrary, the owners of trailers, semitrailers and other
vehicles not subject to the certificate of title tax prior
to the enactment of this chapter shall be subject to the
privilege tax imposed by this section: Provided, how-
ever, That mobile homes, house trailers, modular homes
and similar nonmotive propelled vehicles susceptible
of being moved upon the highways but primarily de-
dsigned for habitation and occupancy, rather than for
transporting persons or property, shall not be subject to
the tax imposed by this section, but shall be taxable
under the provisions of articles fifteen and fifteen-a of
chapter eleven of this code.

CHAPTER 92
(Senate Bill No. 95—By Mr. Barnett)

[Passed March 12, 1971; in effect ninety days from passage. Approved by the
Governor.]

AN ACT to amend and reenact sections one and two, article
four-a, chapter seventeen-a of the code of West Virginia,
one thousand nine hundred thirty-one, as amended, relating
to automobile title certificates; liens; information required
to be placed on the certificate.

Be it enacted by the Legislature of West Virginia:
That sections one and two, article four-a, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 4A. LIENS AND ENCUMBRANCES ON VEHICLES TO
BE SHOWN ON CERTIFICATE OF TITLE; NOTICE
TO CREDITORS AND PURCHASERS.

§17A-4A-1. Certificate to show liens or encumbrances.
§17A-4A-2. Liens and encumbrances subsequently created.

§17A-4A-1. Certificate to show liens or encumbrances.

1 The department upon receiving an application for a
certificate of title to a vehicle, trailer, semitrailer or pole
trailer, for which a certificate of title is required under
article three of this chapter, all of which are hereinafter
in this article referred to as vehicles, showing liens or
encumbrances upon such vehicle, shall, upon issuing to
the owner thereof a certificate of title therefor, show
upon the face of the certificate of title all liens or en-
cumbrances disclosed by such application. All such liens
or encumbrances shall be shown in the order of their
priority being according to the information contained in
such application. When such an application shows liens
and encumbrances, such information as evidence of the
lien in connection therewith as the department may
deeom necessary shall also be furnished. Such information
shall include the name and address of the lienholder, the
nature and kind of his lien, the date thereof, and the
amount thereby secured. However, only the name and
address of the lienholder will be endorsed on the title
certificate. Upon issuing the certificate, the department
shall thereupon send or deliver it to the holder of the
first lien.

§17A-4A-2. Liens and encumbrances subsequently created.

Liens or encumbrances placed on vehicles by the
voluntary act of the owner (including a registered dealer
holding title by assignment entered upon a certificate of
title) after the original issue of title to be properly re-
corded must be shown on the certificate of title. In such
cases, the owner or lienholder shall file application with
the department on a blank furnished for that purpose,
setting forth the lien or liens and such information and
evidence of the lien in connection therewith as the de-
partment may deem necessary. Such information shall
include the name and address of the lienholder, the
nature and kind of his lien, the date thereof, and the
amount thereby secured. However, only the name and
address of the lienholder shall be endorsed on the title
certificate with the endorsement of the fact of such lien
as hereinafter provided. The department, if satisfied that
it is proper that the same be recorded, and upon surrender
of the certificate of title covering the vehicle, shall
thereupon issue a new certificate of title, showing the
liens or encumbrances in the order of their filing being
according to the date, hour and minute of receipt by the
department of the application for same. For the purpose
of recording a subsequent lien on a certificate of title,
the subsequent lienor shall make a written request upon
the lienor in possession of the certificate of title, accom-
panied by proof of the existence of his subsequent lien,
statement his need to have possession of the certificate of
28 title for the purpose of having his lien recorded thereon
29 by the department of motor vehicles. Thereupon, the
30 lienor in possession of the certificate shall within a rea-
31 sonable time, not to exceed ten days from the receipt of
32 said written request, deliver the certificate of title to
33 the requesting subsequent lienor.
34 Upon delivery of the certificate of title, the subsequent
35 lienor shall immediately forward it and his own appli-
36 cation to the department of motor vehicles for filing his
37 lien and recording the same on the certificate of title.
38 Upon issuing the new certificate, the department shall
39 thereupon send or deliver it to the holder of the first lien.

CHAPTER 93
(House Bill No. 1197—By Mrs. Smirl and Mr. White, of Cabell)

[Passed March 13, 1971; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article six, chapter
seventeen-a of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, relating to definitions;
and to further amend said article by adding thereto a
new section, designated section ten-a, relating to special
plates for manufacturers and transporters, fee.

Be it enacted by the Legislature of West Virginia:

That section one, article six, chapter seventeen-a of the code
of West Virginia, one thousand nine hundred thirty-one, as
amended, be amended and reenacted; and that said article
six be further amended by adding thereto a new section,
designated section ten-a, all to read as follows:

ARTICLE 6. LICENSING OF DEALERS AND WRECKERS OR DIS-
MANTLERS; SPECIAL PLATES; TEMPORARY
PLATES OR MARKERS, ETC.

§17A-6-1. Definitions.
§17A-6-10a. Special plates for manufacturers and transporters; fee.

§17A-6-1. Definitions.
1 (a) Unless the context in which used clearly requires
2 a different meaning, as used in this article:
(1) "New motor vehicle dealer" means every person (other than his agents and employees, if any, while acting within the scope of their authority or employment), engaged in, or who holds himself out to the public to be engaged in, the business in this state of selling new motor vehicles or new and used motor vehicles, of a type required to be registered under the provisions of this chapter, except, for the purposes of this article only, motorcycles.

(2) "Used motor vehicle dealer" means every person (other than his agents and employees, if any, while acting within the scope of their authority or employment), engaged in, or holds himself out to the public to be engaged in, the business in this state of selling used motor vehicles of a type required to be registered under the provisions of this chapter, except, for the purposes of this article only, motorcycles.

(3) "House trailer dealer" means every person (other than his agents and employees, if any, while acting within the scope of their authority or employment), engaged in, or who holds himself out to the public to be engaged in, the business in this state of selling new and/or used house trailers, or new and/or used house trailers and trailers.

(4) "Trailer dealer" means every person (other than his agents and employees, if any, while acting within the scope of their authority or employment), engaged in, or who holds himself out to the public to be engaged in, the business in this state of selling new and/or used trailers.

(5) "Motorcycle dealer" means every person (other than his agents and employees, if any, while acting within the scope of their authority or employment), engaged in, or who holds himself out to the public to be engaged in, the business in this state of selling new and/or used motorcycles.

(6) "Used parts dealer" means every person (other than his agents and employees, if any, while acting within the scope of their authority or employment), engaged in, or who holds himself out to the public to be engaged in, the business in this state of selling any used appliance, accessory, member, portion or other part of any vehicle.
(7) "Wrecker or dismantler" means every person (other than his agents and employees, if any, while acting within the scope of their authority or employment), engaged in, or who holds himself out to the public to be engaged in, the business in this state of dealing in wrecked or damaged motor vehicles or motor vehicle parts for the purpose of selling the parts thereof or scrap therefrom.

(8) "New motor vehicles" means all motor vehicles, except motorcycles and used motor vehicles, of a type required to be registered under the provisions of this chapter.

(9) "Used motor vehicles" means all motor vehicles, except motorcycles, of a type required to be registered under the provisions of this chapter which have been sold and operated, or which have been registered or titled, in this or any other state or jurisdiction.

(10) "House trailers" means all trailers designed or intended for human occupancy and commonly referred to as mobile homes or house trailers, but shall not include camping, vacation and travel trailers.

(11) "Trailers" means all types of trailers other than house trailers, and shall include, but not be limited to, pole trailers and semitrailers.

(12) "Sales instrument" means any document resulting from the sale of a vehicle, which shall include, but not be limited to, a bill of sale, invoice, conditional sales contract, chattel mortgage, chattel trust deed, security agreement or similar document.

(13) "Sell," "sale" or "selling" shall, in addition to the ordinary definitions of such terms, include offering for sale, soliciting sales of, negotiating for the sale of, displaying for sale, or advertising for sale, any vehicle, whether at retail, wholesale or at auction. "Selling" shall, in addition to the ordinary definition of that term, also include buying and exchanging.

(14) "Applicant" means any person making application for an original or renewal license certificate under the provisions of this article.
(15) "Licensee" means any person holding any license certificate issued under the provisions of this article.

(16) "Predecessor" means the former owner or owners or operator or operators of any new motor vehicle dealer business or used motor vehicle dealer business.

(17) "Established place of business" shall, in the case of a new motor vehicle dealer, mean a permanent location, not a temporary stand or other temporary quarters, owned or leased by the licensee or applicant and actually occupied or to be occupied by him, as the case may be, which is or is to be used exclusively for the purpose of selling new motor vehicles or new and used motor vehicles, which shall have space under roof for the display of at least one new motor vehicle and facilities and space therewith for the servicing and repair of at least one motor vehicle, which servicing and repair facilities and space shall be adequate and suitable to carry out servicing and to make repairs necessary to keep and carry out all representations, warranties and agreements made or to be made by such dealer with respect to motor vehicles sold by him, which shall be easily accessible to the public, which shall conform to all applicable laws of the state of West Virginia and the ordinances of the municipality in which it is located, if any, which shall display thereon at least one permanent sign, clearly visible from the principal public street or highway nearest said location and clearly stating the business which is or shall be conducted thereat, and which shall have adequate facilities to keep, maintain and preserve records, papers and documents necessary to carry on such business and to make the same available to inspection by the commissioner at all reasonable times: Provided, however, That the requirement of exclusive use shall be met even though (i) some new and any used motor vehicles sold or to be sold by such dealer or sold or are to be sold at a different location or locations not meeting the definition of an established place of business of a new motor vehicle dealer, if each such location
is or is to be served by other facilities and space of such dealer for the servicing and repair of at least one motor vehicle, adequate and suitable as aforesaid, and each such location used for the sale of some new and any used motor vehicles otherwise meets the definition of an established place of business of a used motor vehicle dealer; (ii) house trailers, trailers and/or motorcycles are sold or are to be sold thereat, if, subject to the provisions of section five of this article, a separate license certificate is obtained for each such type of vehicle business, which license certificate remains unexpired, unsuspended and unrevoked; (iii) farm machinery is sold thereat; and (iv) accessory, gasoline and oil, or storage departments are maintained thereat, if such departments are operated for the purpose of furthering and assisting in the licensed business or businesses.

(18) “Farm machinery” means all machines and tools used in the production, harvesting or care of farm products.

(19) “Established place of business” shall, in the case of a used motor vehicle dealer, mean a permanent location, not a temporary stand or other temporary quarters, owned or leased by the licensee or applicant and actually occupied or to be occupied by him, as the case may be, which is or is to be used exclusively for the purpose of selling used motor vehicles, which shall have facilities and space therewith for the servicing and repair of at least one motor vehicle, which servicing and repair facilities and space shall be adequate and suitable to carry out servicing and to make repairs necessary to keep and carry out all representations, warranties and agreements made or to be made by such dealer with respect to used motor vehicles sold by him, which shall be easily accessible to the public, shall conform to all applicable laws of the state of West Virginia, and the ordinances of the municipality in which it is located, if any, which shall display thereon at least one permanent sign, clearly visible from the principal public street or highway nearest said location and clearly stating the business
which is or shall be conducted thereat, and which shall have adequate facilities to keep, maintain and preserve records, papers and documents necessary to carry on such business and to make the same available to inspection by the commissioner at all reasonable times:

Provided, That if a used motor vehicle dealer has entered into a written agreement or agreements with a person or persons owning or operating a servicing and repair facility or facilities adequate and suitable as aforesaid, the effect of which agreement or agreements is to provide such servicing and repair services and space in like manner as if said servicing and repair facilities and space were located in or on said dealer's place of business, then, so long as such an agreement or agreements are in effect, it shall not be necessary for such dealer to maintain such servicing and repair facilities and space at his place of business in order for such place of business to be an established place of business as herein defined: Provided further, That the requirement of exclusive use shall be met even though (i) house trailers, trailers and/or motorcycles are sold or are to be sold thereat, if, subject to the provisions of section five of this article, a separate license certificate is obtained for each such type of vehicle business, which license certificate remains un-expired, unsuspended and unrevoked; (ii) farm machinery is sold thereat; and (iii) accessory, gasoline and oil, or storage departments are maintained thereat, if such departments are operated for the purpose of furthering and assisting in the licensed business or businesses.

(20) “Established place of business” shall, in the case of a house trailer dealer, trailer dealer, motorcycle dealer, used parts dealer and wrecker or dismantler, mean a permanent location, not a temporary stand or other temporary quarters, owned or leased by the licensee or applicant and actually occupied or to be occupied by him, as the case may be, which shall be easily accessible to the public, which shall conform to all applicable laws of the state of West Virginia and the ordinances of the municipality in which it is lo-
cated, if any, which shall display thereon at least one permanent sign, clearly visible from the principal public street or highway nearest said location and clearly stating the business which is or shall be conducted thereat, and which shall have adequate facilities to keep, maintain and preserve records, papers and documents necessary to carry on such business and to make the same available to inspection by the commissioner at all reasonable times.

(21) "Manufacturer" means every person engaged in the business of reconstructing, assembling, or reassembling vehicles with a special type body required by the purchaser if said vehicle is subject to the title and registration provision of the code.

(22) "Transporter" means every person engaged in the business of transporting vehicles to or from a manufacturing, assembling or distributing plant to dealers, or sales agents of a manufacturer, or purchasers.

(b) Under no circumstances whatever shall the terms "new motor vehicle dealer," "used motor vehicle dealer," "house trailer dealer," "trailer dealer," "motorcycle dealer," "used parts dealer" or "wrecker or dismantler" be construed or applied under this article in such a way as to include a banking institution, insurance company, finance company, or other lending or financial institution, or other person, the state or any agency or political subdivision thereof, or any municipality, who or which owns or shall come in possession or ownership of, or acquire contract rights, or security interests in or to, any vehicle or vehicles or any part thereof and shall sell such vehicle or vehicles or any part thereof for purposes other than engaging in and holding himself or itself out to the public to be engaged in the business of selling vehicles or any part thereof.

(c) It is recognized that throughout this code the term "trailer" or "trailers" is used to include, among other types of trailers, house trailers. It is also recognized that throughout this code the term "trailer" or "trailers" is seldom used to include semitrailers or pole trailers. However, for the purposes of this article only,
the term “trailers” shall have the meaning ascribed to it in subsection (a) of this section.

§17A-6-10a. Special plates for manufacturers and transporters; fee.

1 (1) Notwithstanding any of the other provisions of this article, a manufacturer or transporter may operate or move a vehicle upon the highways of this state solely for purposes of transporting and/or testing the same without first registering each such vehicle upon condition that any such vehicle display thereon, in a manner prescribed by the commissioner, a special plate or plates issued to such manufacturer or transporter as provided in this section.

2 (2) Any manufacturer or transporter may make application to the commissioner upon a form prescribed by him for a certificate containing a general distinguishing number and for a special plate or plates. The applicant shall also submit proof of his status as a bona fide manufacturer or transporter as may be required by the commissioner.

3 (3) The commissioner, upon approving any such application, shall issue to the applicant a certificate containing the applicant’s name and address and the general distinguishing number assigned to the applicant. The commissioner shall also issue a special plate, or special plates, as applied for, which shall have displayed thereon the general distinguishing number assigned to the applicant. Each plate shall also contain a number or symbol identifying the same from every other plate or plates bearing the same general distinguishing number.

4 (4) The annual fee for a license certificate for a manufacturer or transporter and one special plate shall be one hundred dollars. Additional special plates shall be twenty-five dollars each.

5 (5) Every manufacturer or transporter shall keep a written record of the vehicle upon which such special plates are used, the time during which each is used on a particular vehicle, and the location to which the vehicle was delivered, which record shall be open to in-
spection by any police officer or employee of the de-
partment.

(6) The provisions of this section shall not apply to
work or service vehicles owned by a manufacturer or
transporter.

(7) Said manufacturer or transporter shall be re-
quired to furnish a certificate of insurance in the amount
of ten thousand dollars because of bodily injury to or
death to any one person in any one accident, twenty
thousand dollars because of bodily injury or death to two
or more persons in any one accident, and five thousand
dollars because of injury to or destruction of property of
others in any one accident.

CHAPTER 94
(House Bill No. 807—By Mr. Burke)

[Passed March 11, 1971; in effect ninety days from passage. Approved by the
Governor.]

AN ACT to amend and reenact section five, article two; section
five, article nine; and section twenty-six, article fifteen, all
of chapter seventeen-c of the code of West Virginia, one
thousand nine hundred thirty-one, as amended, all re-
lating to authorized emergency vehicles, operation of
vehicles and streetcars on approach of authorized emer-
gency vehicles and equipment on authorized emergency
vehicles.

Be it enacted by the Legislature of West Virginia:

That section five, article two; section five, article nine; and
section twenty-six, article fifteen, all of chapter seventeen-c of
the code of West Virginia, one thousand nine hundred thirty-
one, as amended, be amended and reenacted, all to read as
follows:
ARTICLE 2. OBEDIENCE TO AND EFFECT OF TRAFFIC LAWS.

§17C-2-5. Authorized emergency vehicles.

1. (a) The driver of an authorized emergency vehicle, when responding to an emergency call or when in the pursuit of an actual or suspected violator of the law or when responding to but not upon returning from a fire alarm, may exercise the privileges set forth in this section, but subject to the conditions herein stated.

2. (b) The driver of an authorized emergency vehicle may:

3. (1) Park or stand, irrespective of the provisions of this chapter;

4. (2) Proceed past a red or stop signal or stop sign, but only after slowing down as may be necessary for safe operation;

5. (3) Exceed the speed limits so long as he does not endanger life or property;

6. (4) Disregard regulations governing direction of movement of turning in specified directions.

7. (c) The exemptions herein granted to an authorized emergency vehicle shall apply only when the driver of any said vehicle while in motion sounds audible signal by bell, siren, or exhaust whistle as may be reasonably necessary, and when the vehicle is equipped with at least one lighted flashing lamp as authorized by section twenty-six, article fifteen of this chapter which is visible under normal atmospheric conditions from a distance of five hundred feet to the front of such vehicle, except that an authorized emergency vehicle operated as a police vehicle need not be equipped with or display a warning light visible from in front of the vehicle.

8. (d) The foregoing provisions shall not relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons, nor shall such provisions protect the driver from the consequences of his reckless disregard for the safety of others.
ARTICLE 9. RIGHT-OF-WAY.

§17C-9-5. Operation of vehicles and streetcars on approach of authorized emergency vehicles.

(a) Upon the immediate approach of an authorized emergency vehicle equipped with at least one flashing lighted lamp of a color authorized by section twenty-six, article fifteen of this chapter, which is visible under normal atmospheric conditions from a distance of five hundred feet to the front of such vehicle other than a police vehicle when operated as an authorized emergency vehicle, and when the driver is giving audible signal by siren, exhaust whistle, or bell:

(1) The driver of every other vehicle shall yield the right-of-way and shall immediately drive to a position parallel to, and as close as possible to, the right-hand edge or curb of the roadway clear of any intersection and shall stop and remain in such position until the authorized emergency vehicle has passed, except when otherwise directed by a police officer.

(2) Upon the approach of an authorized emergency vehicle, as above stated, the motorman of every streetcar shall immediately stop such car clear of any intersection and keep it in such position until the authorized emergency vehicle has passed, except when otherwise directed by a police officer.

(b) This section shall not operate to relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons using the highway.

ARTICLE 15. EQUIPMENT.


(a) Any lighted lamp or illuminating device upon a motor vehicle other than head lamps, spot lamps, auxiliary lamps, or flashing front-direction signals which projects a beam of light of an intensity greater than three hundred candlepower shall be so directed that no part of the beam will strike the level of the roadway on which the vehicle stands at a distance of more than seventy-five feet from the vehicle.
(b) No person shall drive or move any vehicle or equipment upon any highway with any lamp or device thereon displaying other than a white or amber light visible from directly in front of the center thereof except as authorized by subsection (d) of this section.

(c) Except as authorized in section nineteen, flashing lights are prohibited on motor vehicles, except on an authorized emergency vehicle, school bus, snow removal equipment, or on any vehicle as a means for indicating right or left turn, on any vehicle as a means of indicating the same is disabled or otherwise stopped for an emergency.

(d) Notwithstanding any other provisions of this chapter, the following color of flashing warning lights are restricted for the use of the type of vehicle designated:

(1) Blue flashing warning lights are restricted to police vehicles, except as authorized by section twenty-seven of this article.

(2) Red flashing warning lights are restricted to ambulances, fire-fighting vehicles and school buses, except as authorized by sections nineteen and twenty-seven of this article.

(3) All other emergency vehicles authorized by this chapter and by section twenty-seven of this article shall be restricted to amber or yellow flashing warning lights.

It shall be unlawful for flashing warning lights of an unauthorized color to be installed or used on a vehicle other than as specified in this section, except that a police vehicle may be equipped with either or both blue or red warning lights.

CHAPTER 95

(Senate Bill No. 54—By Mr. Barnett and Mr. Knapp)

[Passed February 24, 1971; in effect ninety days from passage. Approved by the Governor.]
nine hundred thirty-one, as amended; and to amend article fifteen, chapter seventeen-c of said code by adding thereto a new section, designated section forty-four, relating to requirements for protective helmets, eye protection devices, handlebars and grips, seats and footrests, number of motorcycle riders; powers and duties of a board created to establish standards and specifications for protective helmets and eye protection devices; and powers and duties of the commissioner of motor vehicles in regulating sale of protective helmets and eye protection devices.

Be it enacted by the Legislature of West Virginia:

That section three, article fourteen, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that article fifteen, chapter seventeen-c of said code be amended by adding thereto a new section, designated section forty-four, to read as follows:

ARTICLE 15. EQUIPMENT.

§17C-15-44. Safety equipment and requirements for motorcyclists and motorcycles.

(a) No person shall operate or be a passenger on any motorcycle unless he is wearing securely fastened on his head by either a neck or chin strap a protective helmet designed to deflect blows, resist penetration and spread impact forces. Any helmet worn by a motorcycle operator or motorcycle passenger shall meet the performance specifications established by the United States of America Standards Institute, Specifications for Protective Headgear for Vehicle Users, Standard Z 90.1-1966.

Helmets worn by motorcycle operators and motorcycle passengers shall be coated with a reflectorized substance, or have attached thereto a reflectorized material, on both sides and the back thereof, with a minimum of ten square inches of coated substance or attached material in each of the three locations.

(b) No person shall operate or be a passenger on any motorcycle unless he is wearing safety, shatter resistant eyeglasses (excluding contact lenses), or eyegoggles or face shield that complies with the performance specifications established by the United States of America
Standards Institute, Specifications for Head, Eye and Respiratory Protection Z 2.1-1959. In addition, if any motorcycle be equipped with a windshield or windscreen, the windshield or windscreen shall be constructed of safety, shatter resistant material that complies with the performance specifications established by the United States of America Standards Institute, Safety Glazing Materials for Glazing Motor Vehicles Operated on Land Highways, Standard Z 26.1-1966.

(c) No person shall operate a motorcycle on which the handlebars or grips are more than fifteen inches higher than the uppermost part of the operator's seat when the seat is not depressed in any manner.

(d) A person operating a motorcycle shall ride in a seated position facing forward and only upon a permanent operator's seat attached to the motorcycle. No operator shall carry any other person nor shall any other person ride on a motorcycle unless the motorcycle is designed to carry more than one person, in which event a passenger may ride behind the operator upon the permanent operator's seat if it is designed for two persons, or upon another seat firmly attached to the motorcycle to the rear of the operator's seat and equipped with footrests designed and located for use by the passenger or in a sidecar firmly attached to the motorcycle. No more than two persons, the motorcycle operator and one passenger, shall ride the same motorcycle at the same time. No person shall ride sidesaddle on a motorcycle seat.

(e) Every motorcycle shall be equipped with a rear-view mirror affixed to the motorcycle handlebars and adjusted so that the motorcycle operator shall have a clear view of the road and condition of traffic behind him for a distance of at least two hundred feet.

(f) There is hereby created a three-member board which shall be known as the motorcycle safety standards and specifications board. The board shall be comprised of the superintendent of public safety, the commissioner of motor vehicles and the executive director of the West Virginia safety council or a person each may designate from his own agency.
Within thirty days after the effective date of this section, the board shall meet and elect one of its members chairman. The board shall meet thereafter at least twice in each calendar year at a place the board shall determine. The board may meet oftener if it deems it necessary to perform its functions.

The board is hereby authorized to issue regulations establishing standards and specifications for the protective helmet and eye protection devices as provided for in subsections (a) and (b) of this section. Not later than thirty days after its first meeting, the board shall establish these standards and specifications. The board shall periodically review the standards and specifications and change them as necessary to comply with this section. The board shall cause all standards and specifications it establishes to be published throughout the state for public knowledge and shall make them available to the commissioner of motor vehicles.

(g) The commissioner of motor vehicles is hereby authorized and shall, in accordance with the standards and specifications established by the motorcycle safety standards and specifications board, approve or disapprove types and makes of motorcycle protective helmets and eye protection devices offered for sale, purchased or used by any person.

The commissioner of motor vehicles is hereby authorized and shall approve or disapprove any type and make of protective helmet and eye protection device within fifteen days after submission to him for approval.

The commissioner of motor vehicles is hereby authorized to establish the procedure which shall be followed when any type and make of protective helmet and eye protection device is submitted to him for approval.

The commissioner of motor vehicles, upon approving any type and make of protective helmet or eye protection device, shall issue to the applicant a certificate of approval.

The commissioner of motor vehicles shall publish throughout the state for public knowledge lists of all types and makes of protective helmets and eye protection
devices that have been approved for use. All law-enforce-
ment agencies within the state shall be mailed a copy
of these lists.

When the commissioner of motor vehicles has reason
to believe a type or make of motorcycle protective helmet
or eye protection device is being sold commercially that
does not comply with the requirements of this section,
he shall, after giving thirty days' previous notice to the
seller, conduct a hearing upon the question of compliance
of the particular safety device. After the hearing, the
commissioner shall determine whether the device meets
the standards and specifications established by the motor-
cycle safety standards and specifications board. If it does
not, the commissioner shall give notice of that fact to
the seller and the seller shall not sell the device until it
is changed or modified to comply with the standards and
 specifications established by the board and is approved by
the commissioner. The commissioner of motor vehicles
shall publish the fact that the particular safety device
is not approved for use. If the device so disapproved by
the commissioner of motor vehicles is one previously
approved but which has fallen below the standards and
 specifications established by the board, he shall suspend
or revoke the approval issued, and he may require that
the seller replace with an approved device any dis-
approved device sold after the notification to the seller
that the device does not meet the proper standards and
 specifications.

CHAPTER 96

(House Bill No. 1054—By Mr. Reed)

[Passed March 13, 1971; in effect ninety days from passage. Approved by the
Governor.]

AN ACT to amend and reenact section eleven, article seventeen,
chapter seventeen-c of the code of West Virginia, one thou-
sand nine hundred thirty-one, as amended, relating to
pilot cars accompanying mobile homes on highways.
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 17. SIZE, WEIGHT AND LOAD.

§17C-17-11. Permits for excess size and weight.

(a) The commissioner of highways may, in his discretion, upon application in writing and good cause being shown therefor issue a special permit in writing authorizing, (1) the applicant, in crossing any highway of this state, to operate or move a vehicle or combination of vehicles of a size or weight or load exceeding the maximum specified in this chapter or otherwise not in conformity with the provisions of this chapter, whether such operation be continuous or not, provided such applicant shall agree to compensate the commissioner of highways for all damages or expenses incurred in connection with such crossing; and (2) the applicant to operate or move a vehicle or combination of vehicles of a size or weight of vehicles or load exceeding the maximum specified in this chapter or otherwise not in conformity with the provisions of this chapter, except that a permit shall not be issued for continuous operation of a vehicle not in conformity with the provisions of this article relating to weight limitations.

(b) The application for any such permit shall specifically describe the vehicle or vehicles and load to be operated or moved along or across such highway and the particular highway or crossing of the highway for which permit to operate is requested, and whether such permit is requested for a single trip or for a continuous operation.

(c) The commissioner of highways is authorized to issue or withhold such permit at his discretion; or, if such permit is issued, to limit the number of trips, or to establish seasonal or other time limitations within which the vehicles described may be operated on or across the highways indicated, or otherwise to limit or prescribe conditions of operation of such vehicle or vehicles, when necessary to assure against undue damage to the road.
foundations, surface, or structures, and may require such
undertaking, bond or other security as may be deemed
necessary to compensate for any injury to any roadway
structure.

(d) Every such permit shall be carried in the vehicle
or combination of vehicles to which it refers and shall
be open to inspection by any police officer or authorized
agent of the commissioner of highways granting such
permit, and no person shall violate any of the terms or
conditions of such special permit.

Notwithstanding any other provision of this section to
the contrary there shall be no requirement that a pilot
car follow behind a mobile home being transported over
the interstate highway system within this state.

CHAPTER 97
(Senate Bill No. 239—By Mr. Barnett)

[Passed March 12, 1971; in effect ninety days from passage. Approved by the
Governor.]

AN ACT to amend and reenact section sixteen, article four,
chapter seventeen-d of the code of West Virginia, one
thousand nine hundred thirty-one, as amended, relating to
proof of financial responsibility following an automobile
accident.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. PROOF OF FINANCIAL RESPONSIBILITY FOR THE
FUTURE.

§17D-4-16. Money or securities as proof.

1 (a) Proof of financial responsibility may be evidenced
2 by the certificate of the state treasurer that the person
3 named therein has deposited with him twenty thousand dollars in cash, or securities such as may legally be purchased by savings banks or for trust funds of a market value of twenty thousand dollars. The state treasurer shall not accept any such deposit and issue a certificate therefor and the commissioner shall not accept such certificate unless accompanied by evidence that there are no unsatisfied judgments of any character against the depositor in the county where the depositor resides.

(b) Such deposit shall be held by the state treasurer to satisfy, in accordance with the provisions of this chapter, any execution on a judgment issued against such person making the deposit, for damages, including damages for care and loss of services, because of bodily injury to or death of any person, or for damages because of injury to or destruction of property, including the loss of use thereof, resulting from the ownership, maintenance, use or operation of a motor vehicle, trailer or semitrailer after such deposit was made.

CHAPTER 98
(Com. Sub. for Senate Bill No. 410—Originating in the Senate Committee on Finance)

[Passed March 13, 1971; in effect from passage. Approved by the Governor.]

AN ACT to amend article thirteen, chapter eight 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 taxation of purchasers and consumers of public utility services or tangible personal property by municipalities and collection of such tax, providing new taxing authority, limited to two percent of gross revenue.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 13. TAXATION AND FINANCE.

1 Every municipality shall have plenary power and authority to levy and collect an excise tax on the privilege of purchasing, using or consuming, within the corporate limits of such municipality, public utility services and tangible personal property from public utilities subject to the jurisdiction of the public service commission of West Virginia. Such tax shall be computed on the basis of an amount not to exceed two percent of the gross amount of each periodic statement rendered such purchasers or consumers by such public utilities: Provided, however, that sales of tangible personal property such as appliances or the like, as distinguished from the public service supplied, shall not be included in the gross amount subject to the measure of this tax. Such purchasers or consumers shall pay to such public utilities the amount of the tax levied pursuant to this section which shall be added to and constitute a part of the cost of the service or property so purchased or consumed and shall be collectible as such by said public utilities who shall account to the municipality levying same for all tax paid by such purchasers or consumers pursuant to the provisions of any ordinance imposing such tax.

Any ordinance imposing such tax shall require the collection thereof uniformly from all purchasers and consumers of all such services and property within the corporate limits of such municipality and contain reasonable rules and regulations governing the collection thereof by the utilities and the method of its payment and accounting to the municipality: Provided, That such tax shall not be effective until the municipality gives sixty days' written notice by certified mail to any utility doing business therein of the effective date of the ordinance. Any required separation of gross income shall occur in said ordinance whenever necessary to comply with state or federal law: Provided, That the tax authorized by this section shall not be levied upon charges for
telephone services which are paid by the insertion of coins into coin-operated telephones, and specific charges for telephone calls to points outside the taxing municipality. Notwithstanding any other provisions of the law to the contrary contained in the code of West Virginia, one thousand nine hundred thirty-one, as amended, the provisions of this section are in addition to all other taxing authority heretofore granted municipalities.

CHAPTER 99

(Senate Bill No. 234—By Mr. Poffenbarger)

[Passed March 1, 1971; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirteen, article thirteen, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend article sixteen of said chapter eight by adding thereto a new section, designated section four-a; and to amend and reenact sections eight and seventeen of said article sixteen, relating to the rendering of essential or special municipal services and charges therefor and the jurisdiction of the public service commission with respect thereto; relating to municipal public works and revenue bond financing thereof; setting forth certain legislative findings with respect to motor vehicle parking facilities, the development of commerce and business and the availability of property for charitable use; authorizing any municipality to lease as lessor space in or on a municipally owned motor vehicle parking facility for any business, commercial or charitable use; authorizing any municipality to lease as lessor or sell space over a municipally owned motor vehicle parking facility for any business, commercial or charitable use; authorizing any municipality to erect or construct any pedestrian viaduct, ramp, bridge or other pedestrian facility leading to and from a municipally owned motor vehicle parking facility and relating to payment therefor when connected to a pri-
vately owned building or other structure; relating to property taxation in connection with the foregoing; relating to the right of eminent domain for municipal public works generally and specifically in connection with motor vehicle parking facilities and business, commercial or charitable uses in connection therewith; relating to sinking funds, the sinking fund commission and the purchase of outstanding bonds, all in connection with municipal public works; and authorizing the transfer of the net revenues from any municipal public works to the general fund or any special fund of the municipality and the expenditure thereof for any purpose for which such general or special fund may be expended.

Be it enacted by the Legislature of West Virginia:

That section thirteen, article thirteen, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that article sixteen of said chapter eight be amended by adding thereto a new section, designated section four-a; and that sections eight and seventeen of said article sixteen be amended and reenacted, all to read as follows:

Article


16. Municipal Public Works; Revenue Bond Financing.

ARTICLE 13. TAXATION AND FINANCE.

§8-13-13. Special charges for municipal services.

1 Notwithstanding any charter provisions to the contrary, every municipality which furnishes any essential or special municipal service, including, but not limited to, police and fire protection, parking facilities on the streets or otherwise, parks and recreational facilities, street cleaning, street lighting, street maintenance and improvement, sewerage and sewage disposal, and the collection and disposal of garbage, refuse, waste, ashes, trash and any other similar matter, shall have plenary power and authority to provide by ordinance for the installation, continuance, maintenance or improvement of such service, to make reasonable regulations with respect thereto, and to impose by ordinance upon the
users of such service reasonable rates, fees and charges
to be collected in the manner specified in the ordinance:
Provided, That any sewerage and sewage disposal ser-
vice and any service incident to the collection and disposal
of garbage, refuse, waste, ashes, trash and any other
similar matter shall be subject to the provisions of chap-
ter twenty-four of this code. The municipality shall
not, however, have a lien on any property as security
for payments due under such ordinance. Notwithstanding
the provisions of section four, article eleven of this
chapter, any ordinance enacted or substantially amended
under the provisions of this section shall be published
as a Class II legal advertisement in compliance with
the provisions of article three, chapter fifty-nine of this
code, and the publication area for such publication shall
be such municipality. In the event thirty percent of the
qualified voters of the municipality by petition duly
signed by them in their own handwriting and filed with
the recorder of the municipality within fifteen days after
the expiration of such publication protest against such
ordinance as enacted or amended, the ordinance shall
not become effective until it shall be ratified by a ma-
jority of the legal votes cast thereon by the qualified
voters of such municipality at a regular municipal elec-
tion or special municipal election, as the governing body
shall direct. Voting thereon shall not take place until
after notice of such submission shall have been given
by publication as above provided for the publication
of the ordinance after it is adopted or substantially
amended. The powers and authority hereby granted to
municipalities and to the governing bodies thereof are
in addition and supplemental to the powers and author-
ity named in any charters thereof. Notwithstanding any
other provisions of this section, in the event rates, fees
and charges herein provided for shall be imposed by the
governing body of any municipality for the purpose of
replacing and in amounts approximately sufficient to
replace in its general fund such amounts as shall be
appropriated to be paid out of ad valorem taxes upon
property within the municipality pursuant to an election
duly called and held under the constitution and laws
of the state to authorize the issuance and sale of general
obligation bonds of the municipality for public improve-
ment purposes, in the call for which election it shall
be stated that the governing body of the municipality
proposes to impose rates, fees and charges in specified
amounts under this section for the use of one or more
of the services above specified, which shall be related
to the public improvement proposed to be made with
the proceeds of the bonds, no notice, publication of
notice, or referendum or election or other condition or
prerequisite to the imposition of such rates, fees and
charges shall be required or necessary other than the
legal requirements for issuance and sale of such general
obligation bonds.

ARTICLE 16. MUNICIPAL PUBLIC WORKS; REVENUE BOND
FINANCING.

§8-16-4a. Additional special provisions as to motor vehicle parking
facilities.

§8-16-8. Right of eminent domain.

§8-16-17. Sinking fund; sinking fund commission; transfer of funds;
purchase of outstanding bonds.

§8-16-4a. Additional special provisions as to motor vehicle
parking facilities.

(a) The Legislature hereby finds that the greatly in-
creased use by the public of motor vehicles of all kinds
has caused serious traffic congestion on the streets of
many municipalities in this state; that the lack of ade-
quate planning and supervision of the location of park-
ing facilities, the parking of motor vehicles of all kinds
and the lack of adequate parking facilities for motor
vehicles of all kinds substantially impede the free cir-
culation of traffic in, through and from many munici-
palities in this state, impede the rapid and effective fight-
ing of fires and disposition of police officers therein, con-
tribute to the location and relocation of commercial and
business enterprises outside of urban areas and retard
the development of commerce and business within many
municipalities in this state, thereby giving rise to urban
blight and adversely affecting or threatening to ad-
versely affect the tax base of such municipalities; that
such parking crisis can be reduced by such municipalities
providing adequate motor vehicle parking facilities strategically located there; that providing properly located terminal space for motor vehicles is a public responsibility; that fostering the development of commerce and business within municipalities, with the increased tax revenues resulting therefrom, is a public purpose; that fostering the availability of property for charitable use is a public purpose; that the closer the proximity between municipally owned motor vehicle parking facilities and commercial and business establishments the greater the development of commerce and business and the greater the level of revenue produced by such motor vehicle parking facilities; that the erection or construction of pedestrian viaducts, ramps, bridges, tunnels or other pedestrian facilities leading to and from motor vehicle parking facilities so as to facilitate the movement of pedestrians to and from such motor vehicle parking facilities fosters the development of commerce and business and increases the level of revenue produced by such motor vehicle parking facilities; that the leasing, particularly on a long-term basis, and the selling of space for commercial or business use in connection with a municipally owned motor vehicle parking facility will aid the development of commerce and business, increase the level of revenue produced by such motor vehicle parking facility and maintain and increase the tax base of such municipalities; that in many instances the authority for the leasing of space as provided for in this section would assist in financing the construction, reconstruction, establishment, acquisition, improvement, renovation, extension, enlargement, increase, equipment or repair (including replacements) of any such motor vehicle parking facility; that the enactment of this section is for the general welfare of the public and is a public necessity; and that the means and measures authorized in this section are, as a matter of public policy, for the public purposes of such municipalities. This section is enacted in view of these findings and shall be liberally construed in the light thereof.

(b) The governing body or bodies, in its or their discretion, may provide by ordinance or ordinances:
(1) For the leasing by the board as lessor of space in or on a municipal public works which is a motor vehicle parking facility for any business, commercial or charitable use to such person, for such fair and adequate consideration, for such period or periods of time and upon such other terms and conditions as such body or bodies or the board may agree to. In connection with the leasing of any such space, the board may agree to provide in or on such motor vehicle parking facility such structures, accommodations or improvements as may be necessary for such business, commercial or charitable use or such space may be leased upon condition that the lessee shall provide the same in or on the space so leased.

(2) For the leasing by the board as lessor or the selling of air space over a municipal public works which is a motor vehicle parking facility for any business, commercial or charitable use to such person, for such fair and adequate consideration, for such period or periods of time in the case of a lease and upon such other terms and conditions as such body or bodies or the board may agree to. Any lease or deed of sale of such air space may contain provisions (i) authorizing the use of such areas of the underlying motor vehicle parking facility as are essential for ingress and egress to and from such air space, (ii) relating to the support of any building or other structure to be erected in such air space, and (iii) relating to the connection of essential public or private utilities to any building or other structure in such air space.

(3) For the erection or construction by the board of any pedestrian viaduct, ramp, bridge, tunnel or other pedestrian facility leading to and from a municipal public works which is a motor vehicle parking facility; and any such pedestrian viaduct, ramp, bridge, tunnel or other pedestrian facility shall, for all purposes of this article, be considered to be a part of a municipal public works which is a motor vehicle parking facility with like effect as if the term "municipal public works" were expressly defined in section one of this article to include pedestrian
viaducts, ramps, bridges, tunnels or other pedestrian facilities: Provided, That any cost incurred by any municipality or municipalities in erecting or constructing any such pedestrian viaduct, ramp, bridge, tunnel or other pedestrian facility which connects a municipal public works which is a motor vehicle parking facility with a privately owned building or buildings or other privately owned structure or structures shall be paid for by the owner or owners of such building or buildings or such other structure or structures.

Any such lease may be privately negotiated without any public notice or advertising, and any such sale may be a public sale pursuant to the provisions of section eighteen, article twelve of this chapter or such sale may be privately negotiated, notwithstanding the provisions of said section eighteen.

(c) The proceeds received from any lease, sale or payment as provided in this section shall be deemed revenue of the works and used as provided in section seventeen of this article.

(d) Notwithstanding the fact that any motor vehicle parking facility subject to the provisions of this article is municipally owned and the fact that a lease or sale under the provisions of subdivision (1) or subdivision (2), subsection (b) of this section is for a public purpose as declared in subsection (a) of this section, any leasehold interest under said subdivision (1), and any building, structure, accommodation or improvement erected, made or operated in any air space leased or sold under said subdivision (2) shall be subject to all property taxes, which shall be assessed and imposed against the lessee or grantee, as the case may be, unless the use of such leasehold interest, building, structure, accommodation or improvement is otherwise exempt from property taxation under the provisions of section nine, article three, chapter eleven of this code.

§8-16-8. Right of eminent domain.

1 Every such municipality shall have plenary power and authority to condemn any such municipal public works
to be acquired, and any land, rights, easements, rights-of-way, franchises and other property, real or personal, deemed necessary, appropriate, useful or convenient for, and incidental to, the construction, reconstruction or establishment of any such works and space for business, commercial or charitable use in connection therewith, or for the improvement, renovation, extension, enlargement, increase or equipment thereof or thereto, and in connection therewith shall have and may exercise all the rights, power, authority and privileges of eminent domain granted to municipalities under the laws relating thereto. Title to property shall be taken in the name of the municipality or jointly in the names of the participating municipalities. Proceedings for such appropriation of property shall be under and pursuant to chapter fifty-four of this code: Provided, That any such municipality shall be under no obligation to accept and pay for any property condemned, and shall in no event pay for any property condemned or purchased, except from funds provided under the authority of this article; and in any proceedings to condemn, such orders may be made as may be just to any such municipality and to the owners of the property to be condemned; and an understanding or other security may be required securing such owners against any loss or damage which may be sustained by reason of the failure of any such municipality to accept and pay for the property, but such undertaking or security shall impose no liability upon any such municipality, except such as may be paid from the funds provided under the authority of this article.

In the event of acquisition by purchase, the board may obtain and exercise an option from the owners of said property for the purchase thereof, and may enter into a contract for the purchase thereof, and such purchase may be made upon such terms and conditions, and in such manner as the board may deem proper: Provided, however, That the exercise of such option, or the contract for such purchase, or such purchase shall in no event create any obligation of any such municipality, or create any debt, liability or claim, except such as may be discharged
or paid from the funds provided under the authority of this article.

In the event of the acquisition of any works already constructed by purchase or condemnation, the board at or before the time of the adoption of any ordinance described in section seven hereof, shall cause to be determined what reconstruction, improvement, renovation, extension, enlargement, increase, equipment or repair (including replacements) will be necessary, in order that such works and space for business, commercial or charitable use in connection therewith, if any, may be effective for their purpose, and an estimate of the cost thereof shall be included in the estimate of the cost required by section seven hereof, and the same shall be made upon the acquisition of the works and as a part of the cost thereof: Provided further, That no municipality or municipalities shall, under the authority conferred by this article, condemn any existing privately owned works (other than motor vehicle parking facilities) in operation at the date of the condemnation.

§8-16-17. Sinking fund; sinking fund commission; transfer of funds; purchase of outstanding bonds.

Before the issuance of any such bonds, the governing body or bodies shall, by ordinance or ordinances, provide for a sinking fund for the payment of the bonds and the interest thereon, and the payment of the charges of banking institutions or trust companies for making payment of such bonds and interest, out of the net revenues of said works, and shall set aside and pledge a sufficient amount of the net revenues of the works hereby defined to mean the revenues of the works remaining after the payment of the reasonable expenses of repair (including replacements), maintenance and operation, such amount to be paid by the board into the sinking fund at intervals, to be determined by ordinance or ordinances adopted prior to the issuance of the bonds, for (a) the interest upon such bonds as such interest shall fall due; (b) the necessary fiscal agency charges for paying bonds and interest; (c) the payment of the bonds as they fall due, or if all bonds mature at one time, the proper maintenance of a
sinking fund sufficient for the payment thereof at such
time; and (d) a margin for safety and for the payment
of premium upon bonds retired by call or purchase as
herein provided, which margin, together with unused
surplus of such margin carried forward from the pre-
ceding year, shall equal ten percent of all other amounts
so required to be paid into the sinking fund. Such re-
quired payments shall constitute a first charge upon all
the net revenues of the works. Prior to the issuance of
the bonds, the board may, by ordinance or ordinances, be
given the right to use or direct the trustee or the state
sinking fund commission to use such sinking fund, or
any part thereof, in the purchase of any of the outstand-
ing bonds payable therefrom, at the market prices there-
of, but not exceeding the price, if any, at which the
same shall in the same year be payable or redeemable,
and all bonds redeemed or purchased shall forthwith be
cancelled, and shall not again be issued. After the pay-
ments into the sinking fund as herein required and after
reserving an amount deemed by the board sufficient
for repair (including replacements), maintenance and
operation for an ensuing period of not less than twelve
months and for depreciation, the board may at any time
in its discretion transfer all or any part of the balance
of the net revenues into the sinking fund or into a fund
for improvement, renovation, extension, enlargement, in-
crease or equipment for or to the works, or the governing
body or bodies may, notwithstanding the provisions of
section twenty, article thirteen of this chapter, transfer
all or any part of the balance of the net revenues to the
general or any special fund of the municipality or mu-
icipalities and use such revenues for any purpose for
which such general or special fund may be expended.

All amounts for the sinking fund and interest, as and
when set apart for the payment of same, shall be remitted
to the state sinking fund commission at such periods as
shall be designated in the ordinance or ordinances, but
in any event at least thirty days previous to the time
interest or principal payments become due, to be retained
and paid out by said commission consistent with the pro-
visions of this article and the ordinance or ordinances
pursuant to which such bonds have been issued. The state sinking fund commission is hereby authorized to act as fiscal agent for the administration of such sinking fund under any ordinance or ordinances passed or adopted pursuant to the provisions of this article and shall invest all sinking funds as provided by general law.

CHAPTER 100

(House Bill No. 830—By Mr. Jones, of Monongalia, and Mr. Dinsmore)

[Passed February 27, 1971; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article fourteen, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section five-a, authorizing municipalities to appoint special parking lot or parking building police officers; specifying their duties, power and authority; relating to their uniforms, badges or other signs of authority; specifying that such special police officers shall serve at the will and pleasure of the appointing authority and not come within the civil service provisions of said article fourteen or the policemen's pension and relief fund provisions of article twenty-two of said chapter; authorizing such municipalities to require such special police officers to give bond; and providing a method for the payment of such special police officers.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 14. LAW AND ORDER; POLICE FORCE OR DEPARTMENTS; POWERS, AUTHORITY AND DUTIES OF LAW-ENFORCEMENT OFFICIALS AND POLICEMEN; POLICE MATRONS; SPECIAL SCHOOL ZONE
§8-14-5a. Special parking lot or parking building police officers.

Every municipality shall have plenary power and authority to provide by ordinance for the appointment of special parking lot or parking building police officers, whose sole duties shall be to patrol, and to enforce municipal ordinances upon or within, designated parking lots and parking buildings either owned by, or leased to, or under the control of, and operated by, the municipality or any board, commission or authority created by the municipality. Notwithstanding the provisions of section twelve, article twelve of this chapter, such special parking lot or parking building police officers may be assigned to police a parking facility established, maintained and operated pursuant to the provisions of said section twelve. In the performance of such duties, such special parking lot or parking building police officers shall be vested with the power to make arrests, issue summonses, sign complaints and request the issuance of capiases. Such special parking lot or parking building police officers shall be in uniform, shall display a badge or other sign of authority, shall serve at the will and pleasure of the appointing authority, and shall not come within the civil service provisions of this article or the policemen’s pension and relief fund provisions of article twenty-two of this chapter. The governing body of the municipality may require such special parking lot or parking building police officers to give bond, payable to the municipality, in its corporate name, with such sureties and in such penalty as the governing body may see fit, conditioned for the faithful performance of their duties. The cost of providing such special parking lot or parking building police officers may be paid from revenues derived from the parking lot or parking building to which they are assigned.
AN ACT to amend and reenact section six, article fifteen, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the dissolution of volunteer fire companies.

Be it enacted by the Legislature of West Virginia:

That section six, article fifteen, 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 15. FIRE FIGHTING; FIRE COMPANIES AND DEPARTMENTS; CIVIL SERVICE FOR PAID FIRE DEPARTMENTS.


1 Whenever the governing body shall ascertain that such company has failed, for three months successively, to consist of twenty effective members, or shall ascertain that it has failed for a like period of time to have and keep in good, serviceable condition an engine, hose or other proper equipment, such governing body shall declare such failure and by order dissolve the company.

2 Whenever a company is dissolved, the order of dissolution shall be recorded in the office of the clerk of the county court of the county wherein such municipality or the major portion of the territory thereof is located.

CHAPTER 102

AN ACT to amend and reenact section ten, article fifteen, chapter eight of the code of West Virginia, one thousand nine
Be it enacted by the Legislature of West Virginia:

That section ten, article fifteen, 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 15. FIRE FIGHTING; FIRE COMPANIES AND DEPARTMENTS; CIVIL SERVICE FOR PAID FIRE DEPARTMENTS.


1 On and after the effective date of this section, the members of a paid fire department, without any reduction in their total annual compensation as such members, shall not be required to remain on duty in excess of one hundred twelve hours during any fourteen consecutive days' period. The members of any such paid fire department shall, by a majority vote, determine the schedule of hours to be worked in any twenty-four-hour period: Provided,

2 That the members of any paid fire department shall not remain on duty for more than twenty-four consecutive hours except in case of an emergency requiring the service of more than one half of the department. The chief executive officer of the department is hereby empowered, authorized and directed to make the necessary assignments as provided in this section.

CHAPTER 103

(House Bill No. 1102—By Mr. Halbritter and Mr. Jones, of Monongalia)

[Passed March 13, 1971; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section seven, article sixteen; section five, article nineteen; and section four, article twenty, all of chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the ordinances of municipalities with respect to municipal public works, waterworks systems and combined waterworks and sewerage systems; providing that
an abstract of any such ordinance and not the ordinance itself must be published; relating to the notice to be published with any abstract; and relating to filing of certified copy of ordinance for review by interested persons.

Be it enacted by the Legislature of West Virginia:

That section seven, article sixteen; section five, article nineteen; and section four, 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.
19. Municipal Waterworks System.

ARTICLE 16. MUNICIPAL PUBLIC WORKS; REVENUE BOND FINANCING.

§8-16-7. Ordinance for construction, etc., of works.

Before any municipality or municipalities shall, under the provisions of this article, construct, reconstruct, establish, acquire, improve, renovate, extend, enlarge, increase, equip or repair (including replacements) any municipal public works, the governing body, or the governing body of each participating municipality, shall enact an ordinance or ordinances, which shall (a) set forth a brief and general description of the works, including a reference to the preliminary report or plans and specifications which shall theretofore have been prepared; (b) set forth the estimated cost thereof; (c) order the construction, reconstruction, establishment, acquisition, improvement, renovation, extension, enlargement, increase, equipment or repair (including replacements) of such works; (d) direct that municipal revenue bonds be issued pursuant to this article, in such amount as may be found necessary to pay the cost of the works; and (e) contain such other provisions as may be necessary or proper in the premises. When two or more municipalities take joint action under the provisions of this article, a certified copy of each such ordinance shall be filed in the office of the clerk of the county court of the county or counties in which
the municipalities are located and in the office of the
state tax commissioner, and when any such municipality
is located in more than one county, the filing for that
municipality shall be in the office of the clerk of the
county court in which the major portion of the territory
of such municipality is located. Before any such ordinance
shall become effective, an abstract of the ordinance,
determined by the governing body or each governing
body, as the case may be, to contain sufficient informa-
tion as to give notice of the contents of such ordinance,
共同 with the following described notice, shall be
published as a Class II legal advertisement in compliance
with the provisions of article three, chapter fifty-nine
of this code, and the publication area for such publica-
tion shall be such municipality or each such municipality,
as the case may be. The notice to be published with
said abstract of the ordinance shall specify a date, time
and place for a public hearing, the date being not less
than ten days after the first publication of said abstract
and notice at which time and place all parties and in-
terests may appear before the governing body of the
municipality or each such municipality and may be heard
as to whether or not said ordinance shall be put into
effect, and said notice shall also identify the office in
which a certified copy of such ordinance shall be on
file for review by interested persons during the office
hours of such office. At such hearing all objections and
suggestions shall be heard and the governing body or
each such governing body shall take such action as it
or they shall deem proper in the premises: Provided,
That if at any such hearing written protest is filed by
thirty percent or more of the freeholders of the munici-
pality for which the hearing is held, then the governing
body of said municipality shall not take further action
unless four fifths of the members of said governing body
assent thereto: Provided, however, That in case writ-
ten protest is filed by thirty percent or more of the free-
holders as herein provided, any such governing body
shall have authority to appoint a committee to consist
of one proponent, one opponent, and the third to be
selected by these two, to determine whether or not thirty
percent of the freeholders have in fact protested and said committee shall report its findings to any such governing body.

ARTICLE 19. MUNICIPAL WATERWORKS SYSTEMS.

§8-19-5. Publication of abstract of ordinance and notice; hearing.

1 After the ordinance for any project under this article has been adopted, an abstract of the ordinance, determined by the governing body to contain sufficient information as to give notice of the contents of such ordinance, together with the following described notice, shall be published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be such municipality. The notice to be published with said abstract of the ordinance shall state that said ordinance has been adopted, that the municipality contemplates the issuance of the bonds described in the ordinance, that any person interested may appear before the governing body, upon a certain date which shall not be less than ten days subsequent to the date of the last publication of such abstract and notice, and present protests, and that a certified copy of the ordinance is on file with the governing body for review by interested parties during the office hours of the governing body. At such hearing all protests and suggestions shall be heard and the governing body shall take such action as it shall deem proper in the premises: Provided, That if at such hearing written protest is filed by thirty percent or more of the freeholders of the municipality, then the governing body of said municipality shall not take further action unless four fifths of the qualified members of said governing body assent thereto.

ARTICLE 20. COMBINED WATERWORKS AND SEWERAGE SYSTEMS.

§8-20-4. Publication of abstract of ordinance and notice; hearing.

1 After the ordinance for any project under the provisions of this article has been adopted, an abstract
of the ordinance, determined by the governing body
to contain sufficient information as to give notice of
the contents of such ordinance, together with the follow-
ing described notice, shall be published as a Class II
legal advertisement in compliance with the provisions
of article three, chapter fifty-nine of this code, and the
publication area for such publication shall be such
municipality. The notice to be published with said
abstract of the ordinance shall state that said ordinance
has been adopted, that the municipality contemplates
the issuance of the bonds described in the ordinance,
that any person interested may appear before the govern-
ing body, upon a certain date which shall not be less
than ten days subsequent to the date of the last pub-
licaton of such abstract and notice, and present pro-
tests, and that a certified copy of the ordinance is on
file with the governing body for review by interested
parties during the office hours of the governing body.
At such hearing all protests and suggestions shall be
heard and the governing body shall take such action
as it shall deem proper in the premises: Provided, That
if at such hearing written protest is filed by thirty
percent or more of the freeholders of the municipality,
then the governing body of said municipality shall not
take further action unless four fifths of the qualified
members of said governing body assent thereto.

CHAPTER 104
(House Bill No. 828—By Mr. Grewe and Mr. Fantasia)

[Passed February 25, 1971; in effect July 1, 1971. Approved by the Governor.]
lating to the contributions thereto by municipalities, police-
men and firemen and the amount thereof; relating to
levies in connection therewith; and relating to the compu-
tation and amount of disability, retirement and death
benefits payable from such funds.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 22. RETIREMENT BENEFITS GENERALLY; POLICE-
MEN'S PENSION AND RELIEF FUND; FIREMEN'S
PENSION AND RELIEF FUND; PENSION PLANS
FOR EMPLOYEES OF WATERWORKS SYSTEM,
SEWERAGE SYSTEM OR COMBINED WATER-
WORKS AND SEWERAGE SYSTEM.

§8-22-19. Levy to maintain fund; gifts, etc.; assessments on members of
departments; return of assessments.


§8-22-27. General provisions concerning disability pensions, retirement
pensions and death benefits.

§8-22-19. Levy to maintain fund; gifts, etc.; assessments on members of
departments; return of assessments.

1 In every municipality in which there shall be a police-
men's pension and relief fund or a firemen's pension
and relief fund, or both, the same shall be maintained
as follows: The governing body of the municipality
shall levy annually and in the manner provided by law
for other municipal levies, and include within the maxi-

mum levy or levies permitted by law, and if necessary
in excess of any charter provision, a tax at such rate
as will, after crediting (a) all interest, if any, to be re-
ceived in such year from the investments of the respec-
tive boards, (b) the amount of the contributions received
during such year from the members of the respective paid
police department or paid fire department, and (c) in
the case of the policemen's pension and relief fund, the
arrest fee of one dollar as provided for in section twenty
of this article, provide funds equal to the sum of (1) the
full amount of estimated expenditures of the boards
of trustees of the respective funds, and (2) an addi-
tional amount equal to ten percent of such estimated
expenditures, said ten percent amount to be taken, ac-
cumulated and invested, if possible, as surplus reserve:
Provided, That in no event shall such levy for each of
the respective boards of trustees be less than one cent
nor more than eight cents on each one hundred dollars
of all real and personal property as listed for taxation
in such municipality.

The levies authorized under the provisions of this
section, or any part of them, may by the governing body
be laid in addition to all other municipal levies, and
to that extent, beyond the limit of levy imposed by
the charter of such municipality; and such levies shall
supersede and if necessary exclude levies for other pur-
poses if such priority or exclusion is necessary under
limitations upon taxes or tax levies imposed by law.

Such public corporations are authorized to take by
gift, grant, devise or bequest, any money or real or
personal property, upon such terms as to the invest-
ment and expenditure thereof as may be fixed by the
grantor or determined by said trustees.

In addition to all other sums provided for pensions
in this section, it shall be the duty of every municipality
in which any such fund or funds have been or shall be
established to assess and collect from each member of
the paid police department or paid fire department or
both each month, the sum of six percent of the actual
salary or compensation of such member; and the amount
so collected shall become a regular part of the police-
men's pension and relief fund, if collected from a police-
man, and of the firemen's pension and relief fund, if col-
lected from a fireman.

Any member of a paid police or fire department who
is removed or discharged or who before retirement on
any retirement pension or disability pension severs his
connection with said department, provided he has served
two full years or more, whether or not consecutive, shall,
upon request, be refunded all pension and relief fund
deductions made from his salary or compensation, but
without interest. In the event such refund is made
and such member subsequently reenters the department
no credit shall be allowed him for any former service,
unless any such member of a paid police or fire de-
partment repays to the pension and relief fund all sums
refunded to him within one year from the date he
reenters the department with interest at the rate of six
percent per annum: Provided, however, That any mem-
ber who, on or before June three, one thousand nine
hundred fifty-five, reentered the paid police or fire de-
partment shall be allowed credit for any former service
in the same department reentered if he within one year
from said June three, one thousand nine hundred fifty-
five, repaid all sums withdrawn or refunded to him
with interest at the rate of six percent per annum, but
in no case shall interest be charged for more than three
years. Any probationary member of a paid police or
fire department who is not given an absolute appoint-
ment at the end of his probationary period shall, upon
request, be refunded all pension and relief fund deduc-
tions made from his salary or compensation, but with-
out interest.

1 (a) If any member of any such paid police or fire
department of any such municipality shall become and
be found upon examination by a majority of a board
of medical examiners, which board shall consist of not
less than three physicians appointed by the board of
trustees, to have become so physically or mentally per-
manently disabled by reason of service rendered in
the performance of his duties in such department, as
to render necessary his retirement from all service in
such department, or if any member who has been such
a member of either of such departments for a period
of not less than five consecutive years preceding his dis-
ability become and be found upon such an examination
to have become so physically or mentally permanently
disabled, from any reason other than as specified above
in this section, as to render necessary his retirement
from all service in such department, such board of trus-
tees shall retire such permanently disabled members
from all service in such department; and said board of trustees of such pension and relief fund shall authorize the payment to each such permanently disabled member monthly from the pension and relief fund a disability pension, the amount thereof to be determined as specified in subsection (f) of this section.

(b) If any member of any such department shall at any time be injured or become sick, regardless of the cause therefor, so as to render such member temporarily disabled, he shall be paid, during such disability for not exceeding twenty-six weeks, from said pension and relief fund temporary disability payments, the amount thereof to be determined as specified in said subsection (f) for the determination of payments under a disability pension.

(c) No member shall be eligible for any disability pension or any temporary disability payments unless such member shall have presented himself for an examination at the time of his appointment to the department and his condition was then approved by a majority of a board of medical examiners appointed as aforesaid by such pension board: Provided, That this provision shall not apply to any individual who became a member of either of said departments on or before March eight, one thousand nine hundred thirty-five. Any such pension board may, if it so elects, designate as a member or members of its board of medical examiners any physician or physicians appointed by the policemen's civil service commission or firemen's civil service commission of such municipality to conduct medical examinations on behalf of any such commission under the provisions of article fourteen or article fifteen of this chapter, as the case may be.

(d) Any member who has been heretofore, or shall hereafter be, allowed a disability pension or temporary disability payments under the provisions of sections sixteen through twenty-eight of this article may be required by such board to be reexamined at any time and if he is then not disabled as aforesaid he shall be ordered by the mayor of the municipality to return to duty in his former position in the paid police or fire
department, as the case may be, and his disability pension
or temporary disability payments shall be discontinued:
Provided, however, That this provision shall not apply
to any member until such member can and shall be re-
stored to his former position in such department.
(e) All medical examinations conducted under the
provisions of this section shall be ordered by the pen-
sion board.
(f) The monthly sum to be paid to each permanently
disabled member of a paid police or fire department
entitled thereto shall be equal to sixty percent of the
monthly salary or compensation being received by such
member, at the time he is so disabled, or the sum of
two hundred dollars per month, whichever shall be
greater.
(a) Any member of a paid police or fire depart-
ment who is entitled to a retirement pension hereunder,
and who has been in the honorable service of such de-
partment for twenty years, may, upon written applica-
tion to the board of trustees, be retired from all ser-
vice in such department without medical examination
or disability; and on such retirement the board of trus-
tees shall authorize the payment of annual retirement
pension benefits commencing upon his retirement or
upon his attaining the age of fifty years, whichever is
later, payable in twelve monthly installments for each
year of the remainder of his life, in an amount equal
to sixty percent of such member's average annual sal-
ary or compensation received during the five fiscal years,
not necessarily consecutive, in which such member re-
ceived his highest salary or compensation while a mem-
er of the department, or an amount of two hundred
dollars per month, whichever shall be greater.
(b) Any member of any such department who
is entitled to a retirement pension under the provisions
of subsection (a) of this section and who has been
in the honorable service of such department for more
than twenty years at the time of his retirement, as
herein provided, shall, in addition to the sixty percent
authorized in said subsection (a), receive one additional
percent, to be added to the sixty percent, per each year
served in excess of said twenty years, up to a maximum
of five additional percent.

(c) Any member of any such department whose
service has been interrupted by duty with the armed
forces of the United States as provided in section
twenty-seven of this article, shall be eligible for retire-
ment pension benefits immediately upon retirement,
regardless of his age, if he shall otherwise be eligible
for such retirement pension benefits.

(d) Any member of a paid police or fire de-
partment shall be retired at the age of sixty-five years in
the manner provided in this subsection. When a mem-
ber of the paid police or fire department shall have
reached the age of sixty-five years, the said board of
trustees shall notify the mayor of this fact, within
thirty days of such member's sixty-fifth birthday; and
the mayor shall cause such sixty-five-year-old member of
the paid police or fire department to be retired within a
period of not more than thirty additional days. Upon
retirement under the provisions of this subsection (d),
such member, whether he has been employed in said
department for twenty years or not, shall receive re-
tirement pension benefits payable in twelve monthly
installments for each year of the remainder of his life,
in an amount equal to sixty percent of such member's
average annual salary or compensation received dur-
ing the five fiscal years, not necessarily consecutive, in
which such member received his highest salary or com-
pen- sation while a member of the department, or an
amount of two hundred dollars per month, whichever
shall be greater, and if such member has been employed
in said department for more than twenty years, the
provisions of subsection (b) of this section shall apply.

(e) It shall be the duty of each member of a
paid police or fire department at the time a fund is here-
after established to furnish the necessary proof of his
date of birth to the said board of trustees, as specified
in section twenty-three of this article, within a reason-
able length of time, said length of time to be determined
by the said board of trustees; and then the board of
trustees and the mayor shall proceed to act in the man-
ner provided in subsection (d) of this section and shall
cause all members of the paid police or fire department
who are over the age of sixty-five years to be retired
in not less than sixty days from the date the fund is
established. Upon retirement under the provisions of
this subsection (e), such member, whether he has been
employed in said department for twenty years or not,
shall receive retirement pension benefits payable in
twelve monthly installments for each year of the re-
mainder of his life, in an amount equal to sixty percent
of such member's average annual salary or compensa-
tion received during the five fiscal years, not necessarily
consecutive, in which such member received his highest
salary or compensation while a member of the depart-
ment, or an amount of two hundred dollars per month,
whichever shall be greater, and if such member has
been employed in said department for more than twenty
years, the provisions of subsection (b) of this section
shall apply.


1. In case:

(a) Any member of a paid police or fire department
who has been in continuous service for more than five
years shall die, from any cause other than as specified
in subsection (b) of this section twenty-six, before re-
tirement on a disability pension under the provisions of
section twenty-four of this article or a retirement pen-
sion under the provisions of subsections (a) and (b) of section twenty-five of this article,
leaving in either case surviving a dependent spouse, or
any dependent child or children under the age of eighteen
years, or dependent father or mother or both, or any
dependent brothers or sisters or both under the age of
eighteen years; or

(b) Any former member of any such department
who is on a disability pension under the provisions of
said section twenty-four, or has attained the age of fifty
years and is receiving or is entitled to receive retire-
ment pension benefits under the provisions of subsection (a) or both subsections (a) and (b) of section twenty-five of this article, shall die, from any cause other than as specified in subsection (b) of this section twenty-six, leaving in either case surviving a dependent spouse to whom the marriage took place prior to the date of such member's retirement on a disability pension or a retirement pension, or any dependent child or children under the age of eighteen years who were born prior to or within ten months after the date of such member's retirement on a disability pension or a retirement pension, or dependent father or mother or both, or any dependent brothers or sisters or both under the age of eighteen years; or

(3) Any former member of any such department who has retired under the provisions of subsection (a) or both subsections (a) and (b) of section twenty-five of this article, shall die before attaining the age of fifty years, from any cause other than as specified in subsection (b) of this section twenty-six, leaving surviving a dependent spouse, or any dependent child or children under the age of eighteen years, or dependent father or mother or both, or any dependent brothers or sisters or both under the age of eighteen years; then in any of the cases set forth above in (1), (2) and (3), the board of trustees of such pension and relief fund shall, immediately following the death of such member, pay to or for each of such entitled surviving dependents the following pension benefits, viz.: To such dependent spouse, until death or remarriage, a sum per month equal to thirty percent of such member's average monthly salary or compensation received during the five fiscal years, not necessarily consecutive, in which such member received his highest salary or compensation while a member of the department, hereinafter for convenience referred to in this section as "monthly average," or an amount of one hundred dollars per month, whichever shall be greater; to each such dependent child a sum per month equal to ten percent of such monthly average, or the sum of thirty dollars per month for each such child, whichever shall be greater, until such child shall attain the age of eighteen years.
or marry, whichever first occurs; to each such dependent orphaned child a sum per month equal to fifteen percent of such monthly average, or the sum of forty-five dollars per month for each such child, whichever shall be greater, until such child shall attain the age of eighteen years or marry, whichever first occurs; to each such dependent father or mother a sum per month for each equal to ten percent of such monthly average, or the sum of thirty dollars per month for each such father and mother, whichever shall be greater; to each such dependent brother or sister the sum of five dollars per month until such individual shall attain the age of eighteen years or marry, whichever first occurs, but in no event shall the aggregate amount paid to such brothers and sisters exceed thirty dollars per month; but if at any time, because of the number of dependents, all such dependents cannot be paid in full as herein provided, then each dependent shall receive his pro rata share of such payments: Provided, That in no case shall the payments to the surviving spouse and children be cut below sixty-five percent of the total amount to be paid to all dependents.

(b) The dependent spouse, child or children, or dependent father or mother, or dependent brothers or sisters, of any such member who shall die by reason of service rendered in the performance of such member's duties shall, regardless of the length of such member's service and irrespective of whether such member was or was not entitled to receive or was or was not receiving a disability pension or temporary disability payments at the time of his death, receive the death benefits provided for in subsection (a) of this section, and if such member had less than five years' service at the time of his death, the monthly average shall be computed on the basis of the actual number of years of service.

(c) The provisions of this section shall not be construed as creating or establishing any contractual or vested rights in favor of any individual who may be or become qualified as a beneficiary of the death benefits herein authorized to be made, all the provisions hereof and benefits provided for hereunder being expressly sub-

(a) In determining the years of service of a member in a paid police or fire department for the purpose of ascertaining certain disability pension benefits, all retirement pension benefits and certain death benefits, the following provisions shall be applicable:

1. Absence from the service because of sickness or injury shall not be construed as time out of service; and

2. Any member of any paid police or fire department covered by the provisions of sections sixteen through twenty-eight of this article who has been required to or shall at any future time be required to enter the armed forces of the United States by conscription, by reason of being a member of some reserve unit of the armed forces or a member of the West Virginia national guard or air national guard, or who enlists in one of the armed forces of the United States during hostilities, and who upon receipt of an honorable discharge from such armed forces presents himself for resumption of duty to his appointing municipal official within six months from his date of discharge, and is accepted by the pension board's board of medical examiners as being mentally and physically capable of performing his required duties as a member of such paid police or fire department, shall be given credit for continuous service in said paid police or fire department, and his rights shall be governed as herein provided. No member of a paid police or fire department shall be required to pay the monthly assessment as now required by law, during his period of service in the armed forces of the United States.

(b) As to any former member of a paid police or fire department receiving disability pension benefits or retirement pension benefits from a policemen's or firemen's pension and relief fund, on the effective date of this...
article [July 1, 1969], the following provisions shall
govern and control the amount of such pension benefits:

(1) A former member who on June thirtieth,
one thousand nine hundred sixty-two, was receiving dis-
ability pension benefits or retirement pension benefits
from a policemen's or firemen's pension and relief fund,
shall continue to receive pension benefits but on and after
July one, one thousand nine hundred seventy-one, such
pension benefits shall be in the amount of two hundred
dollars per month; and

(2) A former member who became entitled to
disability pension benefits or retirement pension benefits
on or after July one, one thousand nine hundred sixty-
two, shall continue to receive pension benefits but on and
after July one, one thousand nine hundred seventy-one,
shall receive the disability pension benefits or retirement
pension benefits provided for in section twenty-four or
section twenty-five of this article, as the case may be.

(c) As to any dependent spouse, child or children,
or dependent father or mother, or dependent brothers or
sisters, of any former member of a paid police or fire de-
partment, receiving any death benefits from a policemen's
pension and relief fund or firemen's pension and relief
fund, on the effective date of this article, the following
provisions shall govern and control the amount of such
death benefits:

(1) A dependent spouse, child or children, or
dependent father or mother, or dependent brothers or
sisters, of any former member, who on June thirty, one
thousand nine hundred sixty-two, was receiving any
death benefits from a policemen's pension and relief
fund or firemen's pension and relief fund, shall continue
to receive death benefits but on and after July one, one
thousand nine hundred seventy-one, such death benefits
shall be in the following amounts: To a dependent spouse,
until death or remarriage, the sum of one hundred dollars
per month; to each dependent child the sum of thirty dol-
lars per month, until such child shall attain the age of
eighteen years or marry, whichever first occurs; to each
dependent orphaned child the sum of forty-five dollars
per month, until such child shall attain the age of eighteen
years or marry, whichever first occurs; to each dependent
date and mother the sum of thirty dollars per month
for each; to each dependent brother or sister the sum of
five dollars per month, until such individual shall attain
the age of eighteen years or marry, whichever first occurs,
but in no event shall the aggregate amount paid to such
brothers and sisters exceed thirty dollars per month; but
if at any time, because of the number of dependents, all
such dependents cannot be paid in full as herein pro-
vided, then each dependent shall receive his pro rata
share of such payments: Provided, That in no case shall
the payments to the surviving spouse and children be
cut below sixty-five percent of the total amount to be paid
to all dependents;

(2) A dependent spouse, child or children, or
dependent father or mother, or dependent brothers or
sisters, of any former member, who became eligible for
death benefits on or after July one, one thousand nine
hundred sixty-two, shall continue to receive death bene-
fits but on and after July one, one thousand nine hundred
seventy-one, shall receive the death benefits provided
for in section twenty-six of this article.

CHAPTER 105

(House Bill No. 1015—By Mr. Speaker, Mr. Boiarsky, and Mr. Seibert)

[Passed March 9, 1971; in effect ninety days from passage. Approved by the
Governor.]

AN ACT to amend article twenty-four, chapter eight of the code
of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated
section fifty-a, relating to municipal corporations, planning
and zoning, and the adoption of the standards of federal
department of housing and urban development.

Be it enacted by the Legislature of West Virginia:

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

**ARTICLE 24. INTERGOVERNMENTAL RELATIONS—URBAN AND RURAL PLANNING AND ZONING.**

**PART XIII-A. ADOPTION OF STANDARDS OF FEDERAL DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.**

§8-24-50a. Standards of federal department of housing and urban development for factory-built housing, components, etc., adopted.

1 Notwithstanding any existing provisions of law, municipal or county ordinance, or local building code, but excluding any such provisions relating to zoning or land use control, the standards for factory-built housing, housing prototypes, subsystems, materials and components certified as acceptable by the federal department of housing and urban development are hereby deemed acceptable and approved for use in housing construction in this state.

2 A certificate from the state director of the federal housing administration of the department of housing and urban development shall constitute prima facie evidence that the products or materials listed therein are acceptable and such certificates shall be furnished by the building contractor to any local building inspector or other local housing authority upon request.

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**CHAPTER 106**

*(Com. Sub. for House Bill No. 847—Originating in the House Committee on the Judiciary)*

[Passed March 13, 1971; in effect from passage. Approved by the Governor.]*

AN ACT to amend and reenact sections five, fourteen and twenty, article twenty-seven, chapter 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 twenty-six and twenty-seven, relating to urban mass transportation
authorities; authorizing participating governments to contribute moneys or property to such authorities; relating to the number of votes participating governments shall have in the affairs of such authorities; authorizing other counties and municipalities within and without this state to join such authorities; relating to the revenue bonds to be issued by such authorities; providing an exemption from taxation; relating to dissolution of such authorities and the disposition of their assets after payment of debts; and relating to workmen's compensation for employees of such authorities.

Be it enacted by the Legislature of West Virginia:

That sections five, fourteen and twenty, article twenty-seven, chapter 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 twenty-six and twenty-seven, all to read as follows:

ARTICLE 27. INTERGOVERNMENTAL RELATIONS—URBAN MASS TRANSPORTATION SYSTEMS.

PART II. ORGANIZATION AND FUNCTION OF AUTHORITIES AND BOARDS.

§8-27-5. Management of authority vested in board; eligibility, appointment, number and term of members; vote of members; vacancies.

PART VI. DEVELOPMENT OF SYSTEM; FINANCING THEREOF.


PART XI. DISSOLUTION OF AUTHORITY; WORKMEN'S COMPENSATION.

§8-27-26. Dissolution of authority; disposition of assets after payment of debts.
§8-27-27. Employees to be covered by workmen's compensation.

PART II. ORGANIZATION AND FUNCTION OF AUTHORITIES AND BOARDS.

§8-27-5. Management of authority vested in board; eligibility, appointment, number and term of members; vote of members; vacancies.
The management and control of any authority, its operations, business and affairs shall be lodged in a board of not less than five nor more than fifteen individuals who shall be known as members of the board and who shall be appointed for terms of three years each by the governing bodies of the participating governments. Prior to making the initial appointments to the board, the governing bodies of the participating governments shall agree to make such initial appointments so that approximately one third of the total number of the members to be so appointed shall be appointed for a term of one year, approximately one third of such total number of the members shall be appointed for a term of two years and approximately one third of such total number of the members shall be appointed for a term of three years. As the term of each such initial appointee expires, the successor to fill the vacancy created by such expired term shall be appointed for a term of three years. The number of members representing each participating government shall be as agreed upon from time to time by the governing bodies of the said participating governments. When a participating government is represented by more than one member on the board of an authority, such members shall be entitled to cast the votes of that participating government in such manner as that participating government may direct in the order or ordinance appointing its members.

Each participating government shall have one vote for each five hundred dollars it has contributed to the authority in the form of moneys or property. When property is contributed, the contributing participating government and the authority shall agree in writing at the time the contribution is made as to the fair market value of such property, which valuation shall determine the number of votes to be allocated to the participating government on the basis thereof. For the fiscal year during which any authority is formed, the number of votes to which any participating government shall be entitled shall be determined as of the time of formation of the authority and shall govern until the end of that
fiscal year, even though additional moneys or property are contributed during that fiscal year. Thereafter, the number of votes shall be determined at the end of each fiscal year and such determination shall govern for the ensuing fiscal year, even though additional moneys or property are contributed during that fiscal year. Subsequent to its formation, any authority may permit any municipality or county within or without this state to participate in the affairs of the authority, to appoint members of the authority in the same manner, and to have such vote or votes beginning as of the next ensuing fiscal year, as prescribed by law with respect to the original participating municipalities or counties or any combination thereof.

Any individual who is a resident of, or member of the governing body, of, any participating government is eligible to serve as a member of the board. The governing body of each participating government shall inform the authority of its appointments or reappointments to the board by delivering to the authority a certified copy of the ordinance or order making the appointment or reappointment. If any member of the board dies, resigns or for any other reason ceases to be a member of the board, the governing body of the participating government which such member represented shall appoint another individual to fill the unexpired portion of the term of such member.

PART VI. DEVELOPMENT OF SYSTEM; FINANCING THEREOF.


1 The authority is hereby empowered and authorized to provide by resolution, from time to time, for the issuance of revenue bonds of the authority for the purpose of paying all or any part of the cost of acquiring, constructing or improving a system or systems, or any part thereof, or the facilities and equipment therefor, as the case may be, or for any other purpose or project authorized by the provisions of this article. The purposes for which revenue bonds may be issued may include the payment of all costs and estimated costs incidental to or con-
11  nected with the accomplishment of such purpose or project
12  including, without limitation, engineering, inspection and
13  legal fees, the fees of fiscal agents and financial con-
14  sultants and other fees, bond and other reserve funds,
15  working capital, bond interest estimated to accrue during
16  the construction period and for a period not to exceed
17  two years thereafter, and expenses of all proceedings for
18  the authorization, issuance and sale of the bonds.
19
20  The bonds of each issue shall be dated and shall bear in-
21  terest at such rate or rates as are approved by the author-
22  ity, payable semiannually, and shall mature at such time
23  or times not exceeding forty years from their date or dates
24  as may be determined by the authority, and may be made
25  redeemable before maturity, at the option of the au-
26  thority, at such price or prices and under such terms
27  and conditions as may be fixed by the authority prior
28  to the issuance of the bonds. The authority shall deter-
29  mine the form of the bonds, including any interest
30  coupons to be attached thereto, and shall fix the denomi-
31  nation or denominations of the bonds and the place or
32  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 au-
45  thorizing the issuance of such bonds shall otherwise pro-
46  vide. If any officer whose signature or countersignature
47  or a facsimile of whose signature or countersignature
48  appears on bonds or coupons ceases to be such officer be-
49  fore the delivery of the bonds, his signature shall be as
50  effective as if he had remained in office until such de-
51  livery. The bonds may be issued in coupon or in regis-
52  tered form, or both, as each authority may determine
and provision may be made for the registration of any coupon bonds as to principal alone, and also as to both principal and interest, for the reconversion into coupon bonds of any bonds registered as to both principal and interest, and for the interchange of registered and coupon bonds. Notwithstanding the form or tenor thereof, and in the absence of any express recital on the face thereof that the bond is nonnegotiable, all such bonds shall be, and shall be treated as, negotiable instruments for all purposes except when registered in the name of a registered owner.

The authority may exchange its bonds, in whole or in part, for any system or systems, or any parts thereof, or facilities and equipment therefor, or may sell its bonds, in whole or in part, in such manner either at public or private sale and for such price as it may determine will best effect the purposes of this article and be for the best interest of the authority: Provided, That if the bonds be issued the minimum price for which they may be exchanged or at which they may be sold shall be such that the interest cost to the authority of the proceeds of the bonds shall not exceed the interest rate per annum thereon computed to maturity according to the standard table of bond values.

Prior to the preparation of definitive bonds, the authority may, under like restrictions, issue interim receipts or temporary bonds with or without coupons, exchangeable for definitive bonds when such bonds shall have been executed and are available for delivery. The authority may also provide for the replacement of any bonds which shall become mutilated or shall be destroyed or lost.

The authority is hereby empowered and authorized to provide by resolution, from time to time, for the issuance, sale or exchange of revenue refunding bonds of such authority for the purpose of refunding any bonds then outstanding which shall have been issued under the provisions of this article, including the payment of any redemption premium thereon, and any interest accrued or to accrue to the date of redemption of such bonds, and the payment of all expenses incidental thereto. The
authority is further empowered and authorized to pro-
vide by resolution, from time to time, for the issuance,
sale or exchange of revenue bonds of such authority for
the combined purpose of refunding any bonds then out-
standing, as herein provided, and paying all or any part of
the cost of any additional project or projects. All provi-
sions of this article applicable to the issuance of revenue
bonds are applicable to the issuance of refunding bonds
and to the sale or exchange thereof.


1 It is hereby found, determined and declared that the
creation of any authority and the carrying out of its
purposes is in all respects for the benefit of the people
of this state in general, and of the participating govern-
ments in particular, and is a public purpose; and that
the authority will be performing an essential govern-
mental function in the exercise of the powers conferred
upon it by the provisions of this article. Accordingly,
each authority and, without limitation, its revenues,
properties, operations and activities shall be exempt from
the payment of any taxes or fees to the state or any
of its political subdivisions or to any officer or employee
of the state or any of its political subdivisions, except
the special assessment provided for in section six, arti-
 cle six, chapter twenty-four-a of this code. Property,
real and personal, owned by or leased and used exclu-
sively by each authority shall be public property and
therefore exempt from taxation in accordance with
section nine, article three, chapter eleven of this code.
The revenue bonds and other evidences of indebtedness
issued pursuant to the provisions of this article, and the
interest thereon, shall be exempt from taxation, except
inheritance and transfer taxes.

PART XI. DISSOLUTION OF AUTHORITY; WORKMEN’S
COMPENSATION.

§ 8-27-26. Dissolution of authority; disposition of assets after
payment of debts.

1 In the event full and adequate provision is made for
the payment of all of the debts of an authority, the
participating municipalities or counties or any combination thereof which have contributed at least sixty percent of the total value of all moneys and property (the value of which property is determined as specified in section five of this article) contributed to the authority by the participating municipalities and counties may by resolution provide for the dissolution of the authority and for (1) the conveyance of the real and tangible personal property contributed to it to those participating municipalities and counties which contributed the same, (2) equitable distribution among the contributing municipalities and counties of any real and tangible personal property purchased or condemned by the authority or of the proceeds of sale thereof, or the fair value thereof, and (3) the equitable distribution of all moneys on hand to the participating municipalities and counties in direct proportion to the contribution of moneys by them.

§8-27-27. Employees to be covered by workmen’s compensation.

All eligible employees of any authority shall be deemed to be within the workmen’s compensation statute of this state and premiums on their compensation shall be paid by the authority as required by law.

CHAPTER 107

(Com. Sub. for Senate Bill No. 86—Originating in the Senate Committee on the Judiciary)

[Passed March 2, 1971; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article thirty-two, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, authorizing counties and municipalities to make appropriations to certain non-stock, nonprofit corporations for public purposes, subject to certain specified limitations.
Ch. 107] \textbf{MUNICIPALITIES} \hfill 629

\textit{Be it enacted by the Legislature of West Virginia:}

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

\textbf{ARTICLE 32. INTERGOVERNMENTAL RELATIONS—CONTRIBUTIONS TO OR INVOLVEMENT WITH NONSTOCK, NONPROFIT CORPORATIONS FOR PUBLIC PURPOSES.}

\textbf{PART I. MUSEUMS; CULTURAL CENTERS, ETC.}

\textbf{§8-32-1. Legislative findings; authority of municipalities and counties to make appropriations; limitations and restrictions.}

\begin{enumerate}
\item (a) The Legislature hereby finds that the support of nonstock, nonprofit corporations dedicated to making available to the general public museums, facilities or cultural centers for the appreciation, advancement or enjoyment of art, crafts, music, dance, drama, nature, science or other educational and cultural activities is for the general welfare of the public and is a public purpose. This section is enacted in view of this finding and shall be liberally construed in the light thereof.
\item (b) When a nonstock, nonprofit corporation, chartered under the laws of this state, (1) is organized for the construction, maintenance or operation of museums, facilities or cultural centers for the appreciation, advancement or enjoyment of art, crafts, music, dance, drama, nature, science or other educational and cultural activities and provides in its charter that its buildings or facilities, or a designated portion thereof, shall be devoted to the use by the public for all purposes set forth in such charter without regard to race, religion, national origin or economic circumstance, and free from charge except such as is necessary to provide the means to keep the buildings, facilities and grounds in proper condition and repair, and to pay the cost of insurance, care, management, operations, teaching and attendants, so that the general public may have the benefit of such establishment for the uses set forth in such corporation's charter at as little expense as possible, (2) provides in its charter that no member trustee, or member of the board of directors
(by whatever name the same may be called), of the corporation shall receive any compensation, gain or profit from such corporation, and (3) is operated in compliance with such charter provisions as aforesaid, then, notwithstanding any statutory or municipal charter provisions to the contrary, any municipality in which such nonstock, nonprofit corporation is operating or which is or will be served by such nonstock, nonprofit corporation, if any, and the county court of any county in which such nonstock, nonprofit corporation is operating or which is or will be served by such nonstock, nonprofit corporation, may appropriate funds subject to the provisions and limitations set forth in subsections (c) and (d) of this section, to such nonstock, nonprofit corporation, for such public purposes.

In every such case, the governing body of any such municipality or any such county court and such corporation may agree for the appointment of additional members to the board of directors of such corporation by such governing body or county court, either as regular members or in an ex officio capacity.

(c) No funds appropriated by a municipality or county court under the authority of this section shall be disbursed by any such nonstock, nonprofit corporation unless and until the expenditure thereof has been approved by the governing body of such municipality or any such county court, as the case may be, which made such appropriation, and such corporation shall upon demand at any time make a full and complete accounting of all such funds to such governing body or county court, as the case may be, and shall in every event without demand make to such governing body or county court an annual accounting thereof.

(d) Under no circumstances whatever shall any action taken by any municipality or county court under the authority of this section give rise to or create any indebtedness on the part of the municipality, the governing body of such municipality, the county, such county court, any member of such governing body or the county court or any municipal or county official or employee.
AN ACT to amend and reenact section five, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to unlawful methods of hunting and fishing and deleting certain birds from the unprotected status.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-5. Unlawful methods of hunting and fishing.

1 Except as authorized by the director, it shall be unlawful at any time for any person to:

3 (1) Shoot at or to shoot any wild bird or animal unless it is plainly visible to him;

5 (2) Dig out, cut out, or smoke out, or in any manner take or attempt to take any live wild animal or wild bird out of its den or place of refuge, except as may be authorized by regulations promulgated by the director or by law;

10 (3) (a) Make use of, or take advantage of, any artificial light in hunting for, locating, taking, trapping, or killing any wild bird or wild animal; or (b) make use of, or take advantage of, any artificial light in hunting for, taking, attracting, trapping, or killing any wild bird or wild animal, or to attempt to do so, while having in his possession or subject to his control any firearm, whether cased or uncased, or other implement or device suitable for taking, killing, trapping, skinning, or dressing such wild bird or animal. Any person violating the provisions of division (b) of this subdivision three shall be guilty
of a misdemeanor, and, upon conviction thereof, shall
for each offense be fined not less than one hundred dollars
nor more than five hundred dollars and shall be im-
prisoned for not less than ten days nor more than one
hundred days: *Provided,* That it shall not be unlawful
to hunt or take raccoon, opossum or skunk by the use of
artificial lights;

(4) Hunt for, take, kill, wound or shoot at wild animals
or wild birds from an airplane, or other airborne con-
veyance, an automobile, or other land conveyance, or
from a motor-driven water conveyance, except as may
be authorized by regulations promulgated by the director;

(5) Take any beaver or muskrat by any means other
than by trap;

(6) Catch, capture, take or kill by seine, net, bait, trap
or snare or like device of any kind, any wild turkey,
ruffed grouse, pheasant or quail;

(7) Destroy or attempt to destroy needlessly or will-
fully the nest or eggs of any wild bird or have in his
possession such nest or eggs unless authorized to do so
under regulations or under a permit by the director;

(8) Except as provided in section six of this article,
carry an uncased or loaded gun in any of the woods of
this state except during the open firearms hunting season
for game animals and nonmigratory game birds within
any county of the state, unless he has in his possession
a permit in writing issued to him by the director: *Pro-
vided,* That this section shall not prohibit hunting or
taking of unprotected species of wild animals and wild
birds and migratory game birds, during the open season,
in the open fields, open water and open marshes of the
state;

(9) Except as provided in section six of this article,
carry an uncased or loaded gun after the hour of five
o'clock antemeridian on Sunday in any woods or on any
highway, railroad right-of-way, public road, field or
stream of this state, except at a regularly used rifle, pistol,
skeet, target or trap shooting ground or range and nothing
contained in section eighteen, article eight, chapter sixty-
one of this code shall prohibit the use of a gun by a
61 licensed hunter before the hour of five o'clock antemeridian on Sunday;
62 (10) Have in his possession a loaded firearm or a firearm from the magazine of which all shells and cartridges have not been removed, in or on any vehicle or conveyance, or its attachments, within the state, except as may otherwise be provided by law or regulation. Except as hereinafter provided, between five o'clock postmeridian of one day and seven o'clock antemeridian, eastern standard time of the day following, any unloaded firearm, being lawfully carried in accordance with the foregoing provisions, shall be so carried only when in a case or taken apart and securely wrapped. During the period from July first to September thirtieth, inclusive, of each year, the foregoing requirements relative to carrying certain unloaded firearms shall be permissible only from eight-thirty o'clock postmeridian to five o'clock antemeridian, eastern standard time;
79 (11) Hunt, catch, take, kill, trap, injure or pursue with firearms or other implement by which wildlife may be taken after the hour of five o'clock antemeridian on Sunday any wild animals or wild birds: Provided, That traps previously and legally set may be tended after the hour of five o'clock antemeridian on Sunday, if the person so doing shall not have firearms or long bow of any description in his possession;
87 (12) Hunt with firearms or long bow while under the influence of intoxicating liquor;
89 (13) Possess a ferret;
(14) Buy raw furs, pelts or skins of fur-bearing animals unless licensed to do so;
92 (15) Have in his possession or about his premises, without the written permission of the director, any hunting or fishing paraphernalia which cannot be used lawfully in this state for hunting or fishing, and any conservation officer shall remove and destroy such hunting and fishing paraphernalia, whenever found in this state, and the person or persons claiming ownership shall have no recourse at law against such confiscation and destruction;
(16) Catch, take, kill, or attempt to catch, take or kill any fish at any time by any means other than by rod, line, and hooks with natural or artificial lures unless otherwise authorized by law or regulation issued by the director: Provided, That snaring of any species of suckers, carp, fallfish and creek chubs shall at all times be lawful;

(17) Employ or hire, or induce or persuade, by the use of money or other things of value, or by any means, any person to hunt, take, catch or kill, any wild animal or wild bird except those species on which there is no closed season, or to fish for, catch, take or kill any fish, amphibian or aquatic life which is protected by the provisions of this chapter or regulations of the director, or the sale of which is prohibited;

(18) Hunt, catch, take, kill, capture, pursue, transport, possess or use any migratory game or nongame birds included in the terms of conventions between the United States and Great Britain and between the United States and United Mexican States for the protection of migratory birds and game mammals concluded, respectively, August sixteen, one thousand nine hundred sixteen, and February seven, one thousand nine hundred thirty-six, except during the time and in the manner and numbers prescribed by the Federal Migratory Bird Treaty Act and regulations made thereunder;

(19) Kill, take, catch, or have in his possession living or dead, any wild bird, other than a game bird; or expose for sale, or transport within or without the state any such bird, except as aforesaid. No part of the plumage, skin or body of any protected bird shall be sold or had in possession for sale, except mounted or stuffed plumage, skin, bodies or heads of such birds legally taken and stuffed or mounted, irrespective of whether such bird was captured within or without this state, except the English or European sparrow (Passer domesticus), starling (Sturnus vulgaris), crow (Corvus brachyrhynchos) and cowbird (Molothrus ater), which shall not be protected and the killing thereof at any time is lawful;

(20) Use dynamite or any like explosive or poisonous mixture placed in any waters of the state for the purpose
of killing or taking fish. Any person violating the provisions of this subdivision shall be guilty of a felony, and, upon conviction thereof, shall be fined not more than five hundred dollars or imprisoned for not less than six months nor more than three years, or both fined and imprisoned;

(21) Have a bow and gun, or have a gun and any arrow or arrows, in the fields or woods at the same time;

(22) Have a crossbow in the woods or fields or use a crossbow to hunt for, take or attempt to take any wildlife;

(23) Take or attempt to take turkey, bear, elk or deer with any arrow unless the same is equipped with a point having at least two sharp cutting edges measuring in excess of three fourths of an inch wide;

(24) Take or attempt to take any wildlife with an arrow having an explosive head or shaft, a poisoned arrow, or an arrow which would affect wildlife by any chemical action;

(25) Shoot an arrow across any public highway or from aircraft, motor-driven watercraft, motor vehicle or other land conveyance;

(26) Permit any dog owned by him or under his control to chase, pursue or follow upon the track of any game animal or game bird, either day or night, between the first day of May and the fifteenth day of August next following: Provided, That dogs may be trained on game animals and game birds, except deer and wild turkeys, and field trials may be held or conducted on the grounds or lands of the owner or by his bona fide tenant or tenants or upon the grounds or lands of another person with his written permission or on public lands, at any time: Provided, however, That the person training said dogs does not have firearms or other implements in his possession during the closed season on such game animals and game birds, whereby game animals or game birds could be taken or killed;

(27) Conduct or participate in a field trial, water race or wild hunt hereafter referred to as trial: Provided, That any person, group of persons, club or organization
may hold such trial at any time of the year upon obtaining such permit as is provided for in section fifty-six of this article. The person responsible for obtaining said permit shall prepare and keep an accurate record of the names and addresses of all persons participating in said trial, and make same readily available for inspection by any conservation officer upon request; and

(28) Except as provided in section four of this article, hunt, catch, take, kill or attempt to hunt, catch, take or kill any wild animal, wild bird or wild fowl except during the open season established by regulation of the director as authorized by subdivision six, section seven, article one of this chapter.

CHAPTER 109
(House Bill No. 730—By Mr. Seibert)

[Passed March 3, 1971; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend section thirteen, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the importation and liberation of wildlife.

Be it enacted by the Legislature of West Virginia:

That section thirteen, 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.


1 No person shall transport into or have in his possession within this state any live wildlife or viable eggs thereof from without the state, except as authorized by an importation permit issued by the director: Provided, That the director shall not be authorized to issue a permit to any person to transport into this state any foxes, either red (Vulpes fulva) or gray (Urocyon cinereo-argenteus), fishers (Martes pennanti), or coyotes (Canis
The director may issue at his discretion such permit as he is authorized to issue, fix the terms thereof and revoke it at his pleasure: Provided, That the director is hereby authorized to issue permits for the importation of foxes, either red (Vulpes fulva) or gray (Urocyon cinereoargenteus) to duly organized clubs having twenty-five or more members in the counties of Boone, Cabell, Kanawha, McDowell, Wayne and Wyoming.

Importers of fish or viable eggs of the family salmonidae (trout, char, salmon) shall furnish a statement from a recognized fish pathologist certifying the source to be free of whirling disease, infectious pancreatic necrosis, viral hemorrhagic septicemia or other diseases which may threaten fish stocks within the state.

Importers of other wildlife species shall furnish disease free certification from pathologists, or veterinarians, as the director deems necessary to protect native populations.

All imported wildlife shall be subject to inspection by authorized agents of the department and such inspections may include biological examinations and the removal of a reasonable sample of fish or eggs for such purposes.

Any person violating any of the provisions of this section concerning foxes, fishers and coyotes shall be guilty of a misdemeanor, and, upon conviction thereof, shall for each offense be fined not less than one hundred nor more than three hundred dollars, or confined in jail not less than ten nor more than one hundred days, or be both fined and imprisoned within the limitations aforesaid.

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CHAPTER 110

(Com. Sub. for House Bill No. 1009— Originating in the House Committee on Finance)

[Passed March 13, 1971; in effect January 1, 1972. Approved by the Governor.]

AN ACT to repeal section forty-two, article two, chapter twenty of the code of West Virginia, one thousand nine
hundred thirty-one, as amended; and to amend and reenact sections thirty-four, thirty-nine, forty, forty-a, forty-four-a and forty-six of said article, all relating to hunting, trapping and fishing licenses; license fees; disposition of license fees.

_Be it enacted by the Legislature of West Virginia:_

That section forty-two, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that sections thirty-four, thirty-nine, forty, forty-a, forty-four-a and forty-six of said article 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.

§20-2-39. Class A resident statewide hunting and trapping license.

§20-2-40. Class B resident statewide fishing license.

§20-2-40a. Class AB combination resident statewide hunting, trapping and fishing license.

§20-2-44a. Class I national forest hunting, trapping and fishing license.

§20-2-46. Class L nonresident statewide bow and arrow hunting and 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 and permits required by this chapter shall, on the first day of each month, pay over to the director all moneys so collected by them during the preceding month. Such payment shall be accompanied by a report showing, in the case of license money, the name of the county, the class of license sold, the names and addresses of the persons paying the same, the date of the receipt thereof, the signature of the person receiving and remitting such funds, and such other information as the director may deem necessary.

12 Except where other provisions of this chapter specifically require and direct payment of any such moneys into designated funds for specific uses and purposes, all moneys so received by the director hereunder shall be by him promptly paid into the state treasury and shall be credited to the department of natural resources and shall be further credited to and kept in a separate fund designated “license fund—wildlife resources” which shall
be used and paid out, upon order of the director solely for law enforcement and for purposes directly relating to the conservation, protection, propagation and distribution of wildlife in this state pursuant to the provisions of this chapter.

No funds from the “license fund—wildlife resources” shall be expended for recreational facilities or activities that are used by or for the benefit of the general public, rather than purchasers of hunting and fishing licenses.

Of the annual license fund income, the director shall retain ten percent for capital improvements and land purchases benefiting state wildlife, forty percent shall be budgeted to the wildlife resources division, forty percent to law enforcement and ten percent apportioned by the director within provisions of this section. Any unexpended moneys for capital improvements and land purchases shall be carried forward.

§20-2-39. Class A resident statewide hunting and trapping license.

A Class A license shall be a resident statewide hunting and trapping license and shall entitle the licensee to hunt and trap all legal species of game in all counties of the state, except as prohibited by rules or regulations of the director. It shall be issued only to citizens of the United States who are residents of this state. The fee therefor shall be five dollars.

§20-2-40. Class B resident statewide fishing license.

A Class B license shall be a resident statewide fishing license and shall entitle the licensee to fish for all legal fish in all counties of the state, except as prohibited by rules or regulations of the director. It shall be issued only to citizens of the United States, and unnaturalized persons possessing the permit mentioned in section twenty-nine of this article, who are residents of this state. The fee therefor shall be five dollars.

§20-2-40a. Class AB combination resident statewide hunting, trapping and fishing license.

A Class AB combination license shall be a resident statewide hunting, trapping and fishing license and shall
entitle the licensee to hunt and trap for all legal species of game, and fish for all legal species of fish and frogs in all counties of the state, except as prohibited by rules or regulations of the director. It shall be issued only to citizens of the United States who are residents of this state. The fee therefor shall be eight dollars.

§20-2-44a. Class I national forest hunting, trapping and fishing license.

A Class I license shall be a national forest hunting, trapping and fishing license. It shall entitle the licensee, when within national forest land in West Virginia, to hunt legal species in season; to trap all fur-bearing animals in season; and to fish in the waters therein. The license shall be issued only to a nonresident holding a Class E, Class L, Class F or Class K license, or to a resident holding a Class A, Class B or Class AB license. The fee therefor shall be one dollar.

§20-2-46. Class L nonresident statewide bow and arrow hunting and fishing license.

A Class L license shall be a nonresident bow and arrow hunting and fishing license and shall entitle the licensee to employ a long bow and arrow in taking game, fish and frogs in all counties of the state. It shall be issued only to citizens of the United States who are not residents of this state. The fee therefor shall be fifteen dollars.

CHAPTER 111

(Senate Bill No. 232—By Mr. Carrigan)

[Passed March 11, 1971; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section fifteen, article five-a, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to subpoenas in appeal hearings before water resources board.
Be it enacted by the Legislature of West Virginia:

That section fifteen, article five-a, 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 5A. WATER POLLUTION CONTROL ACT.

§20-5A-15. Appeal to water resources board.

1. (a) Any person adversely affected by an order made and entered by the chief in accordance with the provisions of this article, or aggrieved by failure or refusal of the chief to act within the time required by section seven of this article on an application for a permit or aggrieved by the terms and conditions of a permit granted under the provisions of this article, may appeal to the water resources board for an order vacating or modifying such order, or for such order, action or terms and conditions as the chief should have entered, taken or imposed. The person so appealing shall be known as the appellant and the chief shall be known as the appellee. If the chief denies a permit because of any disapproval of a permit application by one or more of the public officers required to review such application under the provisions of subsection (b), section seven of this article, such public officers shall be joined as a co-appellee or coappellees with the chief in such appeal.

1. (b) Such appeal shall be perfected by filing a notice of appeal, on the form prescribed by the board for such purpose, with the board within thirty days after date upon which the appellant received the copy of such order or received such permit, as the case may be. The filing of the notice of appeal shall not stay or suspend the execution of the order appealed from. If it appears to the director or the board that an unjust hardship to the appellant will result from the execution of the chief's order pending determination of the appeal, the director or the board may grant a suspension of such order and fix its terms. The notice of appeal shall set forth the order or terms and conditions complained of and the grounds upon which the appeal is based. A copy of the notice
of appeal shall be filed by the board with the chief within
three days after the notice of appeal is filed with the board.

(c) Within seven days after receipt of his copy of the
notice of appeal, the chief shall prepare and certify to
the board a complete record of the proceedings out of
which the appeal arises including all documents and
correspondence in the chief's file relating to the matter
in question. With the consent of the board and upon such
terms and conditions as the board may prescribe, any
persons affected by any such activity or by such alleged
pollution may by petition intervene as a party appellant
or appellee. The board shall hear the appeal de novo,
and evidence may be offered on behalf of the appellant
and appellee, and, with the consent of the board, by any
intervenors.

(d) All of the pertinent provisions of article five, chap-
ter twenty-nine-a of this code shall apply to and govern
the hearing on appeal authorized by this section and
the administrative procedures in connection with and
following such hearing, with like effect as if the pro-
visions of said article five were set forth in extenso in this
section, with the following modifications or exceptions:

(1) Unless the board directs otherwise, the appeal hear-
ing shall be held in the city of Charleston, Kanawha
county, West Virginia; and

(2) In accordance with the provisions of section one,
article five of said chapter twenty-nine-a, all of the testi-
mony at any such hearing shall be recorded by steno-
graphic notes and characters or by mechanical means.
Such reported testimony shall in every appeal hearing
under this article be transcribed.

(e) Any such appeal hearing shall be conducted by a
quorum of the board, but the parties may by stipulation
agree to take evidence before a hearing examiner em-
ployed by the board. For the purpose of conducting such
appeal hearing, any member of the board and the chair-
man thereof shall have the power and authority to issue
subpoenas and subpoenas duces tecum in the name of the
board, in accordance with the provisions of section one,
article five, chapter twenty-nine-a of this code. All sub-
poenas and subpoenas duces tecum shall be issued and served within the time and for the fees and shall be enforced, as specified in section one, article five of said chapter twenty-nine-a, and all of the said section one provisions dealing with subpoenas and subpoenas duces tecum shall apply to subpoenas and subpoenas duces tecum issued for the purpose of an appeal hearing hereunder.

(f) Any such hearing shall be held within twenty days after the date upon which the board received the timely notice of appeal, unless there is a postponement or continuance. The board may postpone or continue any hearing upon its own motion, or upon application of the appellant, the appellee or any intervenors for good cause shown. The chief shall be represented at any such hearing by the attorney general or his assistants. At any such hearing the appellant and any intervenor may represent himself or be represented by an attorney at law admitted to practice before any circuit court of this state.

(g) After such hearing and consideration of all of the testimony, evidence and record in the case, the board shall make and enter an order affirming, modifying or vacating the order of the chief, or shall make and enter such order as the chief should have entered, or shall make and enter an order approving or modifying the terms and conditions of any permit issued. In determining its course of action, the board shall take into consideration not only the factors which the chief was authorized to consider in making his order and in fixing the terms and conditions of any permit, but also the economic feasibility of treating and/or controlling the sewage, industrial wastes or other wastes involved.

(h) Such order shall be accompanied by findings of fact and conclusions of law as specified in section three, article five, chapter twenty-nine-a of this code, and a copy of such order and accompanying findings and conclusions shall be served upon the appellant, and any intervenors, and their attorneys of record, if any, and upon the appellee in person or by registered or certified mail.
(i) The board shall also cause a notice to be served with the copy of such order, which notice shall advise the appellant, the appellee and any intervenors of their right to judicial review, in accordance with the provisions of section sixteen of this article. The order of the board shall be final unless vacated or modified upon judicial review thereof in accordance with the provisions of section sixteen of this article.

CHAPTER 112

(Com. Sub. for Senate Bill No. 193—Originating in the Senate Committee on Natural Resources)

[Passed March 13, 1971; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two, five, six, seven, eight, nine, ten, eleven, thirteen, fourteen, fifteen, sixteen, seventeen and thirty, article six, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article by adding thereto four new sections, designated sections nine-a, eleven-a, thirteen-a and fourteen-a; and to further amend said chapter by adding thereto a new article, designated article six-a, all relating to surface mining and reclamation; definitions of terms, duties of surface-mining reclamation inspectors; reclamation commission, its duties, functions and compensation; prospecting permit, bond and postponement of reclamation; surface mine permits required, applications, issuance and renewal of permits, fees and use of proceeds; preplanning plans; alternative plans; time affecting plans; limitations; mandamus; blasting restriction, formula, filing preplan, penalties and warning; requirements regarding surface-mined areas where benches result; requirements regarding surface-mined areas where benches do not result; obligations of the operator; cessation of operation by inspector; completion of planting, inspection and evaluation; performance bonds; special reclamation tax and offenses, penalties, prosecutions, treble dam-
ages and injunctive relief; providing that commencing on the effective date of this act and ending two years thereafter, no new permits, including prospecting permits, shall be issued under the provisions of article six of this chapter, for the surface mining of coal in any county in which no surface mining existed during calendar year one thousand nine hundred seventy, under lawful permit.

Be it enacted by the Legislature of West Virginia:

That sections two, five, six, seven, eight, nine, ten, eleven, thirteen, fourteen, fifteen, sixteen, seventeen and thirty, article six, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and re-enacted; that said article be further amended by adding thereto four new sections, designated sections nine-a, eleven-a, thirteen-a and fourteen-a; and that said chapter be further amended by adding thereto a new article, designated article six-a, all to reads as follows:

Article

6. Surface Mining and Reclamation.
6A. Limitations on Surface mining.

ARTICLE 6. SURFACE MINING AND RECLAMATION.

§20-6-2. Definitions.
§20-6-5. Duties of surface-mining reclamation inspectors.
§20-6-6. Reclamation commission; duties, functions and compen-
§20-6-7. Prospecting permit; bond; postponement of reclamation.
§20-6-8. Permit required; applications; issuance and renewals; fees
and use of proceeds.
§20-6-9. Preplans.
§20-6-9a. Installation of drainage system.
§20-6-10. Alternative plans; time.
§20-6-11. Limitations; mandamus.
§20-6-11a. Blasting restriction; formula; filing preplan; penalties;
notice.
§20-6-13. Requirements regarding surface-mined areas where benches
result.
§20-6-13a. Requirements regarding surface-mined areas where benches
do not result.
§20-6-14. Obligations of the operator.
§20-6-14a. Cessation of operation by inspector.
§20-6-15. Completion of planting; inspection and evaluation.
§20-6-16. Performance bonds.
§20-6-17. Special reclamation tax.
§20-6-30. Offenses; penalties; prosecutions; treble damages; injunc-
tive relief.

§20-6-2. Definitions.

1 Unless the context in which used clearly requires a
2 different meaning as used in this article:
(a) "Adequate treatment" shall mean treatment of water by physical, chemical or other approved methods in a manner that will cause the analyzed pH level of the treated water to be 5.5 or more and analyzed content of iron of the treated water to be ten milligrams per liter or less or approved treatment which will not lower the water quality standards established for the river, stream or drainway into which such water is released.

(b) "Breakthrough" shall mean the release of water which has been trapped or impounded underground, or the release of air into any underground cavity, pocket or area.

(c) "Director" shall mean the director of natural resources or his authorized agents.

(d) "Disturbed land" or "land disturbed" shall mean (1) the area from which the overburden has been removed in surface-mining operations, (2) the area covered by the spoil, and (3) any areas used in surface-mining operations which by virtue of their use are susceptible to excessive erosion including all lands disturbed by the construction or improvement of haulageways, roads or trails.

(e) "Minerals" shall mean coal, clay, flagstone, gravel, limestone, manganese, sand, sandstone, shale, iron ore and any other metal or metallurgical ore.

(f) "Mulch" shall mean any natural or plant residue, organic or inorganic material, applied to the surface of the earth to retain moisture and curtail or limit soil erosion.

(g) "Multiple bench" or "multiple seam" shall mean a form of surface mining in which two or more benches are produced, one above the other, in order to allow the removal of minerals from superjacent seams.

(h) "Operator" shall mean any individual, partnership, firm, association, trust or corporation who or which is granted a permit to engage in any activity covered by this article.
(i) "Permit area" shall mean the area of land indicated on the approved map submitted by the operator with the reclamation plan as specified in section nine of this article showing the exact location of end strip markers, permit markers and monument.

(j) "Person" shall mean any individual, partnership, firm, association, trust or corporation.

(k) "Surface mine" shall mean all areas surface mined or being surface mined, as well as adjacent areas ancillary to the operation, together with preparation and processing plants, storage areas and haulageways, roads or trails: Provided, That mines subject to the provisions of articles one, two, four, five and seven, chapter twenty-two of said code, are not "surface mines" within this definition.

(l) "Surface mining" shall mean all activity for the recovery of minerals, except those activities subject to the provisions of articles one, two, four, five and seven, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and subject to such exception, shall include any and all plants and equipment used in processing said minerals: Provided, however, That the bonding and reclamation provisions of this chapter shall not apply to surface mining of limestone, sandstone and sand, and that the surface mining of limestone, sandstone and sand shall be subject to separate rules and regulations to be promulgated by the commission.

(m) "Surface of a regraded bench" shall mean the top portion or part of any regraded area.

§20-6-5. Duties of surface-mining reclamation inspectors.

The surface-mining reclamation inspectors shall make all necessary surveys and inspections of surface-mining operations, shall administer and enforce all surface-mining laws, rules and regulations, and shall perform such other duties and services as may be prescribed by the director. Such inspectors shall give particular attention to all conditions of each permit to insure complete compliance therewith. The director shall cause inspections to be
made of each active surface-mining operation in this state by a surface-mining reclamation inspector at least once every fifteen days. Said inspector shall note all violations of law thereat and immediately report such violations to the director in writing, furnishing at the same time a copy of such report to the operator concerned and to the prosecuting attorney of the county wherein the operation lies.

§20-6-6. Reclamation commission; duties, functions and compensation.

There is hereby created and established in the department of natural resources a reclamation commission which shall be composed of the director of natural resources, serving as chairman, the chief of the division of reclamation, the chief of the water resources division and the director of the department of mines. The members of the commission shall receive no compensation for their services on the commission, but shall be reimbursed for expenses necessarily incurred in performing their functions. The commission shall meet upon the call of any member. The director shall request the attorney general to appoint one or more assistant attorneys general who shall perform such duties as may be required by the director. The attorney general, in pursuance of such request, may select and appoint one or more assistant attorneys general, to serve at the will and pleasure of the attorney general, and such assistant or assistants, shall be paid out of any funds made available for that purpose by the Legislature to the department of natural resources.

The commission shall have authority to:

(a) Promulgate reasonable rules and regulations, in accordance with the provisions of chapter twenty-nine-a of this code, to implement the provisions of this article;

(b) Make investigations or inspections necessary to insure complete compliance with the provisions of this article;

(c) Conduct hearings under provisions of this article or rules and regulations adopted by the commission and for the purpose of any investigation or hearing, hereun-
der, the commission or any member thereof may administer oaths or affirmations, subpoena witnesses, compel their attendance, take evidence and require production of any books, papers, correspondence, memoranda, agreements, or other documents or records relevant or material to the inquiry;

(d) Order, through the director, the suspension or revocation of any permit for failure to comply with any of the provisions of this article or any rules and regulations adopted pursuant thereto;

(e) Order, through the director, a cease and desist order of any operation that is started without a permit as required by law;

(f) Appoint such advisory committees as may be of assistance to the commission in the development of programs and policies: Provided, That such advisory committees shall, in each instance, include members representative of the general public; and

(g) Review orders and decisions of the director.

§20-6-7. Prospecting permit; bond; postponement of reclamation.

1 It shall hereafter be unlawful for any person to use excavating equipment in an area not covered by a surface mine permit for the purpose of removing the overburden to determine the location, quantity or quality of a natural coal deposit, making feasibility studies or for any other purpose without having first obtained from the department of natural resources a permit therefor as provided in this section. Application for a prospecting permit shall be made in writing on forms prescribed by the director and shall be signed and verified by the applicant. The application shall be accompanied by:

(1) A fee of three hundred dollars; (2) a United States geological survey topographic map showing by proper markings the crop line and the name, where known, of the seam or seams to be prospected; (3) a reclamation plan for the proposed disturbed areas as required for holders of surface-mining permits in section nine of this article; and (4) a bond, or cash or collateral securities or certificates of the same type, form and amount and in
the same manner as provided in section sixteen of this article in the amount of five hundred dollars per acre or fraction thereof for the total estimated disturbed acreage. If such bond is used, it shall be payable to the state of West Virginia and conditioned that the operator shall faithfully perform the requirements of this article as they relate to reclamation of the disturbed acreage. The prospecting permit and the bond accompanying said permit shall be released by the director in the same manner as surface-mining permits and bonds are released. In the event the holder of a prospecting permit desires to mine the area covered by the prospecting permit, the director shall permit such holder to convert the prospecting permit to a surface-mining permit, providing the holder of said permit shall comply with the provisions of this article as they relate to surface-mining permits: Provided, That the prospecting permit fee shall be a credit toward the surface-mining permit fee if the area covered by the prospecting permit is converted to a surface-mining permit.

In the event the holder of a prospecting permit desires to surface mine the area covered by the prospecting permit, and has fulfilled all the remaining requirements of a surface-mining permit, the director may permit the postponement of the reclamation of the acreage prospected if that acreage is incorporated into the complete reclamation plan submitted with application for a surface-mining permit within a period of three months following completion of each separate excavation under the prospecting permit. Any excavation carried out under a prospecting permit and not incorporated into the complete reclamation plan shall be reclaimed within a period of three months: Provided, That nothing herein shall prevent a landowner from obtaining coal from his own property for use in his own household if the same is not produced on a commercial basis.

§20-6-8. Permit required; applications; issuance and renewals; fees and use of proceeds.

1 It shall hereafter be unlawful for any person to engage in surface mining without having first obtained from
the department of natural resources a permit therefor as provided in this section. Application for a surface-mining permit shall be made in writing on forms prescribed by the director of natural resources, and shall be signed and verified by the applicant. The application, in addition to such other information as may be reasonably required by the director, shall contain the following information: (1) The common name and geologic title, where applicable, of the mineral or minerals to be extracted; (2) maps and plans as provided in section nine hereof; (3) the owner or owners of the surface of the land to be mined; (4) the owner or owners of the mineral to be mined; (5) the source of the operator’s legal right to enter and conduct operations on the land to be covered by the permit; (6) a reasonable estimate of the number of acres of land that will be disturbed by mining on the area to be covered by the permit; (7) the permanent and temporary post-office addresses of the applicant and of the owners of the surface and the mineral; (8) whether any surface-mining permits are now held and the numbers thereof; (9) the names and post-office addresses of every officer, partner, director (or person performing a similar function), applicant, together with all persons, if any, owning of record or beneficially (alone or with associates), if known, ten percent or more of any class of stock of the applicant: Provided, That if such list be so large as to cause undue inconvenience, the director may waive the requirements that such list be made a part of such application, except the names and current addresses of every officer, partner, director and applicant must accompany such application; (10) if known, whether applicant, any subsidiary or affiliate or any person controlled by or under common control with applicant, or any person required to be identified by item (9) above, has ever had a surface or strip-mining permit issued under the laws of this state revoked or has ever had a surface-mining bond, or security deposited in lieu of bond, forfeited; and (11) names and addresses of the reputed owner or owners of all surface area within five hundred feet of any part of proposed disturbed land,
which such owners shall be notified by registered or certified mail of such application and such owners shall be given ten days within which to file written objections thereto, if any, with the director. There shall be attached to the application a true copy of an original policy of insurance issued by an insurance company authorized to do business in this state covering all surface-mining operations of the applicant in this state and affording personal injury protection in an amount not less than one hundred thousand dollars and property damage, including blasting damage, protection in an amount of not less than three hundred thousand dollars.

The director shall upon receipt of the application for a permit, cause to be published, as a Class III legal advertisement in accordance with the provisions of article three, chapter fifty-nine of this code, a notice of the application for the permit. Such notice shall contain in abbreviated form the information required by this section, together with the director's statement that written protests to such application will be received by him until a specified date, which date shall be at least thirty days after the first publication of the notice.

The publication area of the notices required by this section shall be the county or counties in which the proposed permit area is located. The cost of all publications required by this section shall be borne by the applicant.

Upon the filing of an application in proper form, accompanied by the fees and bond required by this article and said true copy of the policy of insurance, and after consideration of the merits of the application and written protests, if any, the director may issue the permit applied for if the applicant has complied with all of the provisions of this article. If the director finds that the applicant is or has been affiliated with or managed or controlled by, or is or has been under the common control of, other than as an employee, a person who or which has had a surface or strip-mining permit revoked or bond or other security forfeited for failure to reclaim lands as required by the laws of this state, he shall not issue a permit to the applicant: Provided, however, That no
surface-mining permit shall be refused because of any past revocation of a permit and forfeiture of a bond or other security if such revocation and forfeiture occurred before July one, one thousand nine hundred seventy-one, and if, after such revocation and forfeiture, the operator whose permit has been revoked and bond forfeited shall have paid into the surface-mining reclamation fund the full amount of the bond so forfeited, and any additional sum of money determined by the director to be adequate to reclaim the land covered by such forfeited bond: Provided, further, That in no event shall such additional sum be less than sixty dollars per acre.

The permit shall be valid for one year from its date of issue. Upon verified application, containing such information as the director may reasonably require, accompanied by such fees and bond as are required by this article, and a true copy of the policy of insurance as aforesaid, the director shall from year to year renew the permit, if the operation is in compliance with the provisions of this article.

The registration fee for permits for surface mining, whether by open cut, auger method or by highwall mechanical mining or modification thereof, shall be five hundred dollars. The annual renewal fee for permits for surface mining shall be one hundred dollars payable on the anniversary date of said permit upon renewal.

The permit of any operator who fails to pay any fees provided for in this article shall be revoked.

An operator who has been issued a surface-mining permit may use any of the usual methods of mining, including the auger method or highwall mechanical mining or any combination of mining methods defined as "surface mining" in section two of this article, unless otherwise provided by law. Any modifications of these methods shall also be under the director's jurisdiction.

All registration and renewal fees for prospecting and surface mining shall be collected by the director and shall be deposited with the treasurer of the state of West Virginia to the credit of the surface reclamation fund.
§20-6-9. Preplans.

1 Under the provisions of this article, and rules and regulations adopted by the commission, the operator shall prepare a complete reclamation and mining plan for the area of land to be disturbed. Said reclamation and mining plan shall include a proposed method of operation prepared by a registered professional engineer or a person approved by the director for grading, backfilling, soil preparation, mining and planting and such other proposals as may be necessary to develop the complete reclamation and mining plan contemplated by this article.

2 In developing this complete reclamation and mining plan all reasonable measures shall be taken to eliminate damages to members of the public, their real and personal property, public roads, streams and all other public property from soil erosion, rolling stones and overburden, water pollution and hazards dangerous to life and property. The plan shall be submitted to the director and the director shall notify the applicant by certified mail within thirty days after receipt of the plan and complete application if it is or is not acceptable. If the plan is not acceptable, the director shall set forth the reasons why the plan is not acceptable and he may propose modifications, delete areas or reject the entire plan.

3 Should the applicant disagree with the decision of the director, he may, by written notice, request a hearing before the commission. The commission shall hold such hearing within thirty days after receipt of this notice.

4 When a hearing is held by the commission, it shall notify the applicant of its decision by certified mail within twenty days after the hearing. Any person aggrieved by a final order of the commission made after the hearing or without a hearing may appeal to the reclamation board of review.

5 The application for a permit shall be accompanied by two copies of an enlarged United States geological survey topographic map meeting the requirements of the subdivisions below. Aerial photographs of the area shall be acceptable if the plan for reclamation can be shown to the satisfaction of the director. The maps shall:
(a) Be prepared and certified by or under the supervision of a registered professional civil engineer, or a registered professional mining engineer, or a registered land surveyor, who shall submit to the director a certificate of registration as a qualified engineer or land surveyor;

(b) Identify the area to correspond with the application;

(c) Show probable limits of adjacent deep-mining operations, probable limits of adjacent inactive or mined-out deep-mined areas and the boundaries of surface properties and names of surface and mineral owners of the surface area within five hundred feet of any part of the proposed disturbed area;

(d) Be of such scale as may be prescribed by the director;

(e) Show the names and locations of all streams, creeks or other bodies of public water, roads, buildings, cemeteries, active, abandoned or plugged oil and gas wells, and utility lines on the area of land to be disturbed and within five hundred feet of such area;

(f) Show by appropriate markings the boundaries of the area of land to be disturbed, the crop line of the seam or deposit of coal to be mined, and the total number of acres involved in the area of land to be disturbed;

(g) Show the date on which the map was prepared, the north point and the quadrangle sketch and exact location of the operation;

(h) Show the drainage plan on and away from the area of land to be disturbed. Such plan shall indicate the directional flow of water, constructed drainways, natural waterways used for drainage, and the streams or tributaries receiving or to receive this discharge. Upon receipt of such drainage plan, the director shall furnish to the chief of the division of water resources a copy of all information required by this subdivision, as well as the names and locations of all streams, creeks or other bodies of public water within five hundred feet of the area to be disturbed;
(i) Show the presence of any acid-producing materials which when present in the overburden, may cause spoil with a PH factor below 3.5, preventing effective revegetation. The presence of such materials, wherever occurring in significant quantity, shall be indicated on the map, filed with application for permit. The operator shall also indicate the manner in which acid-bearing spoil will be suitably prepared for revegetation and stabilization, whether by application of mulch or suitable soil material to the surface or by some other type of treatment, subject to approval of the director.

The certification of the maps shall read as follows: "I, the undersigned, hereby certify that this map is correct, and shows to the best of my knowledge and belief all the information required by the surface-mining laws of this state." The certification shall be signed and notarized. The director may reject any map as incomplete if its accuracy is not so attested.

In addition to the information and maps required above, each application for a permit shall be accompanied by a detailed reclamation plan as required by this article.

A monument as prescribed by the department of natural resources shall be placed in an approved location near the operation. If the operations under a single permit are not geographically continuous, the operator shall locate additional monuments and submit additional maps before mining other areas.

Upon an order of the director, the operator shall, within thirty days after service of a copy of said order upon said operator by certified United States mail, furnish to the department of natural resources three copies of a progress map prepared by or under the supervision of a registered professional civil engineer or registered professional mining engineer, or by a registered land surveyor, showing the area disturbed by operations to the date of such map. Such progress map shall contain information identical to that required for both the proposed and final maps, required by this article, and shall show in detail completed reclamation work, as required by the director. Such progress map shall include a geologic survey sketch showing the location of the operation, shall
be properly referenced to a permanent landmark, and
shall be within such reasonable degree of accuracy as
may be prescribed by the director. If no land has been
disturbed by operations during the preceding year, the
operator shall notify the director of this fact. A final
map shall be submitted within sixty days after com-
pletion of mining operations. Failure to submit maps or
aerial photographs or notices at specified times shall
cause the permit in question to be suspended.

§20-6-9a. Installation of drainage system.

Prior to the beginning of surface-mining operations,
the operator shall complete and shall thereafter main-
tain a drainage system including any necessary settling
ponds in accordance with the rules and regulations as
established by the commission.

§20-6-10. Alternative plans; time.

An operator may propose alternative plans not calling
for backfilling where a water impoundment is desired, if
such restoration will be consistent with the purpose of this
article. Such plans shall be submitted to the director,
and if such plans are approved by the director and
complied with within such time limits as may be deter-
mined by him as being reasonable for carrying out such
plans, the backfilling requirements of this article may
be modified.

By regulations of the commission, time limits shall be
established requiring backfilling, grading and planting
to be kept current. All backfilling and grading shall be
completed before equipment necessary for such back-
filling and grading is moved from the operation.

If the operator or other person desires to conduct deep
mining upon the premises or use a deep-mine opening for
haulageways or other lawful purposes, the operator may
designate locations to be used for such purposes at
which places it will not be necessary to backfill as here-
in provided for until such deep mining or other use is
completed, during which time the bond on file for that
portion of the operation shall not be released. Such loca-
tions shall be described and designated on the map re-
quired by the provisions of section nine of this article.

Suitable soil material shall be used to cover the sur-
face of the regraded and backfilled area of operation
in an amount sufficient to support vegetation.

When the backfilling and grading have been com-
pleted and approved by the director, the director shall
release that portion of the bond which was filed and
designated to cover the backfilling and grading require-
ments of this article, the remaining portion of the bond
in an amount equal to two hundred fifty dollars per acre,
but not less than a total amount of five thousand dollars
being retained by the treasurer until such time as the
planting and revegetation is done according to law and
is approved by the director, at which time the director
shall release the remainder of the bond.

All fill and cut slopes shall be seeded during the first
planting or seeding season after the construction of a
haulageway to the area. Upon abandonment of a haulage-
way, the haulageway shall be seeded and every effort
made to prevent its erosion by means of culverts, water-
bars or other devices required by the director. In proper
season, all fill and cut slopes of the operation and haulage-
ways shall be seeded and planted in a manner as pre-
scribed by the director, as soil tests indicate soil suitability
and in accordance with accepted agricultural and re-
forestation practices.

In any such area where surface mining is being conduct-
ed, mulch shall be required on all disturbed areas where
the remaining slope exceeds twenty degrees from horizon-
tal as shown on the preplan map filed with the director as
required by the provisions of section nine of this article.

After the operation has been backfilled, graded and
approved by the director, the operator shall prepare or
cause to be prepared a final planting plan for the planting
of trees, shrubs, vines, grasses or legumes upon the area
of the land affected in order to provide a suitable vegeta-
tive cover. The seed or plant mixtures, quantities, method
of planting, type and amount of lime, fertilizer, mulch,
and any other measures necessary to provide a suitable vegetative cover shall be defined by the rules and regulations of the commission. Such rules and regulations shall be promulgated under the provisions of article three, chapter twenty-nine-a of this code.

The planting called for by the final planting plan shall be carried out in a manner so as to establish a satisfactory cover of trees, shrubs, grasses, legumes or vines upon the disturbed area covered by the planting plan within a reasonable period of time. Such planting shall be done by the operator or such operator may contract in writing with the soil conservation district for the district in which the operation covered by such permit is located or with a private contractor approved by the director to have such planting done by such district or private contractor. The director shall not release the operator's bond until all haulageways, roads and trails within the permit area have been abandoned according to the provisions of this article and the rules and regulations promulgated thereunder or such operator or any other person has secured a permit to deep mine such area as required by chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended.

The purpose of this section is to require restoration of land disturbed by surface mining to a desirable purpose and use. The director may, in the exercise of his sound discretion when not in conflict with such purpose, modify such requirements to bring about a more desirable land use, including, but not limited to, industrial sites, sanitary landfills, recreational areas, building sites:

Provided, That the person or agency making such modifications will execute contracts, post bond or otherwise insure full compliance with the provisions of this section in the event such modified program is not carried to completion within a reasonable length of time.

§20-6-11. Limitations; mandamus.

The Legislature finds that there are certain areas in the state of West Virginia which are impossible to reclaim either by natural growth or by technological activity
and that if surface mining is conducted in these certain areas such operations may naturally cause stream pollution, landslides, the accumulation of stagnant water, flooding, the destruction of land for agricultural purposes, the destruction of aesthetic values, the destruction of recreational areas and the future use of the area and surrounding areas, thereby destroying or impairing the health and property rights of others, and in general creating hazards dangerous to life and property so as to constitute an imminent and inordinate peril to the welfare of the state, and that such areas shall not be mined by the surface-mining process.

Therefore, authority is hereby vested in the director to delete certain areas from all surface-mining operations.

No application for a permit shall be approved by the director if there is found on the basis of the information set forth in the application or from information available to the director and made available to the applicant that the requirements of this article or rules and regulations hereafter adopted will not be observed or that there is not probable cause to believe that the proposed method of operation, backfilling, grading or reclamation of the affected area can be carried out consistent with the purpose of this article.

If the director finds that the overburden on any part of the area of land described in the application for a permit is such that experience in the state of West Virginia with a similar type of operation upon land with similar overburden shows that one or more of the following conditions cannot feasibly be prevented: (1) Substantial deposition of sediment in stream beds, (2) landslides or (3) acid-water pollution, the director may delete such part of the land described in the application upon which such overburden exists.

If the director finds that the operation will constitute a hazard to a dwelling house, public building, school, church, cemetery, commercial or institutional building, public road, stream, lake or other public property, then he shall delete such areas from the permit application before it can be approved.
The director shall not give approval to surface mine any area which is within one hundred feet of any public road, stream, lake or other public property, and shall not approve the application for a permit where the surface-mining operation will adversely affect a state, national or interstate park unless adequate screening and other measures approved by the commission are to be utilized and the permit application so provides: Provided, That the one-hundred-foot restriction aforesaid shall not include ways used for ingress and egress to and from the minerals as herein defined and the transportation of the removed minerals, nor shall it apply to the dredging and removal of minerals from the streams or watercourses of this state.

Whenever the director finds that ongoing surface-mining operations are causing or are likely to cause any of the conditions set forth in the first paragraph of this section, he may order immediate cessation of such operations and he shall take such other action or make such changes in the permit as he may deem necessary to avoid said described conditions.

The failure of the director to discharge the mandatory duty imposed on him by this section shall be subject to a writ of mandamus, in any court of competent jurisdiction by any private citizen affected thereby.

§20-6-11a. Blasting restriction; formula; filing preplan; penalties; notice.

Where blasting of overburden is necessary, such blasting shall be done in accordance with established principles for preventing vibration damage to residences, buildings, and communities. Such blasting shall be considered in compliance with provisions of this article if the following measures are followed:

(1) The weight in pounds of explosive charge detonated at any one time shall conform with the following scaled distance formula: \( W = \frac{(D / 50)^2}{1} \). Where \( W \) equals weight in pounds of explosives detonated at any one instant time, then \( D \) equals distance in feet from nearest point of blast to nearest residence, building, or structure, other than operation facilities of the mine: Provided,
That explosive charges shall be considered to be detonated at one time if their detonation occurs within eight milliseconds or less of each other.

(2) Where blast sizes would exceed the limits under subdivision (1) of this section, blasts shall be detonated by the use of delay detonators (either electric or nonelectric) to provide detonation times separated by nine milliseconds or more for each section of the blast complying with the scaled distance of the formula.

(3) A plan of each operation's methods for compliance with this section (blast delay design) for typical blasts which shall be adhered to in all blasting at each operation, shall be submitted to the department of natural resources with the application for a permit. It shall be accepted if it meets the scaled distance formula established in subdivision (1) of this section.

(4) Records of each blast shall be kept in a log to be maintained for at least three years, which will show for each blast other than secondary (boulder breaking) blasts the following information:

(a) Date and time of blast,
(b) Number of holes,
(c) Typical explosive weight per delay period,
(d) Total explosives in blast at any one time,
(e) Number of delays used,
(f) Weather conditions, and
(g) Signature of operator employee in charge of the blast.

(5) Where inspection by the department of natural resources establishes that the scaled distance formula and the approved preplan are not being adhered to, the following penalties shall be imposed:

(a) For the first offense in any one permit year under this section, the permit holder shall be assessed not less than five hundred dollars nor more than one thousand dollars;
(b) For the second offense in any one permit year under this section, the permit holder shall be assessed not less than one thousand dollars nor more than five thousand dollars;

(c) For the third offense in any one permit year under this section or for the failure to pay any assessment hereinafore set forth within a reasonable time established by the director, the permit shall be revoked.

All such assessments as set forth in this section shall be assessed by the director, collected by him and deposited with the treasurer of the state of West Virginia, to the credit of the special reclamation fund.

The director shall promulgate rules and regulations which shall provide for a warning of impending blasting to the owners, residents or other persons who may be present on property adjacent to the blasting area. Such warning shall be by means approved by the director.

§20-6-13. Requirements regarding surface-mined areas where benches result.

On lands where the mining operation necessitates, requires or produces benches, the bench width of the first cut made shall not exceed the limits specified in the table of maximum bench widths provided in this section. In the event that more than one bench results from the removal of minerals on a single slope, the limits specified in the table of maximum bench width provided in this section, shall apply equally to every such bench: Provided, That the coal seams are more than one hundred and fifty vertical feet apart. In multiple seam mining when the interval between coal seams is less than one hundred and fifty vertical feet, all overburden will be retained on the bench immediately below the seams being mined.

The operator shall show on the map, filed with the application for a permit, the percent of slope of original surface within each two-hundred-foot interval along the contour of the operation, the first measurement to be taken at the starting point of the operation. The flagged field measurement shall be made from the estimated crop line or proposed coal seam down slope to the esti-
mated toe of the outer spoil. All reasonable measures shall be taken so as not to overload the fill bench during the first cut. No overburden material in excess of the first cut shall be placed over the fill bench. With the exception of haulageways and auger-mining operations, trees and brush shall be removed from the upper one half of all fill sections prior to excavation, and no trees or brush removed from the cut section shall be placed therein or thereon.

MAXIMUM BENCH WIDTHS ALLOWED RELATED TO SLOPE OF ORIGINAL SURFACE

<table>
<thead>
<tr>
<th>Percent (degree) of slope of original surface</th>
<th>Maximum bench width allowed in feet</th>
</tr>
</thead>
<tbody>
<tr>
<td>27% (15°)</td>
<td>250</td>
</tr>
<tr>
<td>36% (20°)</td>
<td>150</td>
</tr>
<tr>
<td>46% (25°)</td>
<td>120</td>
</tr>
<tr>
<td>58% (30°)</td>
<td>100</td>
</tr>
<tr>
<td>65% (33°)</td>
<td>60</td>
</tr>
</tbody>
</table>

Above 65% (33°) No fill material beyond cut section.

No fill bench shall be produced on slopes of more than sixty-five percent, except for construction of haulageways, and such haulageways shall not exceed thirty-five feet in width, with very scattered forty-five-foot passing areas permitted.

Lateral drainage ditches connecting to natural or constructed waterways shall be constructed to control water runoff and prevent erosion whenever required by the director. There shall be no depressions that will accumulate water except those the director may specify and approve. The depth and width of natural drainage ditches and any other diversion ditches may vary depending on the length and degree of slope.

If the highwall is composed of materials of sufficient hardness to ordinarily require blasting to displace, where there is insufficient soil available to provide a suitable vegetative cover on the reduced highwall, or where the reduction of the highwall will result in excessive damage to undisturbed vegetated lands above the highwall, such highwall shall be backfilled with soil available from the
operation. In no instance shall the backfilling be less than four feet above the seam of coal being worked, and subject to the discretion of the director, no greater than sixty percent from the horizontal. The highwall shall not exceed thirty feet in vertical rise from the surface of the regraded bench.

Suitable access to the lands above the highwall for at least a four-wheel drive vehicle shall be provided. The number and location of access roads shall be subject to the approval of the director and shall be contained in the final reclamation plan; however, in no case may access roads be spaced further apart than one-half mile.

The table portion of the restored area shall be a terrace with a slope toward the reduced highwall that will direct surface water toward the highwall in a manner to prevent water from flowing over the outer slope of the disturbed area. The restored area shall have a minimum depth of fill sufficient to cover all acid-producing material, all toxic material and all material which constitutes a fire hazard. Such fill shall also be sufficient to support vegetation, as may be prescribed by the director. Additional restoration work may be required by the director according to rules and regulations promulgated by the commission. In addition to the requirements specified in this section, the operator's method of operation on slopes may be further regulated and controlled according to rules and regulations adopted by the commission.

§20-6-13a. Requirements regarding surface-mined areas where benches do not result.

On lands where the mining operation does not produce a bench, complete backfilling shall be required, not to exceed the approximate original contour of the land. Such backfilling shall eliminate all highwalls and spoil peaks. Whenever directed by the director, the operator shall construct, in the final grading, such diversion ditches or terraces as will control the water runoff. Additional restoration work may be required by the director, according to rules and regulations adopted by the commission.
§20-6-14. Obligations of the operator.

1 In addition to the method of operation, grading, back-filling and reclamation requirements of this article and rules and regulations adopted pursuant thereto, the operator shall be required to perform the following:

2 (1) Cover the face of the coal and the disturbed area with material suitable to support vegetative cover and of such thickness as may be prescribed by the director, or with a permanent water impoundment.

3 (2) Bury under adequate fill to be determined by the director, all roof coal, pyritic shale and materials determined by the director to be acid-producing materials, toxic material or materials constituting a fire hazard.

4 (3) Seal off, as directed by rules and regulations, any breakthrough of acid water caused by the operator.

5 Any breakthrough caused by the operator during the course of his operations shall be sealed immediately and reported immediately to the director. If the breakthrough is one that allows air to enter a mine, the seal shall either prevent any air from entering the mine by way of the breakthrough, or prevent any air from entering the breakthrough while allowing the water to flow from the breakthrough. If the breakthrough is one that allows acid water to escape, the seal shall prevent the acid water from flowing. Seals shall be constructed of stone, brick, block, earth or similar impervious materials which are acid resistant. Any cement or concrete employed in the construction of these seals shall also be of an acid resistant, impervious type.

6 (4) Impound, drain or treat all runoff water so as to reduce soil erosion, damage to agricultural lands and pollution of streams and other waters.

7 Any sizeable quantity of storm water accumulating in depressions in the area of operations or any breakthrough of water caused by the operator during the course of his operations shall be sampled immediately and analyzed for PH, total acidity and total iron content. Such analysis shall be made by a competent water analyst or chemist. The original and at least one copy of such analysis shall be retained by the operator, one copy submitted to the
director and one copy to the chief of the water resources division.

In the case of storm water accumulations or any break-through of water, adequate treatment shall be undertaken by the operator so as to prevent pollution occurring from the release of such water into the natural drainway or stream. Treatment may include check-dams, settling ponds and chemical or physical treatment. In the case of a break-through of water, where it is possible, the water released shall be impounded immediately. All water so impounded shall receive adequate treatment by the operator before it is released into the natural drainway or stream.

Storm water or water which escapes, including that which escapes after construction of the seals, and is polluted as defined in this code, or as defined in the rules and regulations promulgated under this code, shall be subject to the requirements of article five-a of this chapter.

(5) Remove or bury all metal, lumber, equipment and other refuse resulting from the operation. No operator shall throw, dump or pile; or permit the throwing, dumping, piling or otherwise placing of any (1) overburden, (2) stones, (3) rocks, (4) coal, (5) particles of coal, (6) earth, (7) soil, (8) dirt, (9) debris, (10) trees, (11) wood, (12) logs or (13) other materials or substances of any kind or nature beyond or outside the area of land which is under permit and for which bond has been posted; nor shall any operator place any of the foregoing listed materials in such a way that normal erosion or slides brought about by natural physical causes will permit the same to go beyond or outside the area of land which is under permit and for which bond has been posted.

§20-6-14a. Cessation of operation by inspector.

Notwithstanding any other provisions of this article, a surface-mining reclamation inspector shall have the authority to order the immediate cessation of any operation where (1) any of the requirements of this article or the rules and regulations promulgated pursuant thereto or the orders of the director or the commission have not been
complied with or (2) the public welfare or safety calls
for the immediate cessation of the operation. Such ces-
sation of operation shall continue until corrective steps
have been started by the operator to the satisfaction of
the surface-mining reclamation inspector. Any operator
who believes he is aggrieved by the actions of the surface-
mining reclamation inspector may immediately appeal
to the director, setting forth reasons why the operation
should not be halted. The director shall determine when
and if the operation may continue.

§20-6-15. Completion of planting; inspection and evaluation.

When the planting of an area has been completed, the
operator shall file or cause to be filed a planting report with
the director on a form to be prescribed and furnished
by the director, providing the following information: (1)
Identification of the operation; (2) the type of planting
or seeding, including mixtures and amounts; (3) the date
of planting or seeding; (4) the area of land planted; and
(5) such other relevant information as the director may
require. All planting reports shall be certified by the
operator, or by the party with whom the operator con-
tracted for such planting, as aforesaid.

§20-6-16. Performance bonds.

Each operator who shall make application for a per-
mit under section eight of this article shall, at the time
such permit is requested, furnish bond, on a form to be
prescribed and furnished by the director, payable to the
state of West Virginia and conditioned that the operator
shall faithfully perform all of the requirements of this
article. The amount of the bond shall be not less than
six hundred dollars for each acre or fraction thereof
of the land to be disturbed: Provided, That the di-
rector shall have the discretion to determine the
amount per acre of the bond that shall be required
before a permit is issued, such amount to be based
upon the estimated reclamation costs per acre, not to
exceed a maximum of one thousand dollars per acre
or fraction thereof. The minimum amount of bond
furnished shall be ten thousand dollars. Such bond
shall be executed by the operator and a corporate surety licensed to do business in the state of West Virginia: Provided, however, That in lieu of corporate surety, the operator may elect to deposit with the director cash, or collateral securities or certificates as follows: Bonds of the United States or its possessions, of the federal land banks, or of the home owners' loan corporation; full faith and credit general obligation bonds of the state of West Virginia, or other states, and of any county, district or municipality of the state of West Virginia or other states; or certificates of deposit in a bank in this state, which certificates shall be in favor of the commission. The cash deposit or market value of such securities or certificates shall be equal to or greater than the sum of the bond. The director shall, upon receipt of any such deposit of cash, securities or certificates, immediately place the same with the treasurer of the state of West Virginia whose duty it shall be to receive and hold the same in the name of the state in trust for the purpose for which such deposit is made. The operator making the deposit shall be entitled from time to time to receive from the state treasurer, upon the written order of the director, the whole or any portion of any cash, securities or certificates so deposited, upon depositing with him in lieu thereof, cash or other securities or certificates of the classes herein specified having value equal to or greater than the sum of the bond.

It shall be unlawful for the owner or owners of surface rights or the owner or owners of mineral rights to interfere with the operator in the discharge of his obligation to the state for the reclamation of lands disturbed by him. If the owner or owners of the surface rights or the owner or owners of the mineral rights desire another operator or other operators to conduct mining operations on lands disturbed by the operator furnishing bond hereunder, it shall be the duty of said owner or owners to require the other operator or operators to secure the necessary mining permit and furnish suitable bond as herein provided. The director may then release an equivalent amount of the bond of the operator orig-
inally furnishing bond on the disturbed area. The director shall determine the amount of bond per acre required for other mining operations within the limitations of this section: Provided, however, That the minimum bond for this type of operation shall be one thousand dollars. The director shall take into consideration the character and nature of the overburden, the future use of the land and all costs of backfilling, grading and adequate reclamation, including planting, and shall determine the total bond required for other mining operations.

The director shall not release that portion of any bond filed by any operator which is designated to assure faithful performance of, and compliance with, the backfilling and regrading requirements of the reclamation plan until all acid-bearing or acid-producing spoil within the permit area has received adequate treatment as specified in section ten of this article.

§20-6-17. Special reclamation tax.

In addition to the fees required by the provisions of section eight of this article, every applicant for a permit to surface mine coal shall, before such permit may be issued, pay to the director a special reclamation tax of sixty dollars for each acre of land to be disturbed in the mining operation, with the exception of exempted roadways, storage areas and processing plants. The director shall in due course determine whether the special reclamation tax for each acre of land disturbed has been paid by such operator. In the event that all such taxes have not been paid, said operator shall pay such taxes, as above set forth. In the event that said operator shall have paid taxes for more acres than were actually disturbed, the director shall certify such overpayment to the treasurer who shall refund out of the special reclamation fund such overpayment.

The director shall deposit with the treasurer of the state of West Virginia, to the credit of the special reclamation fund, all special reclamation taxes collected.

The special reclamation fund shall be administered by the director. The director shall cause to be prepared plans for the reclamation and rehabilitation of
lands which are unreclaimed and for which bond either
has not been posted or is uncollectible and shall pre-
pare specifications for reclamation of such lands. The
director, as funds become available in the special rec-
losion fund, shall reclaim and rehabilitate such lands
in accordance with such plans and specifications, and
in so doing the director shall comply with the pro-
visions of article three, chapter five-a of this code in
obtaining supplies, materials, equipment and contractual
services deemed necessary by the director for the pur-
poses of reclamation and rehabilitation of said lands:
Provided, That during the first year after the effective
date of this act, twenty-five percent of the special
reclamation taxes collected may be used by the director
to pay inspectors, provide necessary equipment, conduct
research and conduct inspection of permit areas and sur-
face-mined areas: Provided, however, That during the first
year a maximum of four hundred fifty thousand dollars
from the special reclamation taxes collected shall be made
available for the director's use as provided above: Pro-
vided further, That during the second year after the
effective date of this act and each year thereafter,
fifteen percent of the special reclamation taxes collected
may be used by the director for the same purposes: And
provided further, That a portion of the special reclama-
tion taxes allocated for the director's use may be used
by the director to provide a subsistence allowance not
to exceed one hundred fifty dollars per month to each
inspector.

Some of the special reclamation taxes collected may
be made available for the purchase of orphaned surface-
mined lands, for the reclamation thereof, and for the
engineering, administrative and research costs necessary
to said reclamation, providing federal funds on a match-
ing basis are made available for the purpose of reclaiming
said orphaned surface-mined lands.

The director shall make an annual report to the gov-
ernor and to the Legislature setting forth the number of
acres reclaimed and rehabilitated through the use, in
whole or in part, of the special reclamation fund provided
for herein. Such report shall identify each such reclama-
tion project, state the number of acres reclaimed thereby, show the county wherein located, and furnish a detailed accounting of expenditures from the special reclamation fund.

§20-6-30. Offenses; penalties; prosecutions; treble damages; injunctive relief.

(a) Any person who shall conduct any surface-mining operation, or any part thereof, without a permit or without having furnished the required bond, or who shall carry on such operation or be a party thereto on land not covered by a permit, or who shall falsely represent any material fact in an application for a permit or in an application for the renewal of a permit, or who willfully violates any provision of this article, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than one hundred nor more than one thousand dollars or by imprisonment not exceeding six months, or by both. Any person who deliberately violates any provision of this article or conducts surface-mining operations without a permit shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than one thousand nor more than ten thousand dollars or by imprisonment not exceeding six months, or by both. Each day of violation constitutes a separate offense. It shall be the duty of the director to institute prosecutions for violations of the provisions hereof. Any person convicted under the provisions of this section shall, in addition to any fine imposed, pay to the director for deposit in the surface-mining reclamation fund an amount sufficient to reclaim the area with respect to which such conviction relates. The director shall institute any suit or other legal action necessary for the effective administration of the provisions of this article.

(b) In addition to and notwithstanding any other penalties provided by law, any operator who directly causes damage to the property of others as a result of surface mining shall be liable to them, in an amount not in excess of three times the provable amount of such damage, if and only if such damage occurs before or within one
year after such operator has completed all reclamation
work with respect to the land on which such surface min-
ing was carried out and all bonds of such operator with re-
spect to such reclamation work are released. Such dam-
ages shall be recoverable in an action at law in any court
of competent jurisdiction. The director shall require, in
addition to any other bonds and insurance required by
other provisions of this article, that any person engaged
in the business of surface mining shall file with the
director a certificate of insurance, or other security in
an amount of not less than ten thousand dollars, to
cover possible damage to property for which a recovery
may be sought under the provisions of this subsection.

(c) Upon application by the director, the attorney
general, or the prosecuting attorney of the county in
which the major portion of the permit area is located,
any court of competent jurisdiction may by injunction
compel compliance with and enjoin violations of the pro-
visions of this article. The court or the judge thereof
in vacation may issue a preliminary injunction in any
case pending a decision on the merits of any application
filed.

An application for an injunction under the provisions
of this section may be filed and injunctive relief granted
notwithstanding that all of the administrative remedies
provided for in this article have not been pursued or
invoked against the person or persons against whom such
relief is sought and notwithstanding that the person or
persons against whom such relief is sought have not been
prosecuted or convicted under the provisions of this
article.

The judgment of the circuit court upon any applica-
tion filed under the provisions of this article shall be
final unless reversed, vacated or modified on appeal to
the supreme court of appeals. Any such appeal shall be
sought in the manner provided by law for appeals from
circuit courts in other civil cases, except that the petition
seeking such review must be filed with said supreme
court of appeals within thirty days from the date of entry
of the judgment of the circuit court.
ARTICLE 6A. LIMITATIONS ON SURFACE MINING.

§20-6A-1. Limitation on the issuance of new permits for surface mining.

1 Commencing on the effective date of this section, and ending two years from such date, no new permits, including prospecting permits, shall be issued under the provisions of article six of this chapter for the surface mining of coal in any county where no surface mining existed under lawful permit during the calendar year one thousand nine hundred seventy: Provided, however, That if in any such county any application for a permit was made prior to the first day of January, one thousand nine hundred seventy-one, such application shall be processed and granted or refused, according to the provisions of this article as if this section had not been enacted.

CHAPTER 113

(House Bill No. 1004—By Mr. Goodwin and Mr. White, of Boone)

[Passed March 11, 1971; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article seven, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to chief conservation officer; conservation officers; special and emergency conservation officers.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7. LAW ENFORCEMENT, PROCEDURES AND PENALTIES; MOTORBOATING.

PART I. LAW ENFORCEMENT, PROCEDURES AND PENALTIES.

§20-7-1. Chief conservation officer; conservation officers; special and emergency conservation officers.
The department's law-enforcement policies, practices and program shall be under the immediate supervision and direction of the department law-enforcement officer selected by the director and designated as chief conservation officer as provided in article one hereof.

Under the supervision of the director, the chief conservation officer shall organize, develop and maintain law-enforcement practices, means and methods geared, timed and adjustable to seasonal, emergency and other needs and requirements of the department's comprehensive natural resources program. All department personnel detailed and assigned to law-enforcement duties and services hereunder shall be known and designated as conservation officers and shall be under the immediate supervision and direction of the chief conservation officer. All such conservation officers shall be trained, equipped and conditioned for duty and services wherever and whenever required by department law-enforcement needs.

The chief conservation officer, acting under supervision of the director, is authorized to select and appoint emergency conservation officers for a limited period of time for effective enforcement of the provisions of this chapter when considered necessary because of emergency or other unusual circumstances. The emergency conservation officers shall be selected from qualified civil service personnel of the department, except in emergency situations and circumstances when the director may designate such officers, without regard to such requirements and qualifications, to meet law-enforcement needs. Emergency conservation officers shall exercise all powers and duties prescribed in section four of this article for full-time salaried conservation officers except the provisions of subdivision (8).

The chief conservation officer, acting under supervision of the director, is also authorized to select and appoint as special conservation officers any full-time civil service employee of the department who is assigned to, and has direct responsibility for management of an area owned, leased or under the control of the department and who has satisfactorily completed a course of train-
ing established and administered by the chief conservation officer, when such action is deemed necessary because of law-enforcement needs. The powers and duties of a special conservation officer, appointed under this provision, shall be the same within his assigned area as prescribed for full-time salaried conservation officers. The jurisdiction of such persons appointed as a special conservation officer, under this provision, shall be limited to the department area or areas to which he is assigned, resides on and directly manages.

The chief conservation officer, acting under supervision of the director, is also authorized to appoint as special conservation officers any full-time civil service forest fire control personnel who have satisfactorily completed a course of training established and administered by the chief conservation officer. The jurisdiction of forest fire control personnel appointed as special conservation officers shall be limited to the enforcement of the provisions of article three of this chapter.

The chief conservation officer, with the approval of the director, shall have the power and authority to revoke any such appointment of an emergency conservation officer or of a special conservation officer at any time.

Conservation officers shall be subject to seasonal or other assignment and detail to duty whenever and wherever required by the functions, services and needs of the department.

CHAPTER 114
(Senate Bill No. 235—By Mr. Gainer)

[Passed March 5, 1971; in effect July 1, 1971. Approved by the Governor.]

AN ACT to amend and reenact section four, article seven, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to natural resources, and the powers and duties of conservation officers.
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7. LAW ENFORCEMENT, PROCEDURES AND PENALTIES; MOTORBOATING.

§20-7-4. Powers and duties of conservation officers.

1. Conservation officers and all other persons authorized to enforce the provisions of this chapter shall be under the supervision and direction of the director in the performance of their duties as herein provided. The authority, powers and duties of the conservation officers shall be statewide and they shall have authority to:

7. (1) Arrest on sight, without warrant or other court process, any person or persons committing a criminal offense in violation of any of the laws of this state, in the presence of such officer, but no such arrest shall be made where any form of administrative procedure is prescribed by this chapter for the enforcement of any of the particular provisions contained herein;

14. (2) Carry such arms and weapons as may be prescribed by the director in the course and performance of their duties, upon giving the bond required by the provisions of section five, article seven, chapter sixty-one of this code, but no license or other authorization shall be required of such officers for this privilege;

20. (3) Search and examine, in the manner provided by law, any boat, vehicle, automobile, conveyance, express or railroad car, fish box, fish bucket or creel, game bag or game coat, or any other place in which hunting and fishing paraphernalia, wild animals, wild birds, fish, amphibians or other forms of aquatic life could be concealed, packed or conveyed whenever they have reason to believe that they would thereby secure or discover evidence of the violation of any provisions of this chapter;

29. (4) Execute and serve any search warrant, notice or any process of law issued under the authority of this chapter or any law relating to wildlife, forests, and all other natural resources, by a justice of the peace or any
court having jurisdiction thereof, or copies of orders made
and entered by the chief of the division of water re-
resources, or, without fee, any subpoena or subpoena duces
tecum issued in accordance with the provisions of article
five-a of this chapter, in the same manner, with the same
authority, and with the same legal effect, as any constable
or sheriff can serve or execute such warrant, notice or
process;
(5) Require the operator of any motor vehicle or other
conveyance on or about the public highways or road-
ways, or in or near the fields and streams of this state,
to stop for the purpose of allowing such officers to conduct
game-kill surveys;
(6) Summon aid in making arrests or seizures or in
executing any warrants, notices or processes, and they
shall have the same rights and powers as sheriffs have in
their respective counties in so doing;
(7) Enter private lands or waters within the state
while engaged in the performance of their official duties
hereunder: Provided, That in connection with all surveys,
examinations, inspections, inquiries, investigations and
studies needed in the gathering of facts concerning water
resources and their use or the pollution thereof under
article five or article five-a of this chapter, such conserva-
tion officers and all other persons authorized to enforce
the provisions of this chapter, shall act pursuant to and
under the direction of the chief of the division of water
resources or the state water resources board, and such
officers and other persons shall be subject to the provi-
sions of subsection (c), section five, article five, and
subsection (d), section three, article five-a of this
chapter;
(8) Arrest on sight, without warrant or other court
process, subject to the limitations set forth in subdivision
(1) of this section, any person or persons committing a
criminal offense in violation of any law of this state in
the presence of any such officer on any state-owned lands
and waters and lands and waters under lease by the de-
partment of natural resources and all national forest lands,
waters and parks, and U. S. Corps of Army Engineers'
properties within the boundaries of the state of West Virginia, and, in addition to any authority conferred in the other subdivisions of this section, execute all warrants of arrest on such state and national lands, waters and parks, and U. S. Corps of Army Engineers' properties, consistent with the provisions of article one, chapter sixty-two of this code; and

(9) Do all things necessary to carry into effect the provisions of this chapter.

CHAPTER 115

(House Bill No. 571—By Mr. Harman)

[Passed March 10, 1971; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section nine, article seven, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to penalties for violation of nonresident hunting license.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7. LAW ENFORCEMENT, PROCEDURES AND PENALTIES; MOTORBOATING.

§20-7-9. Violations of chapter generally; penalties.

1 Any person violating any of the provisions of this chapter, or rules and regulations promulgated under the provisions of this chapter, the punishment for which is not prescribed, shall be guilty of a misdemeanor, and, upon conviction thereof, shall for each offense be fined not less than twenty nor more than three hundred dollars, or confined in jail not less than ten nor more than one hundred days, or be both fined and imprisoned within the limitations aforesaid; and, in the case of a violation by a corporation, every officer or agent thereof
directing or engaging in such violation shall be guilty of a misdemeanor, and, upon conviction thereof, shall be subject to the same penalties and punishment as herein provided: Provided, however, That any person violating subdivision three, section five, article two of this chapter, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than five hundred dollars and shall be imprisoned for not less than ten days nor more than one hundred days: Provided further, That any person violating sections forty-three and forty-five, article two of this chapter shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than fifty dollars nor more than three hundred dollars, or confined in jail not less than ten nor more than one hundred days, or both fined and imprisoned within the limitations aforesaid.

CHAPTER 116

(House Bill No. 1151—By Mr. Perry)

[Passed March 11, 1971; in effect ninety days from passage. Approved by the Governor.]

AN ACT to authorize and empower the state of West Virginia to receive by gift or to acquire by purchase or agreement a certain tract or parcel of land owned by the Rumseyan Society, located in Shepherdstown, Jefferson county, commonly known as the "James Rumsey Park", to be used by the state of West Virginia through its Department of Natural Resources as a public park and recreation area, historical site and for other related purposes.

Be it enacted by the Legislature of West Virginia:

JAMES RUMSEY PARK.

§1. State authorized to receive by gift or acquire Rumseyan Society property and certain other land.
The state of West Virginia is hereby authorized and empowered to receive by gift a certain tract or parcel of land containing approximately two acres, owned by the Rumseyan Society, located in Shepherdstown, Jefferson county, commonly known as the “James Rumsey Park”, and also to receive by gift or to acquire by purchase or agreement a tract or parcel of land adjacent to the said “James Rumsey Park,” said additional tract or parcel of land being bound by the said park on the north, the Norfolk and Western railway to the east, Rocky street to the south, and Mill street to the west and consisting of approximately four and one-fourth acres, the total tract to be used by the state of West Virginia through its Department of Natural Resources as a public park and recreational area, historical site and for preservation of the James Rumsey Monument and for other related purposes.
of article three, chapter fifty-nine of this code, and the
publication area for such publication shall be the county
in which the suit or action is pending.

CHAPTER 118
(House Bill No. 1182—By Mr. McKenzie and Mr. Scott)

[Passed March 13, 1971; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article three, chapter six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the appointment of deputy sheriffs and conservators of the peace; their duties and compensation.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. DEPUTY OFFICERS AND CONSERVATORS OF THE PEACE.

§6-3-1. Appointment of deputies and local conservators of the peace; powers and duties; compensation; vacating appointment of deputy sheriff; removal of conservators.

(a) (1) The clerk of the supreme court of appeals, or of any circuit, criminal, common pleas, intermediate or county court, or of any tribunal established by law in lieu thereof, may, with the consent of the court, or such tribunal, duly entered of record, appoint any person or persons his deputy or deputies.

(2) A sheriff, surveyor of lands, or assessor may, with the consent of the county court duly entered of record, appoint any person or persons his deputy or deputies.

(3) A sheriff, when in the opinion of the judge of the circuit court the public interest requires it, may, with the assent of said court, duly entered of record,
CH. 118] OFFICERS

14 appoint any person or persons his deputy or deputies to perform any temporary service or duty.

16 (4) Each deputy so appointed shall take the same oath of office required of his principal, and may, during his continuance in office, perform and discharge any of the official duties of his principal, and any default or misfeasance in office of the deputy shall constitute a breach of the conditions of the official bond of his principal.

23 (5) A sheriff in any county in which there are more than four deputies shall devote his full time to the performance of the services or duties required by law of such sheriff, and he shall not receive any compensation or reimbursement, directly or indirectly, from any person, firm or corporation for the performance of any private or public services or duties: Provided, That any such sheriff may retain or make any investment and receive income therefrom, unless such investment is otherwise prohibited by law or will impair his independence of judgment in the exercise of, or might reasonably tend to conflict with the proper discharge of, the services or duties of his office. A sheriff in any county in which there are four or fewer deputies, or a deputy sheriff in any county irrespective of the number of deputies, need not devote his full time to the services or duties of his office as sheriff or his employment as deputy sheriff, as the case may be; but any such sheriff or deputy sheriff shall not engage in any business or transaction, accept other employment or make any investment which is otherwise prohibited by law or which will impair his independence of judgment in the exercise of, or might reasonably tend to conflict with the proper discharge of, the services or duties of his office as sheriff or his employment as deputy sheriff, as the case may be. A sheriff and his deputies in any county, irrespective of the number of deputies, shall receive for the performance of their public services and duties no compensation or remuneration except such as may be regularly provided and paid out of public funds to the...
amount and in the manner provided by law. No sheriff
or deputy sheriff in any county, irrespective of the
number of deputies, may receive, directly or indirectly,
any gift or donation from any person, firm or corpora-
tion.

(6) Except as hereinafter expressly provided by sub-
section (b) of this section no sheriff shall appoint or
continue the appointment of any deputy contrary to
the provisions hereof. Any sheriff or deputy sheriff
who shall violate any of the provisions of this section
shall be guilty of a misdemeanor, and, upon conviction
thereof, shall be fined not less than five hundred nor
more than five thousand dollars, or confined in jail
not to exceed one year, or both, in the discretion of
the court.

(7) Circuit courts shall have jurisdiction in equity
and mandamus, and the supreme court of appeals shall
have jurisdiction in mandamus, upon the filing of a
petition by the prosecuting attorney, the attorney gen-
eral, or any three or more citizens of the county, to
require any sheriff and the county court to vacate
the appointment of any deputy, the appointment of
which is made or continued in violation of the pro-
visions hereof. Any such proceeding may be instituted
and prosecuted by the attorney general either in the
circuit court of Kanawha county or in the county for
which such appointment was made.

(b) (1) Any resident or group of residents of any
unincorporated community, as hereinafter defined, may
petition the sheriff for the appointment of a local con-
servator of the peace and such sheriff, when in his
opinion the public interests require it, may with the
assent of said county court and the judge of the circuit
court duly entered of record, either in term or vacation
of any such court, appoint any person or persons a local
conservator or conservators of the peace to perform
the duties of a conservator of the peace outside of
any incorporated city, town or village. No person shall
be appointed such local conservator of the peace who
has not been a bona fide resident and taxpayer of the
county for at least one year prior to his appointment. Such local conservator of the peace during his continuance in office, may perform and discharge any of the official duties of the sheriff, subject nevertheless to the provisions of this section. No local conservator so appointed shall be subject to the direction or control of any person other than his principal and he shall not perform any services or duties, either private or public, except the duties required by law of conservators of the peace pursuant to the provisions hereof, for any person, firm, or corporation. No such local conservator shall be entitled to collect or receive any fees provided by law to be paid to the sheriff or to a deputy sheriff, but all fees provided by law for the sheriff, when such duties and services are rendered by such local conservator, shall be paid to the sheriff as regular collections of the sheriff's office. The local conservator shall be paid for the public services performed by him a salary of not less than seventy-five dollars per month out of the county treasury from a fund to be paid into such treasury by a resident or the residents of the community for which he is appointed, for the sole purpose of compensating such local conservator or conservators and no such local conservator shall receive any other compensation, directly or indirectly, from any person, firm, or corporation, for any private or public service, except the salary payable to him for his public services and duties and from such fund, except that he shall be entitled to witness and mileage fees when a witness in a court of record. Each local conservator so appointed shall take the same oath of office required of his principal and any default or misfeasance in the office of such local conservator shall constitute a breach of the conditions of the official bond of his principal.

(2) When the sheriff shall have been petitioned for the appointment of a local conservator and has determined that the appointment is proper, he shall select the person whom he proposes to have appointed such conservator and shall notify the county court of the community for which such conservator is to be ap-
pointed and the name of the person proposed for such appointment. The county court shall thereupon cause notice that the sheriff has recommended the appointment of the person named as conservator for the community named to be published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county. The notice shall designate a day not less than five days after the date of the last publication when the county court will act upon the petition and recommendation. Neither the county court nor the judge of the circuit court shall assent and approve the appointment of such local conservator until such publication has been made. The costs of the publication shall be paid by the person or persons petitioning for the appointment of the conservator.

No local conservator shall be appointed except it be made to appear to the satisfaction of the county court and the judge of the circuit court that because of the lack of sufficient funds, geographical location of the unincorporated community for which such conservator is to be appointed, or other good reason, the sheriff and his regular deputies and the constables of the county are not sufficient to afford proper local policing of such community and that the person or persons moving for the appointment of such local conservator have made satisfactory arrangements to compensate him for his services as such local conservator of the peace.

(3) Such local conservator of the peace shall have all the powers and duties of a regularly appointed deputy sheriff except that he shall not execute any civil process except such process as may be necessary to bring parties before the court in any action at law or suit in equity and subpoenas for witnesses within the unincorporated community for which he is appointed and within a distance of one mile outside the boundaries thereof, except as hereinafter expressly provided, but he shall not participate in any strike, unemployment boycott, or other industrial or labor dispute,
nor serve any court process of any character relating thereto. He shall act as such local conservator only in the unincorporated community for which he is appointed, and within a distance of one mile from the boundaries thereof as fixed by the county court: Provided, however, That the authority of one local conservator shall not extend into any other unincorporated community for which another local conservator is appointed and acting, except as otherwise expressly provided by subdivision (6) of this subsection, except that in fresh pursuit he may effect arrests anywhere in the county. He may also exercise the powers of a regularly appointed deputy anywhere in the county when required to guard or assist in guarding a payroll, or any other property of value in transit to or from the unincorporated community for which he is appointed. Any person arrested by such local conservator shall, with all convenient speed, be turned over to the sheriff, or one of his regular deputies, or to a regular constable of the county to be dealt with according to law, and his authority for that purpose shall be coextensive with the county.

(4) Any local conservator appointed to perform the duties of conservator of the peace shall be a public officer and the payment, or contribution to the payment of compensation of such local conservator shall not constitute the person, firm or corporation making such payment or contribution the employer of such local conservator and no person, firm or corporation paying, or contributing to the payment of compensation to such local conservator shall be answerable in law or in equity for any damages to person or property resulting from any official act of such local conservator.

(5) No person appointed such local conservator shall thereby be entitled to carry weapons, but such local conservator may carry weapons when he shall be duly licensed and shall have given bond as provided by section two, article seven, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one.
(6) Not more than one local conservator of the peace shall be appointed, to perform the duties of conservator of the peace, for each two thousand five hundred inhabitants of the county as ascertained by the last regular decennial census after deducting the number of inhabitants of the county residing in the incorporated cities, towns and villages in such county. Not more than one local conservator shall be appointed for any unincorporated community unless the population thereof exceed fifteen hundred people and in such case not more than two conservators shall be appointed for such community.

(7) The phrase "unincorporated community" within the meaning of this section shall mean any center of population wherein fifty or more persons reside within an area of not more than one square mile.

(8) The county court and the judge of the circuit court in approving the appointment of a local conservator shall enter of record an order making such appointment and shall show therein the necessity for the appointment, the person or persons on whose motion the appointment is made, the arrangement for the payment of compensation to such local conservator, the unincorporated community or communities, for which the appointment is made, including the general boundary of each unincorporated community for which he is appointed.

(9) No local conservator shall act as an election official or remain in, about or near any voting place or place of political convention, further than is necessary for him to promptly cast his vote and retire from the voting place.

(10) Any local conservator violating any of the provisions of subdivisions (3) and (9) of this subsection shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than fifty nor more than three hundred dollars, or be confined in the county jail not more than six months, or both, in the discretion of the court; and it shall be the duty of the sheriff and the county court to forthwith revoke his appointment irrespective of any criminal prosecution. A pro-
ceeding in mandamus or injunction shall lie in the circuit court and a proceeding in mandamus shall lie in the supreme court of appeals at the instance of the prosecuting attorney, the attorney general, or of any three or more citizens of the community for which such conservator is appointed, to require the performance of such duty by the sheriff and the county court.

(11) Such local conservator shall serve during the joint will and pleasure of the sheriff and the county court and his appointment may be revoked by order entered of record by the county court either with or without the assignment of cause therefor.

A local conservator may be removed by the judge of the circuit court, either in term or vacation, for drunkenness, gross immorality, incompetence, neglect of duty, or other good cause, upon the petition of three or more residents of the community for which he has been appointed. The petition shall set forth the cause or causes for which such removal is asked and shall show that demand for removal has been made of the sheriff and the county court and that the sheriff and the county court have failed to remove the local conservator. At least three copies of the petition shall be filed, and upon the filing of the petition the judge shall fix a time and place for a hearing thereon, which time shall not be less than ten days after the filing of the petition, and shall cause a copy thereof to be served upon the sheriff and such local conservator at least ten days before the hearing thereon.

CHAPTER 119

(House Bill No. 1174—By Mr. Speaker, Mr. Boiarsky, and Mr. Seibert)

[Passed March 13, 1971; in effect July 1, 1971. Approved by the Governor.]

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

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of appointive state officers; appointment; qualifications; powers and salaries of such officers.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7. COMPENSATION AND ALLOWANCES.

§6-7-2a. Terms of certain appointive state officers; appointment; qualifications; powers and salaries of such officers.

1 Notwithstanding any other provision of this code to the contrary, on and after the effective date of this section each of the following named appointive state officers shall be appointed by the governor, by and with the advice and consent of the Senate. Each of such appointive state officers shall serve at the will and pleasure of the governor and until the respective state officer's successors have been appointed and qualified. Each of such appointive state officers shall hereafter be subject to the existing qualifications for holding each such respective office and each shall have and is hereby granted all of the powers and authority and shall perform all of the functions and services heretofore vested in and performed by virtue of existing law respecting each such office. The annual salary of each such named appointive state officer shall be as follows:

The commissioner of highways, thirty thousand dollars; director of mental health, twenty-two thousand five hundred dollars; commissioner of commerce, eighteen thousand five hundred dollars; tax commissioner, twenty thousand dollars; director of department of natural resources, eighteen thousand five hundred dollars; commissioner of department of welfare, twenty-two thousand dollars; alcohol beverage control commissioner, sixteen thousand dollars; director of department of mines, twenty thousand dollars; commissioner of public institutions, sixteen thousand dollars; commissioner of employment security, twenty-two thousand dollars; commissioner of labor, seventeen thousand dollars; director
of personnel civil service commission, seventeen thousand dollars; superintendent of department of public safety, sixteen thousand dollars; insurance commissioner, eighteen thousand dollars; commissioner of motor vehicles, sixteen thousand dollars; commissioner of banking, eighteen thousand dollars; members of the board of probation and parole, twelve thousand dollars; non-intoxicating beer commissioner, twelve thousand dollars; state historian and archivist, twelve thousand dollars; adjutant general, twelve thousand dollars; director of civil and defense mobilization, twelve thousand dollars; director of veterans affairs, twelve thousand dollars; members of board of review of employment security, twelve thousand dollars; members of workmen's compensation appeal board, six thousand dollars; state workmen's compensation commissioner, twenty thousand dollars.

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CHAPTER 120

(Senate Bill No. 188—By Mr. McCourt, Mr. President)

[Passed March 10, 1971; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article two, chapter ten of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section four-a, relating to the creation of park and recreation boards as public bodies corporate, providing for the dissolution of such boards, prescribing the powers and authority of such boards, requiring annual accounting, prohibiting the incurring of indebtedness and requiring bond covering officers and employees.

Be it enacted by the Legislature of West Virginia:

That article two, chapter ten of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section four-a, to read as follows:
ARTICLE 2. PUBLIC RECREATION AND PLAYGROUNDS.

§10-2-4a. Public corporation may be created; name; dissolution; powers; authority; annual accounting; debts prohibited; general powers; bonded officers or employees.

1 Subject to the provisions of this section, and subject further to the terms and conditions of any agreement mentioned in section three of this article insofar as such terms and conditions are not contrary to the provisions of this section, any park and recreation board created by a governing body or bodies pursuant to this article shall be a public body corporate by the name of "The _______ Park and Recreation Board" by which name it may sue or be sued, contract and be contracted with, take and hold title to any property other than real property and operate and manage programs under this article upon real property owned or leased by the governing body or bodies which create such board or by another public body corporate.

2 The board shall have a corporate seal and perpetual existence: Provided, That the board may be dissolved by the affirmative vote of at least sixty percent of the persons elected to the governing body or bodies and: Provided, however, That a governing body may withdraw from any board created by agreement of two or more governing bodies upon the affirmative vote of at least sixty percent of the persons elected to such governing body.

3 Such dissolution or withdrawal shall be effective only upon June thirtieth of any year and any action to dissolve or withdraw must be completed by city or county ordinance or board of education order not later than March thirty-first of such year. In the event of such dissolution or withdrawal the property of the board shall promptly be appraised by the assessor of the county in his reasonable discretion at current value and shall thereupon be apportioned among the parties in proportion to the contributions to the board after the effective date of this section from the general funds of each governing
body or by such other means as are agreed upon by all
interested parties.

The board shall have the power and authority to adopt
bylaws determining its name, providing for the selection
and terms of its officers, personnel policy and other-
wise governing the operation of the board, and the powers
and duties of its officers, which bylaws shall not be
effective until approved by resolution of every governing
body or bodies.

The board shall have power and authority to receive
any gift, federal grant, other grant, donation or bequest
and to receive income and other funds, whether in cash
or check, whether appropriated by governing body or
bodies to the board or derived from programs under the
direction and control of the board, to deposit, invest,
manage and disburse, all such funds, income or receipts,
including interest or income earned thereon or there-
from, to obtain one or more insurance policies affording
coverage to it, to the public and to the governing bodies
for loss of or damage to the property and facilities and
programs under its control and affording public and em-
ployee liability coverage for the board and the governing
body or bodies, their officers, agents and employees as
the need therefor may arise.

The board shall annually at a time convenient to each
governing body report to such body upon all receipts
and disbursements of the board, the scope and location
of its activities and such other information as such govern-
ing body may by resolution request and shall at the
same time present a proposed budget showing projected
receipts and disbursements, describing the programs and
their anticipated costs and giving such other information
as any governing body shall by resolution request, which
annual report shall be a public record.

Any governing body or bodies are hereby authorized to
contribute funds to any board, to appropriate matching
funds for a federal grant or other grant to such board
and to join with such board in executing any neces-
sary application or contract for such federal grant or
other grant and to give such assurances and commitments
as may be necessary or convenient thereto: Provided further, That under no circumstances whatever shall any action under this section of a governing body or the board give rise to or create any indebtedness on the part of the governing body or board, except that the governing body or bodies may separately or by joint agreement enter into such revenue bond financing agreements as have heretofore been lawful.

The board shall have power and authority to do any and all things necessary or convenient to carry out and effectuate the purposes and provisions of this section and shall furnish the governing body or bodies a blanket surety bond covering those individuals authorized by the board to sign checks in its behalf, in a penal sum of not less than twenty-five thousand dollars.

CHAPTER 121
(Com. Sub. for House Bill No. 839—Originating in the House Committee on the Judiciary)

[Passed March 11, 1971; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article two-a, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections one and two, article three of said chapter; and to further amend said chapter by adding thereto a new article, designated article three-a, all relating to the establishment of qualifications and certification of assistants to licensed physicians; definition of terms; and fees.

Be it enacted by the Legislature of West Virginia:

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

Article

2A. Medical Licensing Board.
3. Physicians and Surgeons.
3A. Assistants to Physicians.

ARTICLE 2A. MEDICAL LICENSING BOARD.


1 The medical licensing board of West Virginia shall as-
2 sume, carry on, and succeed to all the duties, rights,
3 powers, obligations and liabilities heretofore belonging
4 to, exercised by, or assumed by the public health council,
5 with regard to the licensure of physicians and surgeons
6 and podiatrists.

7 The medical licensing board shall examine all quali-
8 fied applicants for license to practice medicine and sur-
9 gery, and podiatry and it shall license all such applicants
10 who are qualified under applicable statutes and who
11 pass any examination that may be required by statute
12 or by any legally adopted rule or regulation. The board
13 shall also have authority to authorize medical corpora-
14 tions in accordance with the provisions and subject to
15 the limitations of article three of this chapter to prac-
16 tice medicine and surgery through duly licensed physi-
17 cians and surgeons.

18 The board shall have the power to make such exami-
19 nation of all applicants appearing before it for any type
20 of license as may be necessary to determine that the ap-
21 plicant is qualified. The board shall also have the power
22 to revoke or suspend any license or certificate of au-
23 thorization issued by it, for cause, after having given
24 the person whose license or medical corporation whose
25 certificate of authorization is sought to be revoked or
26 suspended, an opportunity to be heard in the manner
27 provided by section eight, article one, chapter thirty of
28 this code. It shall have the power to reinstate any license
29 or certificate of authorization revoked or suspended
30 by it.

31 The board is authorized and empowered to hold and
32 conduct hearings and investigations on the issuance, sus-
pension, revocation or reinstatement of licenses or cert-
tificates of authorization. The said board shall have the
power to hire, fix the compensation of, and discharge
such employees as are necessary for the performance of
the powers and duties vested in the said board by law.
The board shall have the power to certify and establish
standards for employment of assistants to licensed physi-
cians and licensed podiatrists.

ARTICLE 3. PHYSICIANS AND SURGEONS.
§30-3-1. Evidence of qualification to practice and license required.
§30-3-2. Who deemed practitioner; limitations of article.

§30-3-1. Evidence of qualification to practice and license required.

1. Any person practicing or offering to practice medicine
2. and surgery in this state, with the exception of an as-
3. sistant to a licensed physician or licensed podiatrist, shall
4. be required to submit evidence that he is qualified so
5. to practice, and shall be licensed as hereinafter provided.

§30-3-2. Who deemed practitioner; limitations of article.

1. The term "practice medicine and surgery," as used in
2. this article, shall be construed to mean the treatment of
3. any human ailment or infirmity by any method. To
4. open an office for such purpose or to announce to the
5. public in any way a readiness to treat the sick or afflicted
6. shall be deemed to engage in the practice of medicine
7. and surgery within the meaning of this article: Provided,
8. That the provisions of this article, with the exceptions
9. of sections eight and ten, shall not apply to dentists,
10. dental hygienists, nurses, optometrists, podiatrists, osteo-
11. pathic physicians and surgeons, midwives, or chiroprac-
12. tors, regularly licensed or registered as such under the
13. provisions of this chapter applicable to such professions
14. and occupations, in the practice of their respective pro-
15. fessions and occupations; nor to assistants to physicians or
16. podiatrists; nor to physicians or surgeons living in other
17. states and duly qualified to practice medicine therein
18. who shall be called in consultation into this state by a
19. physician or surgeon legally entitled to practice medicine
20. and surgery in this state; nor to commissioned officers
of the United States army, navy or marine hospital service when in the actual discharge of their duties as such; nor to the practice of the religious tenets of any church in the administration to the sick or suffering by mental or spiritual means, whether gratuitously or for compensation: Provided, however, That sanitary and public health laws shall be complied with: Provided further, That no practices shall be used which may be dangerous or detrimental to life or health and that no person shall be denied the benefits of accepted medical and surgical practices.

ARTICLE 3A. ASSISTANTS TO PHYSICIANS.

§30-3A-1. Definition; supervision; certification of assistant to ophthalmologist not required or permitted.

The term “assistant to a physician,” as used in this chapter, shall mean a person employed in a physician’s or podiatrist’s office, licensed hospital or any licensed health care institution who performs selected medical tasks and functions in accordance with an approved job description, and who possesses the qualifications which have been established for the described job. The assistant to a physician shall be under the supervision of a permanently licensed physician or podiatrist in West Virginia. Certification of an assistant to a physician practicing the specialty of ophthalmology shall neither be required nor permitted under this article.

§30-3A-2. Approval and certification by medical licensing board.

Approval of a job description and establishment of qualifications for employment as an assistant to a physician or podiatrist must be obtained from the medical licensing board. The medical licensing board shall certify each qualified applicant for employment as an assistant to a physician or podiatrist upon submission of a job description, and shall provide for annual renewal of certification. The board shall have the power to revoke
9 or suspend any certification of an assistant to a physician or podiatrist, for cause, after having given the person an opportunity to be heard in the manner provided by sections eight and nine, article one of this chapter.

§30-3A-3. Fees.

Each job description submitted by permanently licensed physician or physicians shall be accompanied by a fee of fifty dollars. A fee of five dollars shall be charged for each annual renewal of certification.

§30-3A-4. Limitation on scope of duties.

Assistants to physicians and podiatrists shall not sign prescriptions or perform any service which his employing physician or podiatrist is not qualified to perform.

CHAPTER 122

(Senate Bill No. 263—By Mr. Wallace)

[Passed February 23, 1971; in effect ninety days from passage. Approved by the Governor.]
other states; permits to practice in prescribed areas.

1 The following persons and no others shall hereafter be permitted to practice medicine and surgery in this state: (a) All such persons as shall be legally entitled to practice medicine and surgery in this state including those persons holding temporary permits to practice in prescribed areas as of the effective date of this section [May 24, 1971]; (b) all such persons as shall be graduates of medical schools, as approved by the medical licensing board of West Virginia, and then only from such schools, when so approved, as required, as a condition to entrance upon the study of medicine, at least two years of academic work of collegiate grade in a standard college of arts and sciences of equal rank with the college of arts and sciences of West Virginia University, and who shall pass an examination before the medical licensing board and shall receive a certificate therefrom as hereinafter provided; and (c) all such persons as shall be graduates of foreign medical schools whose diplomas have been authenticated by the medical licensing board, and whose premedical education shall meet the requirements of subdivision (b) above, and who have become citizens of the United States or who have presented evidence of their declaration of intention and show progress toward becoming citizens of the United States, and who shall pass an examination before the medical licensing board and shall receive a certificate therefrom as hereinafter provided: Provided, That the said board, or a majority of them, may accept in lieu of an examination of applicants under subdivision (b) above, the certificate of the national board of medical examiners, or the certificate of license to practice medicine and surgery legally granted by the state board of registration or examination or licensing board of another state or territory, whose standard of qualification for the practice of medicine and surgery is equivalent to that of this state, and grant to such applicant a certificate of license to practice medicine and surgery in this state, provided such state or territory
accords like privileges to licentiates of this state: Provided, however, That whenever in the judgment of the medical licensing board a condition exists in which medical service may be required, the said board is authorized to grant permits for the practice of medicine to qualified physicians in prescribed areas, and such permits shall be subject to revocation when the agreement, under which they were issued, has been violated. A fee of one hundred dollars shall accompany each application for licensure by examination or reciprocity, twenty-five dollars of which shall be retained by the board in the event an application is withdrawn or rejected. A fee of twenty-five dollars shall accompany each application for temporary licensure and a fee of ten dollars shall accompany each application for an extension thereof.

CHAPTER 123
(House Bill No. 988—By Mr. Myles and Mr. Seibert)

[Passed March 3, 1971; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section seven, article seven, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the qualifications and licensure of persons who are not citizens of the United States of America to practice registered professional nursing in this state.

Be it enacted by the Legislature of West Virginia:

That section seven, article seven, 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 7. REGISTERED PROFESSIONAL NURSES.

§30-7-7. Qualifications and licensure of persons not citizens of United States.

1 The board may, upon application, issue a license to practice registered professional nursing by endorsement
to any person who is not a citizen of the United States of America if such person (a) has been duly licensed as a registered professional nurse under the laws of another state, territory or foreign country, and (b) shall, in any such state, territory or foreign country, have passed a written examination in the English language which, in the opinion of the board, is comparable in content and scope to the type of written examination which is authorized in the second paragraph of section six of this article.

All other provisions of this article shall be applicable to any application for or license issued pursuant to this section.

CHAPTER 124

(House Bill No. 591—By Mr. Butcher)

[Passed February 8, 1971; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seven, article nineteen, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to renewal of foresters' license and the fee therefor.

Be it enacted by the Legislature of West Virginia:

That section seven, article nineteen, 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 19. FORESTERS.

§30-19-7. Expiration and renewal of license; fee.

1 Licenses shall expire on the last day of the month of June following their issuance or renewal and shall become invalid on that date unless renewed. It shall be the duty of the secretary of the board to notify every person registered under this article, at his last registered address, of the date of the expiration of his license and the amount of the fee that shall be required for its renewal.
8 for one year; such notice shall be mailed at least sixty
9 days in advance of the date of the expiration of said
10 license. The fee for the renewal of licenses shall be five
11 dollars per year.

CHAPTER 125
(Com. Sub. for Senate Bill No. 198—Originating in the Senate
Committee on the Judiciary)

[Passed March 9, 1971; in effect July 1, 1971. 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-
two, relating to the practice of landscape architecture;
providing for the licensing of persons engaging in the
practice of landscape architecture; providing a legislative
finding, a declaration of public policy and definitions;
creating the West Virginia state board of landscape archi-
tects; relating to the qualifications, terms, oath and ex-
penses of members of said board; relating to the officers
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 for a landscape architect; providing ex-
ceptions; providing for applications for and the issuance
of licenses and temporary permits, renewals thereof and
fees in connection therewith; relating to the license and
seal of a landscape architect; relating to partnerships
and corporations and the practice of landscape architec-
ture; relating to various exemptions from said article
twenty-two; authorizing the board to suspend or revoke a
license or temporary permit of a landscape architect 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 chap-
ter 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; relating to issuance of new license after revocation of license; 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-two, to read as follows:

ARTICLE 22. LANDSCAPE ARCHITECTS.

§30-22-1. Legislative findings and declaration of public policy.

§30-22-2. Definitions.

§30-22-3. License to practice landscape architecture required.

§30-22-4. Creation of board of landscape architects; members, terms, meetings, officers, oath and expenses; general provisions.

§30-22-5. Powers and duties of board; funds of board.

§30-22-6. Qualifications of applicants; exceptions; applications; fee.

§30-22-7. Issuance of license; renewal of license; renewal fee; duplicate license; display of license; seal.

§30-22-8. Temporary permits.


§30-22-10. Exemptions from article.

§30-22-11. Suspension or revocation of license or temporary permit.


§30-22-16. Actions to enjoin violations.

§30-22-17. Severability.

§30-22-1. Legislative findings and declaration of public policy.

The Legislature of the state of West Virginia hereby determines and finds that in the public interest persons should not hold themselves out as landscape architects in this state without the requisite experience and training and without adequate regulation and control. It is therefore declared to be the public policy of this state that the practice of landscape architecture affects the
general welfare and public interest of the state and its citizens; that persons without the necessary qualifications, training and education should not hold themselves out to the public as landscape architects; and that the evils of such unauthorized and unqualified representations may be best prevented and the interest of the public best served by regulating and controlling such representations as provided in this article.

§30-22-2. Definitions.

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

1. "Applicant" means any person making application for an original or renewal license or a temporary permit under the provisions of this article.

2. "Licensee" or "landscape architect" means any person holding a license or a temporary permit issued under the provisions of this article and hence licensed to practice landscape architecture in the state of West Virginia under the provisions of this article.

3. "Board" means the West Virginia state board of landscape architects created in section four of this article.

4. "Examination" means the examination in landscape architecture required by subdivision (5), subsection (a), section six of this article.

5. "Landscape architecture" means the performance of professional services, including but not limited to consultations, research, planning, design or responsible supervision in connection with the development of land, where the dominant purpose of such professional services is the preservation, enhancement or determination of:

   (i) Land uses;
   (ii) Natural land features;
   (iii) Ground cover and planting;
   (iv) Naturalistic and aesthetic value;
   (v) Settings and approaches to structures or other improvements;
   (vi) Natural drainage; and
(vii) Consideration and determination of inherent problems of the land relating to erosion, wear and tear, blight or other hazard.

(b) The practice of landscape architecture shall include the location and arrangement of such tangible objects and features as are incidental and necessary to the purposes outlined in the above definition of such term, but shall not include the design of structures or facilities with separate and self-contained purposes such as are ordinarily included in the practice of engineering or architecture; and shall not include the making of final land plats for official approval or recording: Provided, That nothing contained herein shall preclude a landscape architect from performing any of the services described in the foregoing provisions of this subsection in connection with the settings, approaches or surroundings for buildings, structures or facilities.

§30-22-3. License to practice landscape architecture required.

1 On and after July one, one thousand nine hundred seventy-one, no person shall hold himself out to the public as a landscape architect unless and until he shall first obtain a license or temporary permit in accordance with the provisions of this article, which license or temporary permit remains unexpired, unsuspended and unrevoked.

§30-22-4. Creation of board of landscape architects; members, terms, meetings, officers, oath and expenses; general provisions.

(a) There is hereby created the West Virginia state board of landscape architects which shall be composed of three members appointed by the governor by and with the advice and consent of the Senate. Each member must be a resident of West Virginia and must be the holder of a license under the provisions of this article, or, in the case of the members first appointed, must be eligible for such a license.

(b) The members of the board shall be appointed for overlapping terms of three years each and until their respective successors have been appointed and have qualified, except for the original appointments. For the pur-
pose of original appointments, one member shall be ap-
pointed for a term of three years and until his successor
has been appointed and has qualified, one member shall
be appointed for a term of two years and until his suc-
cessor has been appointed and has qualified and one
member shall be appointed for a term of one year and
until his successor has been appointed and has qualified.
Members may be reappointed for any number of terms.
Before entering upon the performance of his duties, each
member shall take and subscribe to the oath required by
section five, article four of the constitution of this state.
Vacancies shall be filled by appointment by the governor
for the unexpired term of the member whose office shall
be vacant and such appointment shall be made within
sixty days of the occurrence of such vacancy. Any mem-
ber may be removed by the governor in case of incom-
petency, neglect of duty, gross immorality or malfeasance
in office.

(c) The board shall elect from its membership a chair-
man and secretary who shall serve at the will and plea-
sure of the board. A majority of the members of the board
shall constitute a quorum and meetings shall be held at
the call of the chairman or upon the written request of
two members at such time and place as designated in
such call or request, and, in any event, the board shall
meet at least once annually to conduct the examination
hereinafter provided for and to transact such other busi-
ness as may come before it. Members shall serve without
compensation but may be reimbursed for all reasonable
and necessary expenses actually incurred in the perform-
ance of their duties, which expenses shall be paid in ac-
cordance with the provisions of subsection (b), section
five of this article.

§30-22-5. Powers and duties of board; funds of board.

(a) The board shall:

(1) Examine applicants and determine their eligi-
bility for a license or temporary permit as a landscape
architect;

(2) Prepare, conduct and grade an apt and proper
written, oral or written and oral examination of appli-
7 cants for a license, to ascertain whether an applicant is
8 qualified as to the theory and practice of landscape archi-
9 tecture, and determine the satisfactory passing score on
10 such examination;
11 (3) Promulgate reasonable rules and regulations im-
12 plementing the provisions of this article and the powers
13 and duties conferred upon the board hereby, all of which
14 reasonable rules and regulations shall be promulgated in
15 accordance with the provisions of article three, chapter
16 twenty-nine-a of this code;
17 (4) Issue, renew, deny, suspend or revoke licenses
18 and temporary permits of landscape architects in accord-
19 ance with the provisions of this article and, in accord-
20 ance with the administrative procedures hereinafter pro-
21 vided, may review, affirm, reverse, vacate or modify
22 its order with respect to any such denial, suspension or
23 revocation;
24 (5) Investigate alleged violations of the provisions of
25 this article, reasonable rules and regulations promulgated
26 hereunder and orders and final decisions of the board
27 and take appropriate disciplinary action against any
28 licensee for the violation thereof or institute appropriate
29 legal action for the enforcement of the provisions of this
30 article, reasonable rules and regulations promulgated
31 hereunder and orders and final decisions of the board or
32 take such disciplinary action and institute such legal
33 action;
34 (6) Obtain an office, secure such facilities and employ,
35 direct, discharge and define the duties of full or part-
36 time professional, clerical or other personnel to the extent
37 necessary to effectuate the provisions of this article;
38 (7) Keep accurate and complete records of its pro-
39 ceedings, certify the same as may be appropriate, and
40 prepare, from time to time, a list showing the names and
41 addresses of all licensees;
42 (8) Whenever it deems it appropriate, confer with the
43 attorney general or his assistants in connection with all
44 legal matters and questions; and
(9) Take such other action as may be reasonably neces-
sary or appropriate to effectuate the provisions of this
article.

(b) All moneys paid to the board shall be accepted by
a person designated by the board and deposited by him
with the treasurer of the state and credited to an account
to be known as the "board of landscape architects fund."
The reimbursement of all reasonable and necessary ex-
penses actually incurred by the members of the board
and all other costs and expenses incurred by the board in
the administration of this article shall be paid from such
fund, and no part of the state's general revenue fund
shall be expended for this purpose.

§30-22-6. Qualifications of applicants; exceptions; applica-
tions; fee.

1 (a) To be eligible for a license as a landscape archi-
tect, the applicant must:

2 (1) Be at least twenty-one years of age;

3 (2) Be of good moral character;

4 (3) Not, within the next preceding twelve months,
have had his application for a license or a certificate or
for registration to engage in the practice of landscape
architecture or as a landscape architect refused, sus-
pended or revoked in any state of the United States;

5 (4) Either (i) be a holder of an undergraduate degree
or graduate degree in landscape architecture from an
accredited institution of higher learning, with adequate
course study at such institution in landscape architecture,
the adequacy of any such course study to be determined
by the board; and when the degree held is an under-
graduate degree, have had at least two years' experience
subsequent to receiving said degree in the practice of
landscape architecture under the supervision of a land-
scape architect or a person having qualifications accept-
able to the board and similar to the qualifications of a
landscape architect, and, when the degree held is a grad-
uate degree, have had at least one year's experience sub-
sequent to receiving said graduate degree in the practice
of landscape architecture under the supervision of a land-
scape architect or a person having qualifications acceptable to the board and similar to the qualifications of a landscape architect; or (ii) have had at least ten years' experience in the practice of landscape architecture, of a grade and character to qualify him to assume responsibility for the work involved in the practice of landscape architecture, at least six years of which shall have been under the supervision of a landscape architect or a person having qualifications acceptable to the board and similar to the qualifications of a landscape architect; and

(5) Have passed the examination prescribed by the board, which examination shall cover the theory and practice of landscape architecture.

(b) The following persons shall be eligible for a license as a landscape architect without examination:

(1) Any person who was once licensed under the provisions of this article, who temporarily abandoned the practice of landscape architecture and did not renew his license, provided he satisfies the board that he remains qualified to engage in the practice of landscape architecture; and

(2) Any person who holds a license or certificate or is registered to engage in the practice of landscape architecture issued by or effected in any other state, the requirements for which license, certificate or registration are found by the board to be at least as great as those provided in this article.

(c) Any person meeting the qualifications set forth in subdivisions (1), (2) and (3), subsection (a) of this section, who submits evidence satisfactory to the board that for at least one year prior to the effective date of this article he regularly engaged in the practice of landscape architecture as a principal livelihood shall be entitled to be licensed under the provisions of this article, without meeting the qualifications set forth in subdivisions (4) and (5), subsection (a) of this section, if he files such application with the board within six months from and after the effective date of this article.
Any applicant for any such license shall submit an application therefor at such time (subject to the time limitation set forth in subsection (c) of this section), in such manner, on such forms and containing such information as the board may from time to time by reasonable rule and regulation prescribe, and pay to the board a license fee of forty dollars, which fee shall be returned to the applicant if he is denied a license.

§30-22-7. Issuance of license; renewal of license; renewal fee; duplicate license; display of license; seal.

Whenever the board finds that an applicant meets all of the requirements of this article for a license as a landscape architect, it shall forthwith issue to him such license; and otherwise the board shall deny the same. Licenses shall expire on June thirty of each year, but shall be renewable each year without examination upon application for renewal on a form prescribed by and filed with the board and payment to the board of an annual renewal fee in such amount as may be prescribed by the board not to exceed fifty dollars: Provided, That if application for renewal is filed with the board after June thirty of the year of expiration, an additional renewal fee of fifteen dollars must accompany such application: Provided, however, That the board may deny an application for renewal for any reason which would justify the denial of an original application for a license. A duplicate license may be obtained upon the payment to the board of a fee of ten dollars. The board shall prescribe the form of licenses and each license shall be conspicuously displayed by the licensee at his principal place of practice.

Every person licensed under the provisions of this article as a landscape architect shall have a seal, approved by the board, which shall contain the name of the licensee and the words "Professional Landscape Architect, State of West Virginia" and such other words or figures as the board may prescribe. All working drawings and specifications, prepared by such landscape architect or under the supervision of such landscape architect, shall
30 have such seal affixed thereto: Provided further, That
31 nothing contained in this article shall be construed to
32 permit the seal of a landscape architect to serve as a
33 substitute for the seal of an architect, an engineer or a
34 land surveyor whenever the seal of such architect, engi-
35 neer or land surveyor is required by law.

§30-22-8. Temporary permits.
(a) Upon proper application the board may issue,
without examination, a temporary permit as a landscape
architect, pending examination, to an applicant who meets
the qualifications of subdivisions (1), (2), (3) and (4),
subsection (a), section six of this article, which tempo-
rary permit shall expire thirty days after the board gives
written notice of the results of the examination held
next following the issuance of such temporary permit,
and such permit may not be renewed nor another thereof
issued to the same person.
(b) The fee for such temporary permit shall be fifteen
dollars.

Nothing contained in this article shall be deemed to
preclude a person licensed under the provisions of this
article from forming a partnership or corporation with per-
sons who are not so licensed if the name of the person so
licensed shall appear as the landscape architect on all
plans, drawings, specifications, reports or other instru-
ments of service rendered or submitted by such partner-
ship or corporation. In no case shall the other members
of such partnership or the others having an interest in or
connected with such corporation be designated or de­
dscribed as landscape architects. A landscape architect
who forms a partnership or corporation with a person
or persons who are not landscape architects shall notify
the board in writing of such fact within thirty days
thereof, giving the board such information as may be re-
quired by the board. Upon dissolution of any such part-
nership or corporation, the landscape architect shall notify
the board thereof, in writing, within thirty days after
such dissolution.
§30-22-10. Exemptions from article.

1. Nothing contained in this article shall under any circumstances whatever be construed as in any way affecting the laws relating to the practice, licensing, certification or registration of architects, engineers, land surveyors and foresters.

2. An architect, engineer, land surveyor or forester licensed, certified or registered to practice his profession or occupation in West Virginia under the provisions of any law to regulate the practice of such profession or occupation is exempt from licensing under the provisions of this article, and nothing contained in this article shall under any circumstances whatever be construed as in any way precluding an architect, engineer or forester from performing any of the services included within the definition of the term landscape architecture in section two of this article when incidental to the performance of his normal practice as an architect, engineer or forester or as requiring any such person to be licensed under the provisions of this article.

3. Community, city or other municipal, urban and regional planners and urban designers shall not be required to be licensed under the provisions of this article.

4. Every agriculturist, horticulturist, landscape contractor, nurseryman, gardener, landscape gardener, garden or lawn caretaker, and grader or cultivator of land is exempt from licensing under the provisions of this article.

5. Nothing contained in this article shall under any circumstances whatever be construed as in any way precluding any person from making any landscape plans, drawings or specifications for any property owned, leased or rented by him or, without compensation therefor, for the property of any other person, or as requiring such person to be licensed under the provisions of this article.

6. None of the persons referred to in this section shall, however, use the title, "Landscape Architect," without obtaining a license under the provisions of this article.
§30-22-11. Suspension or revocation of license or temporary permit.

1 (a) The board may at any time upon its own motion, and shall upon the verified written complaint of any person filed with the board within two years from and after the act or omission complained of, conduct an investigation to determine whether there are any grounds for the suspension or revocation of a license or temporary permit issued under the provisions of this article.

2 (b) The board shall suspend for a period not exceeding one year or revoke any license or shall suspend or revoke any temporary permit when it finds the holder thereof has:

3 (1) Obtained a license or temporary permit by means of fraud or deceit or false or forged evidence;

4 (2) Been incompetent, grossly negligent, or guilty of other malpractice as defined by the board by reasonable rules and regulations or has been guilty of any fraud or deceit as defined by the board by reasonable rules and regulations;

5 (3) Affixed his seal to any plans, drawings, specifications, reports or other instruments of service which were not prepared by him or under his immediate and responsible supervision, or permitted his name to be used for the purpose of assisting any person to evade the provisions of this article; or

6 (4) Failed or refused to comply with the provisions of this article or any reasonable rule and regulation promulgated by the board hereunder or any order or final decision of the board.

7 (c) The board shall also suspend for a period not exceeding one year or revoke any license or shall suspend or revoke any temporary permit if it finds the existence of any ground which would justify the denial of an application for such license or temporary permit if application were then being made for it.


1 (a) Whenever the board shall deny an application for any original or renewal license or deny an application for
a temporary permit or shall suspend or revoke any license or temporary permit, it shall make and enter an order to that effect and serve a copy thereof on the applicant or licensee, as the case may be, by certified mail, return receipt requested. Such order shall state the grounds for the action taken and shall require that any license or temporary permit suspended or revoked thereby shall be returned to the board by the holder within twenty days after receipt of said copy of said order.

(b) Any person adversely affected by any such order shall be entitled to a hearing thereon (as to all issues not excluded from the definition of a "contested case" as set forth in article one, chapter twenty-nine-a of this code) if, within twenty days after receipt of a copy thereof, he files with the board a written demand for such hearing. A demand for hearing shall operate automatically to stay or suspend the execution of any order suspending or revoking a license or temporary permit or denying an application for a renewal license. The board may require the person demanding such hearing to give reasonable security for the costs thereof and if such person does not substantially prevail at such hearing such costs shall be assessed against him and may be collected by an action at law or other proper remedy.

(c) Upon receipt of a written demand for such hearing, the board shall set a time and place therefor not less than ten and not more than thirty days thereafter. Any scheduled hearing may be continued by the board upon its own motion or for good cause shown by the person demanding the hearing.

(d) All of the pertinent provisions of article five, chapter twenty-nine-a of this code shall apply to and govern the hearing and the administrative procedures in connection with and following such hearing, with like effect as if the provisions of said article five were set forth in this subsection.

(e) Any such hearing shall be conducted by a quorum of the board. For the purpose of conducting any such hearing any member of the board shall have the power and authority to issue subpoenas and subpoenas duces
(f) At any such hearing the person who demanded the same may represent himself or be represented by an attorney at law admitted to practice before any circuit court of this state. Upon request by the board, it shall be represented at any such hearing by the attorney general or his assistants without additional compensation.

(g) After any such hearing and consideration of all of the testimony, evidence and record in the case, the board shall render its decision in writing. The written decision of the board shall be accompanied by findings of fact and conclusions of law as specified in section three, article five, chapter twenty-nine-a of this code, and a copy of such decision and accompanying findings and conclusions shall be served by certified mail, return receipt requested, upon the person demanding such hearing, and his attorney of record, if any.

(h) The decision of the board shall be final unless reversed, vacated or modified upon judicial review thereof in accordance with the provisions of section thirteen of this article.


Any person adversely affected by a decision of the board rendered after a hearing held in accordance with the provisions of section twelve of this article shall be entitled to judicial review thereof. All of the pertinent provisions of section four, article five, chapter twenty-nine-a of this code shall apply to and govern such judicial review with like effect as if the provisions of said section four were set forth in this section.

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

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


After revocation of a license to engage in the practice of landscape architecture, the board may not issue a new license to the person whose license was revoked, without an examination. Such person may file an application with the board for an examination and new license, and the board may, in its sole discretion, issue a new license to such person.


Any person who violates any of the provisions of this article, any of the reasonable rules and regulations promulgated hereunder or any order or any final decision of the board shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one hundred and not more than five hundred dollars, or imprisoned in the county jail not more than one year, or both fined and imprisoned.

§30-22-16. Actions to enjoin violations.

Whenever it appears to the board that any person has been or is violating or is about to violate any provision of this article, any reasonable rule and regulation promulgated hereunder or any order or final decision of the board, the board may apply in the name of the state to the circuit court of the county in which the violation or violations or any part thereof has occurred, is occurring or is about to occur, or the judge thereof in vacation, for an injunction against such person and any other persons who have been, are or are about to be, involved in any practices, acts or omissions, so in violation, enjoining such person or persons from any such violation or violations. Such application may be made and prosecuted to conclusion whether or not any such violation or violations have
resulted or shall result in prosecution or conviction under
the provisions of section fifteen of this article.
Upon application by the board, the circuit courts of
this state may by mandatory or prohibitory injunction
compel compliance with the provisions of this article, the
reasonable rules and regulations promulgated hereunder
and all orders and final decisions of the board. The court
may issue a temporary injunction in any case pending
a decision on the merits of any application filed.
The judgment of the circuit court upon any 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 board 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 at-
torneys of the several counties as well, all without addi-
tional compensation.

§30-22-17. Severability.
If any provision of this article or the application thereof
to any person or circumstance is held unconstitutional
or invalid, such unconstitutionality or invalidity shall not
affect other provisions or applications of the article, and to
this end the provisions of this article are declared to be
severable.

CHAPTER 126
(House Bill No. 1129—By Mr. Neely)
[Passed March 13, 1971; in effect ninety days from passage. Approved by the
Governor.]

AN ACT to amend and reenact sections two and three, article
two-c, chapter thirteen of the code of West Virginia,
one thousand nine hundred thirty-one, as amended, relat-
ing to public bond indebtedness, industrial development
bond act and the financing of pollution abatement facilities.
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2C. INDUSTRIAL DEVELOPMENT BOND ACT.

§13-2C-2. Legislative findings.


§13-2C-2. Legislative findings.

1 It is hereby determined and declared as a matter of legislative finding (a) that critical conditions of unemployment exist in many areas of this state; (b) that lack of employment and business opportunities have resulted in thousands of people leaving this state to find employment elsewhere, and this exodus has adversely affected the tax base of counties and municipalities within this state, resulting in an impairment of their ability to support local government; (c) that the development of new commercial, industrial and manufacturing plants are essential to relieve unemployment and establish a balanced economy within the state; (d) that the present and prospective health, happiness, safety, right of gainful employment, and general welfare of the citizens of each of the counties and municipalities of this state will be promoted by the establishment of industrial plants as herein provided; (e) that the means and measures herein authorized for the promotion of industrial plants are as a matter of public policy, for the public purpose of the several counties, municipalities and the state of West Virginia; and (f) that the abatement or control of pollution of the environment of the state is necessary to protect the health and welfare of the citizens of the state, to protect the natural resources of the state and to encourage the economic development of the state.


1 The following terms, whenever used in this article, shall have the following meaning:
(a) The term “municipality” shall mean any incorporated town or city.

(b) The term “county court” shall mean the governmental body created by section twenty-two, article eight of the West Virginia constitution.

(c) The term “governmental body” shall mean the county court, the council of a town or city, or any other governing body in lieu thereof.

(d) The term “industrial pollution” shall mean any gaseous, liquid, or solid waste substances or adverse thermal effects or combinations thereof resulting from any process of industry, manufacturing, trade or business, or from the development, processing, or recovery of any natural resources which pollute the land, water or air of the state.

(e) The term “industrial plant” shall mean any site, structure, building, fixtures, machinery, equipment and related facilities including both real and personal property or any combination thereof which shall be suitable as a factory, mill, shop, processing, assembly, manufacturing, fabricating plant, research and development facility or pollution abatement or control facility or facilities, including the reconstruction, modernization or modification of existing industrial plants, for the abatement or control of industrial pollution: Provided, That except to the extent provided above, the term industrial plant shall not include facilities designed for sale or distribution to the public of electricity, gas, water, telephone or other services commonly classified as “public utilities.”

CHAPTER 127

(Com. Sub. for House Bill No. 647—Originating in the House Committee on the Judiciary)

(Passed February 10, 1971; in effect from passage. Approved by the Governor.)

AN ACT to amend and reenact sections two, seventeen, twenty-two and twenty-nine, article ten, chapter five of the code
of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the West Virginia public employees retirement act generally and particularly to those provisions of said act concerning or involving members or former members of the Legislature; redefining the term "final average salary" as used in said act; establishing procedures for determining average compensation of members or former members of the Legislature; and relating to the membership of the public employees retirement system, membership status thereunder, retirement annuities under said system, the increase of certain of said retirement annuities from time to time, the members' deposit fund of said system and the contributions to be made by members to said fund generally and particularly with respect to members of the Legislature.

Be it enacted by the Legislature of West Virginia:

That sections two, seventeen, twenty-two and twenty-nine, 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.
§5-10-17. Retirement system membership.
§5-10-22. Retirement annuity.
§5-10-29. Members' deposit fund; members' contributions.

§5-10-2. Definitions.

1. The following words and phrases as used in this article, unless a different meaning is clearly indicated by the context, shall have the following meanings:

2. (1) "State" means the state of West Virginia;

3. (2) "Retirement system" or "system" means the West Virginia public employees retirement system created and established by this article;

4. (3) "Board of trustees" or "board" means the board of trustees of the West Virginia public employees retirement system;

5. (4) "Political subdivision" means the state of West Virginia, a county, city or town in the state; a school corporation or corporate unit; any separate corporation or instrumentality established by one or more counties,
cities or towns, as permitted by law; any corporation
or instrumentality supported in most part by counties,
cities or towns; any public corporation charged by law
with the performance of a governmental function and
whose jurisdiction is coextensive with one or more
counties, cities or towns, any agency or organization
established by, or approved by the department of men-
tal health for the provision of community health or
mental retardation services, and which is supported in
part by state, county or municipal funds;

(5) "Participating public employer" means the state
of West Virginia, any board, commission, department,
institution or spending unit, and shall include any
agency created by rule of the supreme court of appeals
having full-time employees, which for the purposes of
this article shall be deemed a department of state gov-
ernment; and any political subdivision in the state which
has elected to cover its employees, as defined in this
article, under the West Virginia public employees re-
tirement system;

(6) "Employee" means any person who serves reg-
ularly as an officer or employee, full time, on a salary
basis, whose tenure is not restricted as to temporary or
provisional appointment, in the service of, and whose
compensation is payable in whole or in part by any
political subdivision, or an officer or employee whose
compensation is calculated on a daily basis and paid
monthly or on completion of assignment, including
technicians and other personnel employed by the West
Virginia national guard whose compensation in whole
or in part is paid by the federal government: Provided,
That members of the state Legislature, the clerk of the
House of Delegates, the clerk of the state Senate, mem-
ers of the legislative body of any political subdivision
and judges of the state court of claims shall be con-
sidered to be employees, anything contained herein to
the contrary notwithstanding. In any case of doubt as
to who is an employee within the meaning of this ar-
ticle the board of trustees shall decide the question;

(7) "Member" means any person who is included in
the membership of the retirement system;
(8) "Retirant" means any member who retires with an annuity payable by the retirement system;

(9) "Beneficiary" means any person, except a retirant, who is entitled to, or will be entitled to, an annuity or other benefit payable by the retirement system;

(10) "Service" means personal service rendered to a participating public employer by an employee, as defined in this article, of a participating public employer;

(11) "Prior service" means service rendered prior to July one, one thousand nine hundred sixty-one, to the extent credited a member as provided in this article;

(12) "Contributing service" means service rendered by a member from and after the date of his entrance in the retirement system, to the extent credited him as provided in this article;

(13) "Credited service" means the sum of a member's prior service credit and contributing service credit standing to his credit as provided in this article;

(14) "Compensation" means the remuneration paid a member by a participating public employer for personal services rendered by him to the participating public employer. In the event a member's remuneration is not all paid in money, his participating public employer shall fix the value of the portion of his remuneration which is not paid in money;

(15) "Final average salary" means either (a) the average of the highest annual compensation received by a member (including a member of the Legislature who participates in the retirement system in the year one thousand nine hundred seventy-one or thereafter) during any period of three consecutive years of his credited service contained within his ten years of credited service immediately preceding the date his employment with a participating public employer last terminated, or (b) if he has less than five years of credited service, the average of the annual rate of compensation received by him during his total years of credited service; and in determining the annual compensation, under either (a) or (b) of this subdivision (15), of a member of the Legislature who participates
in the retirement system as a member of the Legislature in the year one thousand nine hundred seventy-one or in any year thereafter, his actual legislative compensation (the total of all compensation paid under sections two, three, four and five, article two-a, chapter four of this code) in the year one thousand nine hundred seventy-one or in any year thereafter, plus any other compensation he receives in any such year from any other participating public employer including the state of West Virginia, without any multiple in excess of one times his actual legislative compensation as aforesaid and other compensation, shall be used: Provided, That "final average salary" for any former member of the Legislature or for any member of the Legislature in the year one thousand nine hundred seventy-one who, in either event, was a member of the Legislature on November thirty, one thousand nine hundred sixty-eight, or November thirty, one thousand nine hundred sixty-nine, or November thirty, one thousand nine hundred seventy, or on November thirty in any one or more of said three years, and who participated in the retirement system as a member of the Legislature in any one or more of such years of one thousand nine hundred sixty-eight, one thousand nine hundred sixty-nine or one thousand nine hundred seventy, means (i) either [notwithstanding the provisions of this subdivision (15) preceding this proviso] one thousand five hundred dollars multiplied by eight, plus the highest other compensation such former member or member received in any one of said three years from any other participating public employer including the state of West Virginia, or (ii) "final average salary" determined in accordance with (a) or (b) of this subdivision (15), whichever computation shall produce the higher final average salary [and in determining the annual compensation under (ii) of this proviso, the legislative compensation of any such former member shall be computed on the basis of one thousand five hundred dollars multiplied by eight, and the legislative compensation of any such member shall be computed on the basis set forth in the provisions of this subdivision (15) im-
(16) "Accumulated contributions" means the sum of all amounts deducted from the compensations of a member and credited to his individual account in the members' deposit fund, together with regular interest thereon;

(17) "Regular interest" means such rate or rates of interest per annum, compounded annually, as the board of trustees shall from time to time adopt;

(18) "Annuity" means an annual amount payable by the retirement system throughout the life of a person. All annuities shall be paid in equal monthly installments, using the upper cent for any fraction of a cent;

(19) "Annuity reserve" means the present value of all payments to be made to a retirant or beneficiary of a retirant on account of any annuity, computed upon the basis of such mortality and other tables of experience, and regular interest, as the board of trustees shall from time to time adopt;

(20) "Retirement" means a member's withdrawal from the employ of a participating public employer with an annuity payable by the retirement system;

(21) "Actuarial equivalent" means a benefit of equal value computed upon the basis of such mortality table and regular interest as the board of trustees shall from time to time adopt; and

(22) The masculine gender shall include the feminine gender, and words of the singular number with respect to persons shall include the plural number, and vice versa.

§5-10-17. Retirement system membership.

1 The membership of the retirement system shall consist of the following persons:

2 (a) All employees, as defined in section two of this article, who are in the employ of a political subdivision the day preceding the date it becomes a participating
6 public employer and who continue in the employ of the
7 said participating public employer on or after the said
8 date shall become members of the retirement system;
9 and all persons who become employees of a participating
10 public employer on or after the said date shall thereupon
11 become members of the system; except as provided in
12 subdivisions (b) and (c) of this section.

13 (b) The membership of the retirement system shall
14 not include any person who is a member of, or who has
15 been retired by, the state teachers' retirement system,
16 the judges' retirement system, the retirement system of
17 the department of public safety, or any municipal retire-
18 ment system for either, or both, policemen or firemen;
19 and the West Virginia department of employment se-
20 curity, by the commissioner of such department, may
21 elect whether its employees will accept coverage under
22 this article or be covered under the authorization of a
23 separate enactment: Provided, That such exclusions of
24 membership shall not apply to any member of the state
25 Legislature, the clerk of the House of Delegates, the
26 clerk of the state Senate or to any member of the legis-
27 lative body of any political subdivision provided he once
28 becomes a contributing member of the retirement sys-
29 tem.

30 (c) Any member of the state Legislature, the clerk
31 of the House of Delegates, the clerk of the state Senate
32 or any member of the legislative body of any other politi-
33 cal subdivision shall become a member of the retirement
34 system provided he notifies the retirement system in writ-
35 ing of his intention to be a member of the system and
36 files a membership enrollment form as the board of
37 trustees shall prescribe, and each person, upon filing his
38 written notice to participate in the retirement system,
39 shall by said act authorize the clerk of the House of Dele-
40 gates or the clerk of the state Senate or such person as
41 the legislative body of any other political subdivision
42 shall designate to deduct said member's contribution, as
43 provided in subsection (b), section twenty-nine of this
44 article, and after said deductions have been made from
45 said member's compensation, such deductions shall be
46 forwarded to the retirement system.
(d) Should any question arise regarding the membership status of any employee, the board of trustees has the final power to decide the question.

§5-10-22. Retirement annuity.

Upon a member's retirement, as provided in this article, he shall receive a straight life annuity equal to one and five-tenths percent of his final average salary multiplied by the number of years, and fraction of a year, of his credited service in force at the time of his retirement: Provided, That after March one, one thousand nine hundred seventy, all members retired and all members retiring shall receive a straight life annuity equal to two percent of his final average salary multiplied by the number of years, and fraction of a year, of his credited service in force at the time of his retirement. In either event, upon his retirement he shall have the right to elect an option provided for in section twenty-four of this article. All annuity payments shall commence effective the first of the month following the month in which a member retires or a member dies leaving a beneficiary entitled to benefits and shall continue to the end of the month in which said retirant or beneficiary dies, and said annuity payments shall not be prorated for any portion of a month in which a member retires or retirant or beneficiary dies.

The annuity of any member of the Legislature who participates in the retirement system as a member of the Legislature and who retires under this article or of any former member of the Legislature who has retired under this article (including any former member of the Legislature who has retired under this article and whose annuity was readjusted as of March one, one thousand nine hundred seventy, under the former provisions of this section) shall be increased from time to time during the period of his retirement when and if the legislative compensation paid under section two, article two-a, chapter four of this code to a member of the Legislature shall be increased to the point where a higher annuity would be payable to the retirant if he were retiring as of the effective date of the latest
increase in such legislative compensation, but on the basis of his years of credited service to the date of his actual retirement.

§5-10-29. Members' deposit fund; members' contributions.

(a) The members' deposit fund is hereby created. It shall be the fund in which shall be accumulated, at regular interest, the contributions deducted from the compensation of members, and from which refunds of accumulated contributions shall be paid and transfers made as provided in this section.

(b) The contributions of a member to the retirement system (including any member of the Legislature, except as otherwise provided in subsection (g) of this section) shall be a sum of not less than three and five-tenths percent of his annual compensations but not more than four and five-tenths percent of his annual compensations, as determined by the board of trustees. The said contributions shall be made notwithstanding that the minimum salary or wages provided by law for any member shall be thereby changed. Each member shall be deemed to consent and agree to the deductions made and provided for herein. Payment of a member's compensation less said deductions shall be a full and complete discharge and acquittance of all claims and demands whatsoever for services rendered by him to a participating public employer, except as to benefits provided by this article.

(c) The officer or officers responsible for making up the payrolls for payroll units of the state government and for each of the other participating public employers shall cause the contributions, provided for in subsection (b) above, to be deducted from the compensations of each member in the employ of the participating public employer, on each and every payroll, for each and every payroll period, from the date the member enters the retirement system to the date his membership terminates. When deducted, each of said amounts shall be paid by the participating public employer to the retirement system; said payments to be made in such manner and form, and in such frequency, and shall be accompanied
by such supporting data, as the board of trustees shall
from time to time prescribe. When paid to the retire-
ment system, each of said amounts shall be credited
to the members' deposit fund account of the member
from whose compensations said contributions were de-
ducted.

(d) In addition to the contributions deducted from
the compensations of a member, as heretofore provided,
a member shall deposit in the members' deposit fund,
by a single contribution or by an increased rate of
contribution as approved by the board of trustees, the
amounts he may have withdrawn therefrom and not
repaid thereto, together with regular interest from the
date of withdrawal to the date of repayment. In no
case shall a member be given credit for service rendered
prior to the date he withdrew his contributions or ac-
cumulated contributions, as the case may be, until he
returns to the members' deposit fund all amounts due
the said fund by him.

(e) Upon the retirement of a member, or if a sur-
vivor annuity becomes payable on account of his death,
in either event his accumulated contributions standing
to his credit in the members' deposit fund shall be trans-
ferred to the retirement reserve fund.

(f) In the event an employee's membership in the
retirement system terminates and no annuity becomes
or will become payable on his account, any accumulated
contributions standing to his credit in the members' deposit fund, unclaimed by the said employee, or his
legal representative, within three years from and after
the date his membership terminated, shall be transferred
to the income fund.

(g) Any member of the Legislature who is a member
of the retirement system and with respect to whom
the term "final average salary" includes a multiple of
eight, pursuant to the provisions of subdivision (15),
section two of this article, shall contribute to the retire-
ment system on the basis of his legislative compensation
the sum of five hundred forty dollars each year he par-
ticipates in the retirement system as a member of the
Legislature.
AN ACT to amend and reenact section seven, article four, chapter twenty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections one through eleven, inclusive, article one, chapter twenty-eight of said code, all relating to the commitment of youthful male offenders; forestry camps and other facilities for youthful offenders; lateral transfer of inmates and the authority of the state commissioner of public institutions.

Be it enacted by the Legislature of West Virginia:

That section seven, article four, chapter twenty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that sections one through eleven, inclusive, article one, chapter twenty-eight of said code be amended and reenacted, all to read as follows:

Chapter
25. Commissioner of Public Institutions.

CHAPTER 25. COMMISSIONER OF PUBLIC INSTITUTIONS.

ARTICLE 4. FORESTRY CAMPS FOR HOUSING YOUTHFUL MALE LAW OFFENDERS.

§25-4-7. Physical and mental examination of offenders.

1. Before the judge of any court of original jurisdiction or juvenile court can transfer a youthful offender to the custody of the commissioner of public institutions to be assigned to a forestry camp, such offender shall be given a complete medical examination by a doctor designated by the commissioner of public institutions, and the offender must be free of any communicable disease or other physical defects which would prohibit him from participating in the program of the forestry camp. In the event there is a question concerning the
mental status of an offender, he shall be given an examination by a competent psychiatrist designated by the commissioner of public institutions to determine whether he is fit to participate in the program of the forestry camp.

Any offender who is found to have a communicable disease, is feeble-minded, psychotic, mentally ill, or has a history of homosexual activities, or arsonist tendencies, shall not be eligible for assignment to a forestry camp.

Nothing contained in this section shall prohibit the free transfer of any male youth from one youth facility to another youth facility in the manner provided in article one, chapter twenty-eight of this code.

CHAPTER 28. STATE CORRECTIONAL AND PENAL INSTITUTIONS.

ARTICLE 1. COMMITMENT OF YOUTHFUL MALE OFFENDERS.

§28-1-1. Care of youthful male offenders.

The state commissioner of public institutions shall be exclusively charged with the care, training and reformation of male youths of the state committed to his custody.

All state facilities and institutions for such purpose shall be managed and controlled as prescribed in article one, chapter twenty-five of this code.

§28-1-2. Commitment; age limits.

Any male youth between the ages of ten and eighteen years shall be committed to the custody of the state commissioner of public institutions:
(a) By any juvenile or domestic relations court of competent jurisdiction for any of the causes, and in the manner prescribed in article two, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended and reenacted by chapter one, acts of the Legislature of West Virginia, first extraordinary session, one thousand nine hundred thirty-six, pertaining to delinquent children.

(b) By any court of record of competent jurisdiction of this state or of the United States for the districts of West Virginia in the manner prescribed in the next succeeding section of this article: Provided, however, That any male youth who has been adjudged delinquent and placed on probation by a court of competent jurisdiction prior to his eighteenth birthday may be committed to the custody of the state commissioner of public institutions for any act or omission amounting to a violation of any condition of his probation which said act or omission occurred prior to the expiration of the period of his probation and prior to the attainment of his twenty-first birthday.

But no youth shall be committed to such school as an inmate thereof, who is of unsound mind, or imbecile, or idiotic, or epileptic, or afflicted with tuberculosis. Before committing a boy to the custody of the state commissioner of public institutions, the court committing him shall cause him to be examined by a full-time county health physician duly authorized to practice medicine in this state, or if there be no full-time county health physician, then by some physician duly authorized to practice medicine in this state designated by the juvenile court for that purpose, in order to ascertain whether such boy is sound in mind, or whether he is an imbecile, or an idiot, or afflicted with tuberculosis, epilepsy, syphilis, gonorrhea or any other infectious disease, and as to any other particulars deemed necessary by the juvenile court as may be prescribed in the rules and regulations of the state commissioner of public institutions.

In the event there is no full-time health officer in the county or if there be one and the county health depart-
ment is not adequately equipped or staffed to give the mental or physical examinations required in cases, in the opinion of the juvenile court, needing specialized diagnostic services, the juvenile court may order the child to receive such physical or mental examinations from a duly qualified physician designated by the juvenile court, and it shall be the duty of the county court and the county court shall pay for such examinations and services upon receipt of an itemized statement along with the written order and approval of the juvenile court. Such examination shall be made in private. The physician making such examination shall make out a statement respecting the particulars named in the form prescribed by the state health department and the state commissioner of public institutions, which certificate of the physician shall accompany the commitment. If it shall appear from such examination or otherwise that the boy is of unsound mind, or is imbecile, or idiotic, or epileptic, or is afflicted with tuberculosis, epilepsy, syphilis, gonorrhea or has any infectious disease, he shall not be committed to the custody of the state commissioner of public institutions, except as hereinafter provided; and the state commissioner of public institutions shall not receive any boy into his custody unless the commitment is accompanied by a certificate of health, signed by such physician, showing that he is not of unsound mind and is not an imbecile, or idiot, nor afflicted with tuberculosis, epilepsy, syphilis, gonorrhea, or any other infectious disease. If, upon such examination, it shall appear that the boy is suffering with tuberculosis, or a venereal disease, in any stage, the judge committing such boy shall make an order committing him to the custody of the state commissioner of public institutions, and shall make an additional order directing that he first be transferred to one of the state hospitals for tuberculosis, in case he is found to have tuberculosis, and in case he is found to be infected with any venereal disease, then to the Fairmont emergency hospital or the Welch emergency hospital for observation, treatment and detention, pending such treatment until cured of such venereal disease or rendered completely noninfectious therefrom, after which time he
shall be transferred to the custody of the state commis-
commissioner of public institutions and be kept as provided
by law: Provided, however, That any such boy who is
feeble-minded shall be sent to the Colin Anderson center,
or if there is no room in the center, then to one of the
state hospitals for the insane, and not to Fairmont emer-
gency hospital or Welch emergency hospital. It shall
be the duty of the superintendents of the hospitals at
Fairmont and Welch to receive into said hospitals all
boys who may be committed thereto as provided herein,
and to detain, care for, and treat such boys until cured
or rendered completely noninfectious, and as soon there-
after as convenient arrange to transfer them to the
custody of the state commissioner of public institutions,
except as herein provided.

The said commissioner of public institutions shall pro-
vide such suitable buildings or equipment at the said
hospitals as may be necessary to carry out the provisions
of this section including the expenses of transferring the
boys and for their care and treatment at said hospitals.

It shall be the duty of the clerk of the committing
court, upon the commitment of a boy who is infected
with a venereal disease to the said hospitals, as provided
herein, to notify the director of the bureau of venereal
diseases of West Virginia of the fact, giving the name,
age and address of the boy, and the disease from which
he is suffering; and it shall be the duty of the superinten-
dent of the hospital receiving such boy to notify the
director when any boy is received and when he is trans-
ferred to the custody of the state commissioner of public
institutions.

In the case of boys found to be afflicted with venereal
disease but who have been rendered noninfectious, but
who have not by treatment as herein provided been
completely cured, the further treatment of such boys
shall be continued by a competent doctor at the facility
wherein such boys are committed, following the direc-
tions given by the superintendent of the Fairmont emer-
gency hospital or the Welch emergency hospital; and the
decision of the superintendent of Fairmont emergency
hospital or Welch emergency hospital that any boy is noninfectious and admissible to the custody of the state commissioner of public institutions may be questioned only by appeal to the state director of health of the state of West Virginia, who, in such a case, shall make due investigation and shall order such boy returned to the Fairmont emergency hospital or Welch emergency hospital for further treatment or order that such boy have his treatment continued at the facility to which he is committed by the state commissioner of public institutions; and in all such cases where treatment is given or continued at such facility, careful records shall be kept for each boy under treatment showing the dates of treatment and the progress of the case.

§28-1-3. Commitment of boy convicted in state or federal court of crime punishable by imprisonment.

Whenever any male youth under the age of eighteen years shall have been convicted in any court of record of this state of a felony, or of a misdemeanor punishable by imprisonment, the judge of such court, in his discretion, instead of sentencing such youth to be confined in the penitentiary or the county jail, may order him to be removed to and confined in the custody of the state commissioner of public institutions, there to remain until he shall have attained the age of twenty-one years, unless sooner discharged or paroled by the state commissioner of public institutions. Any male youth, under eighteen years of age, convicted in any of the courts of the United States for the districts of West Virginia of any offense punishable by imprisonment, may also be received into the custody of the state commissioner of public institutions upon such regulations and terms as to his maintenance and support as may be prescribed by the state commissioner of public institutions and assented to by the proper authorities of the United States.

The state commissioner of public institutions shall have the authority to receive any youthful offender committed to his custody into any facility under his control for the detention and rehabilitation of youthful offenders and may, from time to time as he deem proper, transfer
§28-1-4. Conveyance of boys; expenses.

1 As soon as practicable after a youth, on any account, is committed to the custody of the state commissioner of public institutions, the papers in the case shall be mailed to the superintendent of the receiving youth facility, and such youth shall remain in the custody of the court pronouncing such commitment until he be delivered to an officer of the receiving youth facility, who shall be sent without delay and duly authorized by the superintendent to conduct such youth by the most direct and convenient route to said facility; but no youth committed to any facility shall be lodged in any jail or lockup, if he be under the age of sixteen years. The superintendent of a facility shall, insofar as is consistent with the safe conveyance of youths to the facility, cause as many youths as may be committed from the same or several counties to be conducted to the facility at the same time. The expense incurred in conducting a youth to a youth facility, including transportation and other necessary traveling expenses of the youth and of his conductor, shall be paid by the county court out of the treasury of the county from which the youth was committed to the facility, and a written statement of such necessary expenditures, fully itemized and sworn to by the officer making such expenditures, and attested by the superintendent of the facility, when presented to any county court, shall be a bill against such court, to be paid to the receiving facility and credited to that fund of the facility from which the original expenditure was made; but when two or more youths shall be so conducted from more than one county, the necessary expenditure on the personal account of the conductor shall be apportioned among the counties concerned in due proportion to the mileage traveled by the youths from their respective counties.

§28-1-5. Rules and regulations.

1 The state commissioner of public institutions shall have authority to make such rules and regulations for the
management and government of the facilities for youthful offenders under his control, and the instruction, discipline, training, employment and disposition of the boys and their transportation to and from the various facilities, not contrary to law, as the commissioner may deem proper.

§28-1-6. Discharge or parole; arrest and return of paroled boys.

The state commissioner of public institutions shall have authority, under such rules and regulations as the commissioner may prescribe, to grant, on the recommendation of the superintendent, a discharge or parole to any inmate of any of the various facilities; but while such inmate is on parole, and until he is discharged according to law, he shall remain in the legal custody of the commissioner of public institutions and subject at any time to be returned to physical custody, if in the judgment of the commissioner the interests of such paroled inmate will best be served thereby. The written order of said commissioner, countersigned by the superintendent, shall be sufficient warrant for any officer or person named therein to arrest and return to the facility the youth so paroled; and it shall be the duty of any such officer or person to arrest and return such youth to the facility. All actual expenses incurred in returning such youth to the facility shall be paid out of the funds appropriated for the maintenance of the facility.

§28-1-7. Transfer of boys to and from penitentiary.

In any case where a youth is committed to any youth facility for an offense punishable by confinement in the penitentiary, and it is found by the state commissioner of public institutions that the youth facility is unable to benefit such youth, and that his presence is a detriment or menace to other youths in the institution, or to the general good of the facility, he may be returned to the court by which he was committed to the facility, and such court shall thereupon pass such sentence upon him as to confinement in the penitentiary as may be proper in the premises, or as it might have passed had it not committed him as a youthful offender. The gov-
13 error shall have power, when, in the judgment of the
14 warden of the penitentiary and of the superintendent
15 of the facility, it is advisable, to remit the penalty of
16 any offender under the age of eighteen years confined
17 in the penitentiary to a commitment to a youth facility.

§28-1-8. Offenses relating to youth facilities; penalties; escape;
arrest and return.

1 If any person shall entice or attempt to entice away
2 from any youth facility any youth legally committed to
3 the same, or shall aid or abet any youth to escape there-
4 from, or shall harbor, conceal or aid or abet in harboring
5 or concealing, any youth who shall have escaped there-
6 from, or shall, without the permission of the superin-
7 tendent, give or sell, or aid or abet any other person to
give or sell, to any youth in the youth facility, whether
on the premises of such institution or otherwise, any
money, firearms, intoxicating drinks, tobacco, cigarettes,
or other articles whatsoever, or shall in any way cause
or influence, or attempt to cause or influence or aid or
abet therein, any youth in the youth facility to violate
any rule of the institution or to rebel against the gov-
ernment of said facility in any particular, or shall receive
by the hands of any such youth anything of value,
whether belonging to the state or otherwise, such per-
son shall be guilty of a misdemeanor, and, upon con-
viction thereof, shall be fined not less than ten, nor more
than one hundred dollars, or be confined not more than
twelve months in the county jail, or, in the discretion
of the court, both fined and imprisoned. The superin-
tendent, or any of his assistants, or any one authorized
in writing by him, or any sheriff, constable, policeman
or other peace officer, shall have power, and it is hereby
made his duty, to arrest any youth, when in his power
to do so, who shall have escaped from said facility, and
return him thereto.

§28-1-9. Payment by counties of cost of detention of boys—
Reimbursement.

1 The county court of every county shall pay into the
2 state treasury the sum of fifty dollars a year on account
of each youth from the county who shall be received into the custody of the state commissioner of public institutions on proper commitment. But in all cases of youths received into such custody, the parent, if of sufficient means, or the guardian, where the youth has sufficient estate, shall annually reimburse the county the amount paid into the state treasury, by virtue of this section, on account of such youth, and the county court of such county shall have the right to recover the same of such parent or guardian in any court of competent jurisdiction.

§28-1-10. Same—Preparation of inmate lists for billing purposes; application of county funds in state treasury.

The superintendent of each youth facility shall, before the tenth day of January in each year, prepare and certify to the auditor and the state commissioner of public institutions each a list by counties of all such youths as are mentioned in the preceding section, who were kept in each facility during the preceding year or any part of it, showing as to each youth what part of the year he was so kept in the facility. On receiving such list the auditor shall charge to each county fifty dollars on account of each youth from such county who was kept in such facility during the preceding year, and a proportionate amount on account of each youth kept for any part of such year less than the whole. Any money in the treasury of the state to the credit of any such county, from whatever source arising, and not appropriated to pay any other debt of the county to the state, shall be applied so far as necessary, to the payment of the sums so charged. If any sum in the treasury due the county shall not be sufficient to pay the whole amount so charged against it, such sum shall be applied as a credit on the amount charged, and the balance shall remain a charge against the county.

§28-1-11. Same—Determination of payments due from counties; levy; compelling payment.

Within ten days after receiving such list the auditor shall certify to the county court of such county a list of
the youths from the county in such facility, stating the
length of the term during the year each youth was in
such facility, as shown by the list certified by the super-
intendent, the amount due from the county on his ac-
count, and the total amount due on account of all. He
shall credit on such statement whatever amount has been
applied as a payment thereon from any funds of the
county in the treasury. Such statement shall be a receipt
to the county for any amount so credited, and shall be
a bill for any amount still appearing to be due from the
county. Unless the bill shall have been paid by the ap-
lication of funds of the county in the state treasury,
the county court shall at its next levy term provide for
the payment of the same, or such part as may not have
been paid, and cause the amount to be paid into the state
treasury. If the amount so due from any county be not
paid in a reasonable time after such levy term, the auditor
may, in the name of the state, apply to the circuit court
of the county for a mandamus to require the county
court to provide for and to pay for the same, or he may
proceed in the name of the state by any other appropriate
remedy to recover the same.

CHAPTER 129

(Com. Sub. for Senate Bill No. 379—Originating in the Senate
Committee on Finance)

[Passed March 13, 1971; in effect July 1, 1971. Approved by the Governor.]

AN ACT to amend and reenact section three, article two,
chapter fifteen of the code of West Virginia, one thou-
sand nine hundred thirty-one, as amended, relating to the
organization of companies and platoons of the depart-
ment of public safety, the training of members and the
salaries and bonds of members.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. DEPARTMENT OF PUBLIC SAFETY.

§15-2-3. Companies and platoons; how constituted; training of members and other peace officers; salaries and bonds of members.

The superintendent shall create, appoint and equip a department of public safety, which shall, in addition to the personnel provided for in section two of this article, consist of four companies or platoons. They shall be designated as companies “A”, “B”, “C” and “D”. Each company or platoon shall be composed of one captain, one lieutenant, one first sergeant, seven sergeants, not more than seventeen corporals and such number of troopers and troopers first class as the superintendent may decide best, but such number of troopers and troopers first class in any company or platoon shall not at any time be less than twenty-five.

The superintendent shall provide adequate facilities for the training of all members of the department and shall prescribe a basic training course for newly enlisted members. He shall also provide advanced or in-service training from time to time for all members of the department. The superintendent shall hold training classes for other peace officers in the state without cost to such officers, except actual expenses for food, lodging and school supplies.

Members of the department shall receive salaries, as follows:

The inspector shall receive an annual salary of twelve thousand two hundred forty dollars; the major shall receive an annual salary of ten thousand nine hundred ninety-two dollars; captains shall each receive an annual salary of nine thousand eight hundred forty dollars; lieutenants shall each receive an annual salary of nine thousand two hundred eighty-eight dollars; the master sergeants and first sergeants shall each receive an annual salary of eight thousand six hundred seventy-six dollars;
Ch. 129] PUBUC SAFETY 741

33 sergeants shall each receive an annual salary of eight
34 thousand four hundred dollars; corporals shall each re-
35 ceive an annual salary of eight thousand twenty-eight
dollars; troopers first class shall receive an annual sal-
37 ary of seven thousand seven hundred sixty-four dollars;
and each newly enlisted trooper shall receive a salary
of five hundred thirty-four dollars during the period of
his basic training, and upon the satisfactory completion
of such training and assignment to active duty each
trooper shall receive, during the remainder of his first
year's service, a salary of five hundred ninety-eight dol-
44 lars monthly. During the second year of his service in
the department each trooper shall receive an annual
salary of seven thousand three hundred thirty-two dol-
48 lars; during the third year of his service each trooper
shall receive an annual salary of seven thousand four
hundred eighty-eight dollars; and during the fourth and
fifth years of his service and for each year thereafter
each trooper shall receive an annual salary of seven
thousand six hundred thirty-two dollars. Each member of
the department entitled thereto by the provisions hereof
shall receive an increase in salary over that hereinbefore
set forth in this section, for grade and rank, based on length
of service, including that heretofore and hereafter served,
with the department, as follows: At the end of five years of
service with the department, such member of the depart-
ment shall receive a salary increase of three hundred dol-
lars per year to be effective during his next three years of
service and like increases at three-year intervals there-
after, until a total of six such increases shall be received
and such increases shall be cumulative.

64 In applying the foregoing salary schedule where salary
increases are provided for length of service, members
of the department in service at the time this article be-
comes effective shall be given credit for prior service
and shall be paid such salaries as the same length of
service will entitle them to receive under the provisions
hereof.

67 Each member of the department of public safety, ex-
cept the superintendent and civilian employees, shall,
before entering upon the discharge of his duties, execute
a bond with security in the sum of three thousand five
hundred dollars payable to the state of West Virginia,
conditioned for the faithful performance of his duties as
such, and such bond shall be approved as to form by the
attorney general, and as to sufficiency by the governor,
and the same shall be filed with the secretary of state
and preserved in his office.

CHAPTER 130

(House Bill No. 1014—By Mr. Sparacino)

[Passed March 5, 1971; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-nine, article two,
chapter fifteen of the code of West Virginia, one thousand
nine hundred thirty-one, as amended, relating to the
criminal identification bureau of the department of public
safety and providing penalties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. DEPARTMENT OF PUBLIC SAFETY.

§15-2-29. Criminal identification bureau; establishment; officer
in charge; purpose; fingerprints, photographs, records and other information; reports; offenses
and penalties.

(a) The superintendent of the department of public
safety shall establish, equip and maintain at the depart-
mental headquarters a criminal identification bureau, for
the purpose of receiving and filing fingerprints, photo-
graphs, records and other information pertaining to
the investigation of crime and the apprehension of
criminals, as hereinafter provided. The superintendent shall appoint or designate a regularly enlisted member of the department as officer in charge of the criminal identification bureau and such officer shall be responsible to the superintendent for the affairs of the bureau. Members of the department assigned to the criminal identification bureau shall carry out their duties and assignments in accordance with internal management rules and regulations pertaining thereto promulgated by the superintendent.

(b) The criminal identification bureau shall cooperate with identification bureaus of other states and of the United States to develop and carry on a complete interstate, national and international system of criminal identification.

c) The criminal identification bureau may furnish fingerprints, photographs, records or other information to authorized law-enforcement and governmental agencies of the United States and its territories, of foreign countries duly authorized to receive the same, of other states within the United States and of the state of West Virginia upon proper request stating that the fingerprints, photographs, records or other information requested are necessary in the interest of and will be used solely in the administration of official duties and the criminal laws.

(d) The criminal identification bureau may furnish, with the approval of the superintendent, fingerprints, photographs, records or other information to any private or public agency, person, firm, association, corporation or other organization, other than a law-enforcement or governmental agency as to which the provisions of subsection (c) of this section shall govern and control, but all requests under the provisions of this subsection (d) for such fingerprints, photographs, records or other information must be accompanied by a written authorization signed and acknowledged by the person whose fingerprints, photographs, records or other information is to be released.

e) The criminal identification bureau may furnish fingerprints, photographs, records and other information
of persons arrested or sought to be arrested in this state
to the identification bureau of the United States govern-
ment and to other states for the purpose of aiding law
enforcement.

(f) Persons in charge of any penal or correctional
institution including any city or county jail, in this
state shall take, or cause to be taken, the fingerprints
and description of all persons lawfully committed thereto
or confined therein and furnish the same in duplicate
to the criminal identification bureau, department of public
safety. Such fingerprints shall be taken on forms ap-
proved by the superintendent of the department of pub-
lic safety. All such officials as herein named may, when
possible to do so, furnish photographs to the criminal
identification bureau of such persons so fingerprinted.

(g) Members of the department of public safety, and
all other state law-enforcement officials, sheriffs, deputy
sheriffs, constables, and each and every peace officer in
this state, shall take or cause to be taken the fingerprints
and description of all persons arrested or detained by
them, charged with any crime or offense in this state,
in which the penalty provided therefor is confinement
in any penal or correctional institution, or of any per-
son who they have reason to believe is a fugitive from
justice or an habitual criminal, and furnish the same in
duplicate to the criminal identification bureau, depart-
ment of public safety, on forms approved by the super-
intendent of said department of public safety. All such
officials as herein named may, when possible to do so,
furnish to the criminal identification bureau, photographs
of such persons so fingerprinted. The arresting officer
shall submit to the criminal identification bureau, in
duplicate, a report of final disposition concerning any case
held for court, or in any case in which the disposition
thereof has not been previously furnished to said bureau
(on the fingerprint record of the person arrested). Such
report of final disposition shall be made on forms fur-
ished or approved by the superintendent of the depart-
ment of public safety.

(h) Any person who has been fingerprinted or photo-
graphed in accordance with the provisions of this sec-
tion, who is acquitted of the charges upon which he or she was arrested, and who has no previous criminal record, may, upon the presentation of satisfactory proof to the superintendent of the department of public safety, have such fingerprints or photographs, or both, returned to them.

(i) All state, county and municipal law-enforcement agencies shall submit to the bureau uniform crime reports setting forth their activities in connection with law enforcement. It shall be the duty of the bureau to adopt and promulgate rules and regulations prescribing the form, general content, time and manner of submission of such uniform crime reports. Willful or repeated failure by any state, county or municipal law-enforcement official to submit the uniform crime reports required by this article shall constitute neglect of duty in public office. The bureau shall correlate the reports submitted to it and shall compile and submit to the governor and the Legislature semiannual reports based on such reports. A copy of such reports shall be furnished to all prosecuting attorneys and law-enforcement agencies.

(j) Neglect or refusal of any person mentioned in this section to make the report required herein, or to do or perform any act on his or her part to be done or performed in connection with the operation of this section, shall constitute a misdemeanor, and such person shall, upon conviction thereof, be punished by a fine of not less than twenty-five nor more than two hundred dollars, or by imprisonment in the county jail for a period of not exceeding sixty days, or both, in the discretion of the court. Such neglect shall constitute misfeasance in office and subject such person to removal from office. Any person who wilfully removes, destroys, or mutilates any of the fingerprints, photographs, records or other information of the department of public safety, shall be guilty of a misdemeanor, and such person shall, upon conviction thereof, be punished by a fine not exceeding one hundred dollars, or by imprisonment in the county jail for a period of not exceeding six months, or by both, in the discretion of the court.
AN ACT to amend and reenact sections two and six, article one, chapter twenty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section one, article two of said chapter; to further amend said article two by adding thereto a new section, designated section thirteen; and to amend and reenact section six, article three of said chapter, all relating to the public service commission, compensation of commissioners, enforcement of federal acts and certain special fees and funds.

Be it enacted by the Legislature of West Virginia:

That sections two and six, article one, chapter twenty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section one, article two of said chapter be amended and reenacted; that said article two be further amended by adding thereto a new section, designated section thirteen, and that section six, article three of said chapter be amended and reenacted all to read as follows:

Article
2. Powers and Duties of Public Service Commission.
3. Duties and Privileges of Public Utilities Subject to Regulations of Commission.

ARTICLE 1. GENERAL PROVISIONS.

§24-1-2. Composition; appointment, qualifications and disqualification of commissioners; removal from office; terms of office; vacancies; salaries.

§24-1-6. Office of commission; time and place of hearings; number of commissioners required for taking action.

§24-1-2. Composition; appointment, qualifications and disqualification of commissioners; removal from office; terms of office; vacancies; salaries.

1. There shall be a public service commission of West Virginia which by that name may sue and be sued. The
3 terms of members of the public service commission at the
4 time this section becomes effective shall hereby be con-
5 tinued. Such public service commission shall consist of
6 three members who shall be appointed by the governor
7 with the advice and consent of the Senate. The commis-
8 sioners shall be citizens and residents of this state and at
9 least one of them shall be duly licensed to practice law in
10 West Virginia, of not less than ten years' actual experi-
11 ence at the bar. No more than two of said commissioners
12 shall be members of the same political party. The ap-
13 pointment of a commissioner shall be for a period of
14 six years, except that an appointment to fill a vacancy
15 shall be for the unexpired term only. Each commissioner
16 shall, before entering upon the duties of his office, take
17 and subscribe to the oath provided by section five, ar-
18 ticle four of the constitution, which oath shall be filed
19 in the office of the secretary of state. The governor shall
20 annually designate one of the commissioners as chairman
21 who shall be the chief administrative officer of the com-
22 mission. The governor may remove any commissioner
23 only for incompetency, neglect of duty, gross immorality
24 or malfeasance in office.
25
26 No person while in the employ of, or holding any
27 official relation to, any public utility subject to the pro-
28 visions of this chapter, or holding any stocks or bonds
29 thereof, or who is pecuniarily interested therein, shall
30 serve as a member of the commission or as an employee
31 thereof. Nor shall any such commissioners be a candi-
32 date for or hold public office, or be a member of any
33 political committee, while acting as such commissioner;
34 nor shall any commissioner or employee of said com-
35 mission receive any pass, free transportation or other
36 thing of value, either directly or indirectly, from any
37 public utility subject to the provisions of this chapter.
38 In case any of such commissioners shall become a candi-
39 date for any public office or a member of any political
40 committee, his office as commissioner shall be ipso facto
41 vacated.
42
43 For the administration of this chapter each commis-
44 sioner shall receive a salary of sixteen thousand dollars
45 per annum to be paid in monthly installments from the
§24-1-6. Office of commission; time and place of hearings; number of commissioners required for taking action.

1 The general office of the commission shall be kept at the capitol of the state, and kept open on each working day between the hours of nine o'clock a.m. and five o'clock p.m., and in charge of the secretary or his deputy.

2 Hearings and the taking of evidence may be had at such times and places and in such manner in each particular case as the commission may designate.

3 The concurrent judgment of two of the commissioners, when in session as the commission, shall be deemed the action of the commission, and a vacancy in the commission shall not affect the right or duty of the remaining commissioners to function as a commission.

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.

§24-2-1. Jurisdiction of commission.


§24-2-1. Jurisdiction of commission.

1 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:

2 Common carriage of passengers or goods, whether by air, railroad, street railroad, motor or otherwise, by express or otherwise, by land, water or air, whether wholly or partly by land, water or air; mass transit authorities; 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

In addition to all other powers and duties conferred upon the public service commission herein, the commission shall be charged with the duty of enforcing the provisions of the United States "Federal Railroad Safety Act" and the "Uniform Motor Carrier Identification Act" in this state under the federal requirements contained therein requiring state enforcement of such acts, insofar as the same are not repugnant to the laws of this state or contrary to the rules and regulations of the commission.

ARTICLE 3. DUTIES AND PRIVILEGES OF PUBLIC UTILITIES SUBJECT TO REGULATIONS OF COMMISSION.

§24-3-6. Special license fee; "public service commission fund".

(a) All public utilities subject to the provisions of this chapter shall pay a special license fee in addition to those now required by law. The amount of such fees shall be fixed by the public service commission and levied by it upon each of such public utilities according to the value of its property as ascertained by the last assessment, and shall be apportioned among such public utilities upon the basis of such valuation, so as to produce a revenue of three hundred twenty thousand dollars per annum, which fees shall be paid on or before the twentieth day of January in each year. Such sum of three hundred twenty thousand dollars, together with that provided in subsection (b) hereof shall be paid into the state treasury and kept as a special fund, designated "public service commission fund," to be appropriated as provided by law for the purpose of paying the salaries of the commission, as fixed by this chapter, its expenses and salaries, compensations, costs and expenses of its employees.

(b) All public utilities subject to the provisions of this chapter shall pay a special license fee in addition
to any and all fees now required by law. The amount of such fees shall be fixed by the public service commission and levied by it upon each of such public utilities, in the proportion which the total gross revenue derived from intrastate business done by each of such public utilities in the calendar year next preceding bears to the total gross revenue derived from intrastate business done in such year by all public utilities subject to regulation by the public service commission, so as to produce a revenue of six hundred forty thousand dollars per annum, in addition to such fees as may be fixed by the public service commission under the provisions of subsection (a) hereof and which fees shall be paid on or before the first day of July in each year. Such sum of six hundred forty thousand dollars shall be paid into the state treasury and be kept, appropriated and used as provided in subsection (a) hereof.

(c) Any balance remaining in said fund at the end of any fiscal year shall not revert to the treasury but shall remain in said fund and may be appropriated and used as provided in subsection (a) hereof.

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CHAPTER 132

(House Bill No. 756—By Mr. Seibert)

[Passed March 13, 1971; in effect July 1, 1971. Approved by the Governor.]

AN ACT to amend and reenact section three, article one, chapter twenty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to appointment, duties and compensation of the secretary and other employees of the public service commission and specifying that any commissioner or director of any division of the commission shall devote full time to the performance of his duties as such commissioner or employee during the regular working hours as set by the commission.
Be it enacted by the Legislature of West Virginia:

That section three, article one, 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 1. GENERAL PROVISIONS.

§24-1-3. Appointment, duties and compensation of secretary and other employees; hearings generally; outside employment by certain employees prohibited.

1 The commission shall appoint a secretary and such other employees as may be necessary to carry out the provisions of this chapter and shall fix their respective salaries or compensations. It shall be the duty of the secretary to keep a full and true record of all proceedings, acts, orders and judgments of the commission, to issue all necessary process, returns and notices, to keep all books, maps, documents and papers ordered filed by the commission, and all orders made by the commission or approved and confirmed by it and ordered to be filed; and he shall be responsible to the commission for the safe custody and preservation of all such documents in his office. He may administer oaths in all parts of the state, so far as the exercise of such power is properly incidental to the performance of his duty or that of the commission.

The commission may designate such of its employees as it deems necessary to hold hearings, held or required by this chapter, and to take evidence at such hearings, which employees are hereby empowered to subpoena witnesses, administer oaths, take testimony, require the production of documentary evidence and exercise such other powers and perform such other duties as may be delegated to them and required by the commission, in any proceeding or examination instituted or conducted by the commission under this chapter, at any designated place of hearing within the state.

Any commissioner or person employed by the commission as director of any division thereof shall devote full time to the performance of his duties as such commissioner or employee during the regular working hours as set by the commission.
CHAPTER 133

(House Bill No. 1006—By Mr. Myles)

[Passed March 6, 1971; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article one, chapter twenty-four-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said chapter by adding thereto a new article, designated article six-a, all relating to motor carriers of passengers and property for hire; and regulation of uniform registration of authority and vehicles of interstate for hire carriers.

Be it enacted by the Legislature of West Virginia:

That section two, article one, chapter twenty-four-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said chapter be further amended by adding thereto a new article, designated article six-a, all to read as follows:

Article

1. Purposes, Definitions and Exemptions.

6A. Registration of Interstate Commerce Commission Authority and Identification of Vehicles to Be Operated Thereunder.

ARTICLE 1. PURPOSES, DEFINITIONS AND EXEMPTIONS.


1 When used in this chapter: (a) The term "motor vehicle" means, and includes, any automobile, truck, tractor, truck-tractor, trailer, semitrailer, motorbus, taxicab, any self-propelling motor-driven motor vehicle, or any combination thereof, used upon any public highway in this state for the purpose of transporting persons or property; (b) the term "public highway" means any public street, alley, road, or highway, or thoroughfare of any kind in this state used by the public; (c) the term "commission" means the public service commission of West Virginia; (d) the term "person" means and includes any individual, firm, copartnership, corporation, company, association, or joint-
stock association, and includes any trustee, receiver, assignee or personal representative thereof; (e) the term "common carrier by motor vehicle" means any person who undertakes, whether directly or by lease or any other arrangement, to transport passengers or property, or any class or classes of property, for the general public over the highways of this state by motor vehicles for hire, whether over regular or irregular routes, including such motor vehicle operations of carriers by rail, water or air and of express or forwarding agencies, and leased or rented motor vehicles, with or without drivers; (f) the term "contract carrier by motor vehicle" means any person not included in subdivision (e) of this section, who under special and individual contracts or agreements, and whether directly or by lease or any other arrangement, transports passengers or property over the highways in this state by motor vehicles for hire; (g) the term "motor carrier" includes both a common carrier by motor vehicle and a contract carrier by motor vehicle; (h) the term "exempt carrier" means any person operating a motor vehicle exempt from the provisions of this chapter under section three thereof; (i) the term "power unit" means any vehicle which contains within itself the engine, motor, or other source of power by which said vehicle is propelled; (j) the letters "I.C.C." mean the interstate commerce commission; (k) the words "driveaway operation" mean an operation in which any vehicle or vehicles, operated singly or in lawful combinations, new or used, not owned by the transporting motor carrier, constitute the commodity being transported; (l) the letters "NARUC" mean the national association of regulatory utility commissioners; (m) the term "operations within the borders of this state" means interstate or foreign operations to, from, within or traversing this state.

ARTICLE 6A. REGISTRATION OF INTERSTATE COMMERCE COMMISSION AUTHORITY AND IDENTIFICATION OF VEHICLES TO BE OPERATED THEREUNDER.

§24A-6A-1. Filing of interstate commerce commission authority required; exception.


§24A-6A-3. When registration of vehicles required.

§24A-6A-5. Form and execution of application for identification stamp; fee; option of commission to issue stamp, card or combination thereof.


§24A-6A-10. Inspection of cab cards.


§24A-6A-1. Filing of interstate commerce commission authority required; exception.

1 No motor carrier shall operate within the borders of this state under authority issued by the interstate commerce commission (hereinafter referred to as I. C. C.) unless and until it shall have filed with this commission a copy of such authority. However, a motor carrier shall only be required to file with this commission that portion of its authority permitting operation within the borders of this state. A motor carrier shall not be required to file with this commission an emergency or temporary operating authority having a duration of thirty consecutive days or less if such carrier has: (a) Registered its other authority and identified its vehicles or driveaway operation under the provisions of this chapter, and (b) furnished to this commission a telegram or other written communication describing such emergency or temporary operating authority and stating that operation thereunder shall be in full accord with the requirements of this chapter.


1 A motor carrier need not register under the provisions of this article any authority issued by the I. C. C. permitting operation within the borders of this state, when the same was properly filed with the commission at the time this article became effective.

§24A-6A-3. When registration of vehicles required.

1 No motor carrier subject to the provisions of section one of this article shall operate any motor vehicle within the borders of this state unless and until such vehicle,
other than one used in driveaway operation, shall have been registered with this commission in accordance with the provisions of this article.


(a) On or before the thirty-first day of January of each calendar year, but not earlier than the preceding first day of November, such motor carrier shall apply to the commission for the issuance of an identification stamp or stamps for the registration and identification of the vehicle or vehicles which it intends to operate, or driveaway operations which it intends to conduct, within the borders of this state during the ensuing year. Such motor carrier may thereafter file one or more supplemental applications for additional stamps if the need therefor arises or is anticipated.

(b) If the commission determines that the motor carrier has complied with all applicable provisions of this chapter, the commission shall issue to the motor carrier the number of identification stamps requested.

(c) An identification stamp issued under the provisions of this article shall be used for the purpose of registering and identifying a vehicle or driveaway operation as being operated or conducted by a motor carrier under authority issued by the I. C. C., and shall not be used for the purpose of distinguishing between the vehicles operated by the same motor carrier. A motor carrier receiving an identification stamp under the provisions of this article shall not knowingly permit the use of same by any other person or organization.

(d) The commission shall require the motor carrier to accompany such application with a list identifying each vehicle (other than one to be used in driveaway operations) which it intends to operate within the borders of this state during the ensuing year. The commission shall further require the motor carrier to keep such list current by filing with it an identification of each vehicle acquired for operation within the borders of this state and each vehicle whose operation is discontinued therein.
after the filing of such list. The filing of an identification
of such newly acquired or discontinued vehicle shall be
made with the commission on or before the fifteenth day
after the motor carrier initiates or discontinues operation
of the vehicle within the borders of this state.
(e) On or before the thirty-first day of January of
each calendar year, but not earlier than the preceding
first day of November, such motor carrier shall apply to
the national association of regulatory utility commissioners
(hereinafter referred to as NARUC) for the issuance of
a sufficient supply of uniform identification cab cards
for use in connection with the registration and identifica­
tion of the vehicle or vehicles which it intends to operate,
or driveaway operations which it intends to conduct,
within the borders of this state during the ensuing year.
(f) A motor carrier receiving a cab card under the
provisions of this article shall not knowingly permit the
use of same by any other person or organization. Prior
to operating a vehicle, or conducting a driveaway opera­
tion, within the borders of this state during the en­
suing year, the motor carrier shall place one of such
identification stamps on the back of a cab card in the
square bearing the name of this state in such a manner
that the same cannot be removed without defacing it.
The motor carrier shall thereupon duly complete and
execute the form or certificate printed on the front of the
cab card so as to identify itself and such vehicle or drive­
away operation.
(g) The registration and identification of a vehicle or
driveaway operation under the provisions of this article
and the identification stamp evidencing same and the
cab card prepared therefor shall become void on the
first day of February in the succeeding calendar year,
unless such registration is terminated prior thereto.

§24A-6A-5. Form and execution of application for identifica­tion stamp; fee; option of commission to issue
stamp, card or combination thereof.
1 The application for the issuance of such identification
2 stamp or stamps shall be in the form prescribed by the
3 commission. The application shall be duly completed and
executed by an official of the motor carrier, and shall be accompanied by a three dollar fee for the issuance of each identification stamp. However, the fee for each vehicle identification issued for the period beginning the first day of July, one thousand nine hundred seventy-one, and expiring the first day of February, one thousand nine hundred seventy-three, shall be five dollars. For the period beginning the first day of July, one thousand nine hundred seventy-one, and expiring the first day of February, one thousand nine hundred seventy-three, the commission shall have the option to issue either a vehicle identification stamp or a vehicle identification card as presently authorized under subdivision (a), section six, article six of this chapter or a combination of such stamp and such card.


Any identification stamp issued under the provisions of this article by the commission shall bear its name or symbol and such other distinctive markings or information, if any, as the commission deems appropriate. The stamp shall be in the shape of a square and shall not exceed one inch in diameter.


The cab card shall be in the form prescribed by the NARUC and the commission.


In the case of a vehicle not used in a driveaway operation, the cab card shall be maintained in the cab of such vehicle for which prepared whenever the vehicle is operated under the authority of the carrier identified in the cab card. Such cab cards shall not be used for any vehicle except the vehicle for which it was originally prepared. A motor carrier shall not prepare two or more cab cards which are effective for the same vehicle at the same time.


In the case of a driveaway operation, the cab card shall be maintained in the cab of the vehicle furnishing
3 the motive power for the driveaway operation whenever
4 such an operation is conducted under the authority of
5 the carrier identified in the cab card.

§24A-6A-10. Inspection of cab cards.
1 A cab card shall, upon demand, be presented by the
2 driver to any authorized commission personnel for in-
3 spection.

1 (a) Each motor carrier shall destroy a cab card im-
2 mediately upon its expiration.
3 (b) If a motor carrier permanently discontinues the
4 use of a vehicle for which a cab card has been prepared,
5 it shall nullify the cab card at the time of such discon-
6 tinuance.

1 (a) Any erasure, improper alteration or unauthorized
2 use of a cab card shall render it void.
3 (b) If a cab card is lost, destroyed, mutilated or be-
4 comes illegible, a new cab card may be prepared and new
5 identification stamps may be issued therefor upon ap-
6 plication by the motor carrier and upon payment of the
7 same fee prescribed for the original issuance thereof.

1 Nothing in this article shall be construed to affect the
2 collection or method of collection of taxes or fees by this
3 state from motor carriers for the operation of vehicles
4 within the borders of this state.

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CHAPTER 134
(House Bill No. 803—By Mr. Seibert)

[Passed March 9, 1971; in effect ninety days from passage. Approved by the
Governor.]

AN ACT to amend and reenact section six, article six, chapter
twenty-four-a of the code of West Virginia, one thousand
nine hundred thirty-one, as amended, relating to compensation of commissioners for administering this chapter.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. DUTIES AND PRIVILEGES OF MOTOR CARRIERS SUBJECT TO REGULATION OF THE COMMISSION.

§24A-6-6. Special annual assessment against motor carriers for expenses of administering chapter; "public service commission motor carrier fund."

In addition to the license fees, registration fees, or any other taxes required by law to be collected from motor carriers subject to this chapter, each such motor carrier shall be subject to, and shall pay to the public service commission, a special annual assessment for the purpose of paying the salaries, compensation, costs and expenses of administering and enforcing this chapter. All proceeds or funds derived from such assessment shall be paid into the state treasury and credited to a special fund designated public service commission motor carrier fund, to be appropriated as provided by law for the purposes herein stated. Each member of the commission shall receive a salary of five thousand five hundred dollars per annum as compensation for the administration of this chapter in addition to all other salary or compensation otherwise provided by law, to be paid in monthly installments from said fund. The special assessment against each motor carrier shall be apportioned upon the number and capacity of motor vehicles used by said carrier, computed as hereinafter provided.

(a) For each uniform identification card $ 3.00

(b) Upon each power unit of such carriers of property, in accordance with its capacity as rated by its manufacturer, in addition to amount of subdivision (a):

Of one ton or less capacity $ 9.00
Of over one to one and one-half tons capacity 13.50
Of over one and one-half tons to two tons capacity 18.00
29 Of over two tons to three tons capacity _____________ 22.50
30 Of over three tons to four tons capacity _____________ 27.00
31 Of over four tons to five tons capacity _____________ 31.50
32 Of over five tons to six tons capacity _____________ 36.00
33 Of over six tons to seven tons capacity _____________ 40.50
34 Of over seven tons to eight tons capacity _____________ 45.00
35 Of over eight tons to nine tons capacity _____________ 49.50
36 Of over nine tons to ten tons capacity _____________ 54.00
37 Of over ten tons capacity, $54.00 plus $4.50 for each
38 additional ton of capacity in excess of ten tons.
39  (c) Upon each trailer and semitrailer of such
40 carriers of property, in accordance with its capacity
41 as rated by its manufacturer, in an amount of two
42 thirds of the amount provided for vehicles of its ca-
43 pacity in subdivision (b) of this section.
44  (d) Upon each power unit of such carriers of
45 passengers, in accordance with the seating capacity
46 thereof, in addition to amount in subdivision (a):
47 Of ten passengers or less ______________________ $13.50
48 Of eleven to twenty passengers, inclusive __________ 22.50
49 Of twenty-one to thirty passengers, inclusive _______ 31.50
50 Of thirty-one to forty passengers, inclusive _________ 45.00
51 Of over forty passengers _________________________ 54.00
52  (e) The annual assessment of each motor carrier shall
53 be paid on or before the first day of July of each year.
54 Additional assessments shall be collected upon the plac-
55 ing in use of any additional motor vehicle: Provided, That
56 such additional assessments shall be subject to a reduc-
57 tion in the amounts shown in subdivisions (b), (c), and
58 (d) corresponding to the unexpired quarterly periods
59 of the fiscal year, but shall not in any event be less than
60 one fourth of such amount plus the sum of three dollars
61 provided in subdivision (a).
62  (f) Upon payment by any motor carrier of the as-
63 sessment provided for, the public service commission
64 shall advise the department of motor vehicles by notice
65 in writing that such assessment has been paid, where-
66 upon the department of motor vehicles may issue motor
67 vehicle license for the vehicles described in said notice.
68  (g) Prior to the beginning of any fiscal year the pub-
69 lic service commission, after taking into consideration
any unexpended balance in the motor carrier fund, the probable receipts to be received in the ensuing fiscal year, and the probable costs of administering and enforcing this chapter for the ensuing fiscal year, may fix the assessments provided for in this section for the ensuing fiscal year in amounts which, in the commission's judgment, will produce sufficient revenue to administer and enforce this chapter for said fiscal year: Provided, That in no event shall such assessments exceed the amounts set up in this section.

CHAPTER 135
(House Bill No. 802—By Mr. Seibert)

[Passed March 13, 1971; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article five, chapter twenty-four-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, to remove from the office of state auditor and place in the public service commission the duty to impose and collect the special license fees payable by certain gas pipeline companies.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. EMPLOYEES OF COMMISSION; COMPENSATION TO COMMISSIONERS; FUNDING.

§24B-5-3. Funding; property and revenue license fees.

(a) Every pipeline company shall pay a special license fee in addition to those now required by law. The amount of such fees shall be fixed by the public service commission and levied by it upon each of such pipeline companies according to the number of three inch equiva-
lent pipeline miles included in its pipeline facilities, and shall be apportioned among such pipeline companies upon the basis of the pipeline companies' reports submitted to the commission in such form as the commission may prescribe, so as to produce a revenue of not more than ninety thousand dollars per annum, which fees shall be paid on or before the first day of July in each year.

(b) Such sums collected under section six, article four hereof and under subsection (a) of this section shall be paid into the state treasury and kept as a special fund, designated "public service commission gas pipeline safety fund," to be appropriated as provided by law for the purpose of paying the salaries of the commission, as fixed by this chapter, its expenses and salaries, compensation, costs and expenses of its employees. Any balance in said fund at the end of any fiscal year shall not revert to the treasury, but shall remain in said fund and may be appropriated as provided in this subsection.

CHAPTER 136

(Senate Bill No. 236—By Mr. Poffenbarger)

[Passed February 19, 1971; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eleven, article one, chapter thirty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to summary proceedings on petition for sale, lease or mortgage of the estate of minors, insane persons, or convicts.

Be it enacted by the Legislature of West Virginia:

That section eleven, article one, chapter thirty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:
ARTICLE 1. LANDS OF INFANTS, INSANE PERSONS, OR CONVICTS, AND LANDS HELD IN TRUST.

§37-1-11. Summary proceedings for sale, lease or mortgage; petition; notice.

In addition to the proceedings authorized by section two of this article, the guardian of any minor, or the committee of any insane person or convict, if he deem that the interests of his ward or insane person or convict will be promoted by a sale, lease or mortgage of, or trust deed upon, his estate, or of any estate in which he with others, infants or adults, is interested, whether the estate of the minor, or insane person or convict, or of any of the other persons interested, be absolute or limited, and whether there be or be not limited thereon any other estate, vested or contingent, may apply by petition, in a summary way, to the circuit court, or to the judge thereof in vacation, or to any court of concurrent jurisdiction with the circuit court, or to the judge thereof in vacation, or to any juvenile court, or to the judge thereof in vacation, of the county in which the estate proposed to be sold, leased, or encumbered, or some part thereof may be, describing all the estate, real and personal, belonging to the minor, or insane person or convict and setting forth plainly all the facts calculated to show the propriety of the sale, lease, mortgage, or deed of trust. The petition shall be verified by the oath of the plaintiff, and all persons interested shall be made defendants, and ten days' notice shall be given to such defendants before such petition can be heard: Provided, That any notice or service required by this section to be made upon any infant under fourteen years of age shall be made by delivering a copy of such notice and petition to his guardian resident in this state; or, if there be no such guardian, then either to his father or mother if they be found. If there is no such guardian and if the father or mother cannot be found, service of such notice and petition shall be made upon a guardian ad litem appointed in the manner provided by law.
AN ACT to amend chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article five, relating to safety glazing materials; definitions; labeling required; requiring safety glazing materials in hazardous locations; nonliability of employees; violations and penalties; effective date and prior contracts.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. SAFETY GLAZING MATERIALS.

§47-5-1. Definitions.

§47-5-2. Labeling required.

§47-5-3. Safety glazing materials required in hazardous locations.

§47-5-4. Nonliability of employees.

§47-5-5. Violations; penalties.

§47-5-6. Effective date; prior contracts.

§47-5-1. Definitions.

1 For the purposes of this article:

2 (a) "Fabricator" means a person who fabricates, assembles, or glazes from component parts such structures or products commonly known as sliding glass doors, entrance doors, adjacent fixed glazed panels, storm doors, shower doors, bathtub enclosures, panels to be fixed glazed, entrance doors, or other structures to be glazed, to be used or installed in hazardous locations.

3 (b) "Hazardous locations" shall mean those areas in residential, commercial, and public buildings where the use of other than safety glazing materials would constitute a hazard as the commissioner of the West Virginia department of labor may determine after notice and hearings as required by chapter twenty-nine-a of this code, and shall specifically include those installations, glazed or unglazed, known as sliding glass doors, frame or un-
framed glass doors, and adjacent fixed glazed panels which
may be mistaken for a means of ingress or egress, storm
doors, shower doors, and tub enclosures whether or not
the glazing in such doors, panels, or enclosures is trans-
parent.

(c) "Installer" means those persons or concerns who
or which install glazing materials or build structures
containing glazing materials, in hazardous locations.

(d) "Manufacturer" means a person who manufac-
tures safety glazing material.

(e) "Safety glazing material" means any glazing ma-
terial, such as tempered glass, laminated glass, wire glass
or rigid plastic, which meets the test requirements of
the American National Standards Institute Standard
Z-97.1-1966 and such further requirements as may be
adopted by the department of labor in compliance with
chapter twenty-nine-a of the code of West Virginia and
which are so constructed, treated or combined with other
materials as to minimize the likelihood of cutting and
piercing injuries resulting from human contact with

§47-5-2. Labeling required.

(a) Each light of safety glazing material manufac-
tured, distributed, imported or sold for use in hazardous
locations or installed in a hazardous location within this
state shall be permanently labeled by such means as
etching, sandblasting or firing ceramic material on the
safety glazing material. The label shall identify the
labeler, whether manufacturer, fabricator or installer,
the thickness and type of safety glazing material, and the
fact that the material meets the test requirements of
American National Standards Institute Standard Z-97.1-
1966 and any further requirements as may be adopted
by the department of labor. The label must be legible
and visible after installation.

(b) Safety glazing labeling shall not be used on other
than safety glazing materials.

§47-5-3. Safety glazing materials required in hazardous
locations.

It shall be unlawful in this state to knowingly sell,
fabricate, assemble, glaze, install, consent or cause to be installed glazing materials other than safety glazing materials in, or for use in, any hazardous location: Provided, however, That this shall not apply to the replacement of glazing materials in a residence constructed for occupancy of not more than two families, which residence is in existence on July first, one thousand nine hundred seventy-one.

§47-5-4. Nonliability of employees.
No liability under this article is created for workmen who are employees of a contractor, subcontractor or other employer responsible for compliance with this article.

§47-5-5. Violations; penalties.
Whoever violates any of the provisions of this article shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than fifty dollars nor more than five hundred dollars, or imprisoned in the county jail not more than thirty days, or both fined and imprisoned.

§47-5-6. Effective date; prior contracts.
This article shall take effect on the first day of July, one thousand nine hundred seventy-one. All contracts involving glazing materials entered into prior to the effective date of this article shall not be affected by the provisions of this article even if performance of the contract occurs after the effective date.

CHAPTER 138
(Com. Sub. for House Bill No. 1038—Originating in the House Committee on the Judiciary)

[Passed March 11, 1971; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article
fifteen, relating to prohibition of pyramid promotional schemes in the regulation of trade; restraining prohibited acts; criminal offenses; penalties.

*Be it enacted by the Legislature of West Virginia:*

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

**ARTICLE 15. PYRAMID PROMOTIONAL SCHEME**


(a) "Pyramid promotional scheme" shall mean the organization of any chain letter club, pyramid club, or other group organized or brought together under any plan or device whereby fees or dues or anything of material value to be paid or given by members thereof are to be paid or given to any other member thereof, which plan or device includes any provision for the increase in such membership through a chain process of any members securing other new members and thereby advancing themselves in the group to a position where such members in turn receive fees, dues or things of material value from other members.

(b) "Promote" or "promotion" shall mean the initiation, preparation, operation, advertisement, or the recruitment of any person or persons in the furtherance of any pyramid promotional scheme as defined in subsection (a) of this section.


No person shall promote any pyramid promotional scheme, either personally or through an agent or agents.


All contracts and agreements entered into after the effective date of this article wherein the whole or any
part of the consideration of such contract or agreement is given in exchange for the right to participate in any pyramid promotional scheme are hereby declared to be against public policy and are hereby declared to be void and unenforceable.


The prosecuting attorney of any county or the attorney general, or any person, may petition the circuit court to enjoin the continued operation of any pyramid promotional scheme as defined in this article. The procedure in any such suit shall be the same as the procedure in other suits for equitable relief, except that no bond shall be required upon the granting of either a temporary or permanent injunction therein, when such proceedings are initiated by a prosecuting attorney of any county or the attorney general.


Any person who shall violate the provisions of this article shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than three hundred nor more than one thousand dollars, or confined in jail for a period not to exceed six months, or both.


If any provision of this article is declared unconstitutional or the application thereof to any person or circumstance is held invalid, the constitutionality of the remainder of the article and the applicability thereof to other persons and circumstances shall not be affected thereby.

CHAPTER 139

(House Bill No. 618—By Mr. Seibert and Mr. Dinsmore)

[Passed February 28, 1971; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty, article four, chapter seventeen of the code of West Virginia, one thou-
sand nine hundred thirty-one, as amended, relating to highway contractors' bonds.

Be it enacted by the Legislature of West Virginia:

That section twenty, 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.

§17-4-20. Bidder's bond required; return or forfeiture of bond.

In any case where a contract for work and materials shall be let as a result of competitive bidding, the successful bidder shall promptly and within twenty days after notice of award execute a formal contract to be approved as to its form, terms and conditions by the commissioner, and shall also execute and deliver to the commissioner a good and sufficient surety or collateral bond, payable to the state of West Virginia, to be approved by the commissioner, in such amount as the commissioner may require, but not to exceed the contract price, conditioned that such contractor shall well and truly perform his contract and shall pay in full to the persons entitled thereto for all material, gas, oil, repairs, supplies, tires, equipment, rental charges for equipment and charges for the use of equipment, and labor used by him in and about the performance of such contract, or which reasonably appeared, at the time of delivery or performance, would be substantially consumed in and about the performance of such contract. An action either at law or in equity, may be maintained upon such bond for breach thereof by any person for whose benefit the same was executed or by his assignee. The bidder who has the contract awarded to him and who fails within twenty days after notice of the award to execute the required contract and bond shall forfeit such check or bond, and the check or bond shall be taken and considered as liquidated damages and not as a penalty for failure of such bidder to execute such contract and bond. Upon the execution of such contract and bond by the successful bidder his check or bond shall be returned to him. The checks or bonds of the unsuccessful bidders shall be returned to them promptly after the bids are
opened and the contract awarded to the successful bidder. A duplicate copy of such contract and bond shall be furnished by the commissioner of highways in loose-leaf form, to the clerk of the county court of the county in which such contract is to be performed and it shall be the duty of the clerk to bind and preserve the same in his office, and index the same in the name of the commissioner and of the contractor.

CHAPTER 140

(House Bill No. 744—By Mr. Seibert)

[Passed March 13, 1971; 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 Roads Development Amendment of 1968, in an amount not exceeding ninety million dollars during the fiscal year ending June thirtieth, one thousand nine hundred seventy-two, 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; providing for the state treasurer to be financial advisor; providing for the attorney general or his duly appointed legal representative to serve as bond counsel; and providing that all necessary expenses, including legal expenses approved by the attorney general, incurred in the execution of this act shall be paid out of the state road fund on warrants of the auditor of the state drawn on the state treasurer.

Be it enacted by the Legislature of West Virginia:

ISSUANCE AND SALE OF ROAD BONDS.

§1. Road bonds; amount; when may issue.

§2. Transfer fee; registration fee; where payable; interest rate; tax exempt.

§3. Form of bond.

§4. Form of coupon.

§5. Listing by auditor.

§6. State road sinking fund sources used to pay bonds and interest; investment of remainder.

§7. Covenants of state.

§8. Sale by governor; minimum price.

§9. Proceeds paid into separate account in state road fund; expenditures.

§10. Plates, etc., property of state.

§11. Auditor to be custodian of unsold bonds.

§12. Interim certificates.

§13. State treasurer to be financial advisor; redemption of bonds.

§14. Attorney general or his duly appointed legal representative to serve as bond counsel.

§15. Approval and payment of all necessary expenses.

§1. Road bonds; amount; when may issue.

1 Bonds of the state of West Virginia, under authority of the Roads Development Amendment of 1968, of the par value not to exceed ninety million dollars during the fiscal year ending June thirty, one thousand nine hundred seventy-two, are hereby authorized to be issued and sold for the sole purpose of raising funds for the building and construction of free state roads and highways as provided for by the constitution and the laws enacted thereunder. Such bonds may be issued by the governor in such amounts, in coupons or registered form, in such denominations, at such time, bearing such date or dates, as the governor may determine, based upon
an examination of the West Virginia department of high-
ways' yearly program which justifies the issuance by the
governor of said bonds, and shall become due and payable
serially, annually or semiannually, in such amounts and
mature in such years as the governor may determine:
Provided, That such bonds shall mature within and not
exceeding twenty-five years from their date: Provided
further, That the governor shall not offer for sale more
than thirty million dollars of bonds at any one time
and, in the event said amount of bonds are sold, no
other bonds shall be offered for sale until the expiration
of ninety days from the date the bonds were first offered
for sale.

§2. Transfer fee; registration fee; where payable; interest
rate; tax exempt.

The auditor and the treasurer are hereby authorized
to arrange for the transfer of registered bonds and for
each such transfer a fee of fifty cents shall be charged
by and paid to the state of West Virginia, to the credit
of the state road sinking fund. Bonds taken in exchange
shall be cancelled by the auditor and treasurer and be
carefully preserved by the treasurer. The treasurer shall
make provisions for registering “payable to bearer” bond
and for each bond registered a fee of fifty cents shall
likewise be charged by and paid to the state of West
Virginia, to the credit of the state road sinking fund. All
such bonds shall be payable at the office of the trea-
surer of the state of West Virginia, or, at the option of the
holder, at a bank in the city of New York to be desig-
nated by the governor, or, at the option of the holder
at such other bank or banks, within or without the
state, as may be designated or approved by the gov-
ernor. The bonds shall bear interest, payable semi-
annually, to bearer, at the office of the treasurer of the
state of West Virginia, at the capitol of the state, or
at the banks designated and approved by the governor,
upon presentation and surrender of interest coupons,
then due, in the case of coupon bonds. For the payment
of interest on registered bonds, the treasurer of the
state of West Virginia shall requisition a warrant from
the auditor of the state to be drawn on the state treasurer, and shall mail such warrant to the registered owner at the address as shown by the record of registration. Both the principal and interest of the bonds shall be payable in lawful money of the United States of America and the bonds shall be exempt from taxation by the state of West Virginia, or by any county, district or municipality thereof, which facts shall appear on the face of the bonds as part of the contract with the holder thereof.

§3. Form of bond.

The bonds shall be executed on behalf of the state of West Virginia, by the manual or facsimile signature of the treasurer thereof, under the great seal of the state or a facsimile thereof, and countersigned by the manual or facsimile signature of the auditor of the state: Provided, That one of said signatures on said bonds shall be a manual signature and said bonds shall be in the following form or to the following effect, as nearly as may be, namely:

COUPON ROAD BOND
(Or registered road bond, as the case may be)
OF THE
STATE OF WEST VIRGINIA

The state of West Virginia, under and by virtue of authority of an amendment to the constitution, which was proposed by Senate Joint Resolution No. 2, adopted the eighth day of February, one thousand nine hundred sixty-eight, and was ratified by a vote of the people at the general election on the fifth day of November, one thousand nine hundred sixty-eight, which is hereby made a part hereof as fully as if set forth at length herein, acknowledges itself to be indebted to and hereby promises to pay to the bearer hereof (in case of a coupon bond) or to ________________ or assigns (the owner of record, in case of registered bonds) on the __________ day of ______________, 19_____, in lawful money of the United States of America at the
office of the treasurer of the state of West Virginia at
the capitol of said state, or, at _____________________________
bank in the city of New York, or, at _____________________________
bank, at the option of the holder, the sum of ___________________
dollars, with interest thereon at _____________________ per
centum per annum from the date, payable semiannually
in like lawful money of the United States of America
at the treasurer's office or banks aforesaid, on the first
day of ___________ and the first day of _______________
of each year (and in the case of coupon bonds) according
to the tenor of the annexed coupons bearing the fac-
simile signature of the treasurer of the state of West
Virginia, upon surrender of such coupons. This bond
(in case of a coupon bond) may be exchanged for a
registered bond of like tenor upon application to the
treasurer of the state of West Virginia.

( Redemption provisions, if any, to be inserted here)

To secure the payment of the principal and interest of
this bond, the state of West Virginia covenants and
agrees with the holder as follows: (1) That this bond
shall constitute a direct and general obligation of the
state of West Virginia; (2) that the full faith and credit
of the state is pledged to secure the payment of the
principal and interest of this bond; (3) that an annual
state tax shall be collected in an amount sufficient to
pay as it may accrue the interest on this bond and the
principal thereof; and (4) that such tax shall be levied
in any year only to the extent that the moneys in the
state road fund irrevocably set aside and appropriated
for and applied to the payment of the interest on and
principal of this bond becoming due and payable in such
year are insufficient therefor.

This bond is hereby made exempt from any taxation
by the state of West Virginia, or by any county, dis-
trict, or municipal corporation thereof.

In testimony whereof, witness the manual or facsimile
signature of the treasurer of the state of West Virginia,
and the manual or facsimile countersignature of the
auditor of the state, hereto affixed according to law,
dated the __________ day of __________________________, one
thousand nine hundred __________________________, and
§4. Form of coupon.

The form of coupon shall be substantially as follows, to wit:

STATE OF WEST VIRGINIA

Bond No._______ Coupon No._______

On the first day of __________________, 19______, the state of West Virginia will pay to the bearer, in lawful money of the United States of America, at the office of the treasurer of the state, or, at _______________, bank in the city of New York, or, at _______________, at the option of the holder, the sum of _______________, dollars, the same being semiannual interest on Road Bond No. ____________________.

Treasurer of the State of West Virginia

The signature of the treasurer to such coupon shall be by his facsimile signature and the coupons shall be numbered in the order of their maturity, from number one consecutively. The bonds and coupons may be signed, as provided in this act, by the present treasurer and auditor, or by any of their respective successors in office, and the bonds signed by the persons now in the office may be sold by the governor or his successor in office without being signed by the successor in office of the present treasurer or auditor.

§5. Listing by auditor.

All coupons and registered bonds issued under this act shall be separately listed by the auditor of the state in books provided for the purpose, in each case giving the date, number, character and amount of obligations issued, and in case of registered bonds, the name and
§6. State road sinking fund sources used to pay bonds and interest; investment of remainder.

Into the state road sinking fund there shall be paid all money from any and all appropriations made by the state from the state road fund for the purpose of paying the interest on such bonds or paying off and retiring the bonds, from transfer and registration fees as herein provided, and from any other source whatsoever which is made liable by law for the payment of the principal of such bonds or the interest thereon.

All such funds shall be kept by the treasurer in a separate account, under the designation aforesaid, and all moneys belonging to the fund shall be deposited in the state treasury to the credit thereof.

Such fund shall be applied by the treasurer of the state first to the payment of the semiannual interest on such bonds as it shall become due as herein provided. The remainder of the fund shall be turned over by the state treasurer to the state sinking fund commission, whose duty it shall be to invest the same in obligations of the government of the United States, bonds of the state of West Virginia, or any political subdivision thereof: Provided, That bonds or other obligations so purchased by the state sinking fund commission shall mature so as to provide sufficient money to pay off all bonds herein provided to be issued as they become due; and the money so paid into the state road sinking fund under the provisions of this act shall be expended for the purpose of paying the interest and principal of the bonds hereby provided for as they severally become due and payable and for no other purpose except that the fund may be invested until needed, as herein provided.

§7. Covenants of state.

The state of West Virginia covenants and agrees with the holders of the bonds issued pursuant hereto as fol-
lows: (1) That such bonds shall constitute a direct
and general obligation of the state of West Virginia;
(2) that the full faith and credit of the state is hereby
pledged to secure the payment of the principal and in-
terest of such bonds; (3) that an annual state tax shall
be collected in an amount sufficient to pay as it may
accrue the interest on such bonds and the principal
thereof; and (4) that such tax shall be levied in any
year only to the extent that the moneys in the state
road fund irrevocably set aside and appropriated for
and applied to the payment of the interest on and prin-
cipal of said bonds becoming due and payable in such
year are insufficient therefor.

§8. Sale by governor; minimum price.

The governor shall sell the bonds herein authorized
at such time or times as he may determine necessary to
provide funds for the building and construction of free
state roads and highways, as herein provided, upon the
recommendation of the West Virginia commissioner of
highways, and after reviewing the program of the West
Virginia department of highways and subject to the limi-
tations contained in this act. All sales shall be at not less
than par and accrued interest. All interest coupons be-
coming payable prior to the sale date shall be cancelled
by the treasurer and rendered ineffective, before the
delivery of the bonds so sold.

§9. Proceeds paid into separate account in state road fund;
expenditures.

The proceeds of all sales of bonds herein authorized
shall be paid into a separate and distinct account in the
state road fund and shall be used and appropriated solely
for the building and construction of free state roads
and highways provided for by the state constitution and
the laws enacted thereunder. Except for such sums
necessary for current operating balances, such account
shall be invested and reinvested in short-term obliga-
tions of the United States treasury: Provided, That no
such investment or reinvestment shall adversely affect
the current operating balances of such account.
§10. Plates, etc., property of state.

The plates, casts, dies or other forms from which the bonds authorized by this act are produced or made shall be the property of the state of West Virginia.

§11. Auditor to be custodian of unsold bonds.

The state auditor shall be the custodian of all unsold bonds issued pursuant to the provisions of this act.

§12. Interim certificates.

The governor may authorize the issuance of interim certificates to be issued to the purchasers of such bonds to be held by them in lieu of permanent bonds. When interim certificates are so issued, they shall become full and legal obligations of the state of West Virginia under all of the provisions of this act just as fully and completely as the permanent bonds.

§13. State treasurer to be financial advisor; redemption of bonds.

The state treasurer shall serve as financial advisor to the governor for the issuance and sale of such bonds. In addition to his other duties, the state treasurer may provide in the bond resolution and on the face of the bonds that said bonds are subject to redemption prior to maturity, the redemption price, the redemption date, and the manner in which the bonds shall be redeemed.

§14. Attorney general or his duly appointed legal representative to serve as bond counsel.

The attorney general, or his duly appointed legal representative, shall serve as bond counsel and shall be responsible for the issuance of a final approving opinion regarding the legality of the sale of such bonds.

§15. Approval and payment of all necessary expenses.

All necessary expenses, including legal expenses approved by the attorney general, incurred in the execution of this act shall be paid out of state road fund on warrants of the auditor of the state drawn on the state treasurer.
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-two, for the sole purpose of raising funds for the building and construction of 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; providing for the state treasurer to be financial advisor; providing for the attorney general or his duly appointed legal representative to serve as bond counsel; and providing that all necessary expenses, including legal expenses approved by the attorney general, incurred in the execution of this act shall be paid out of the state road fund on warrants of the auditor of the state drawn on the state treasurer.
Be it enacted by the Legislature of West Virginia:

ISSUANCE AND SALE OF ROAD BONDS.

§1. Road bonds; amount; when may issue.

Bonds of the state of West Virginia, under authority of the Better Roads Amendment of 1964, of the par value not to exceed twenty million dollars during the fiscal year ending June thirty, one thousand nine hundred seventy-two, are hereby authorized to be issued and sold for the sole purpose of raising funds for the building and construction of state roads and highways as provided for by the constitution and the laws enacted thereunder. Such bonds may be issued by the governor in such denominations, at such time, bearing such date or dates as the governor may determine, based upon an examination of the West Virginia department of highways' yearly program which justifies the issuance by the governor of said bonds, and shall become due and payable serially, annually or semiannually, in such amounts and mature in such years as the governor may determine: Provided, That such bonds shall mature within and not exceeding twenty-five years from their date.

§2. Transfer fee; registration fee; where payable; interest rate; tax exempt.

The auditor and the treasurer are hereby authorized to arrange for the transfer of registered bonds and for
each such transfer a fee of fifty cents shall be charged
by and paid to the state of West Virginia, to the credit
of the state road sinking fund. Bonds taken in exchange
shall be cancelled by the auditor and treasurer and be
carefully preserved by the treasurer. The treasurer
shall make provisions for registering “payable to bearer”
bonds, and for each bond registered a fee of fifty cents,
shall likewise be charged by and paid to the state of
West Virginia, to the credit of the state road sinking
fund. All such bonds shall be payable at the office of
the treasurer of the state of West Virginia, or, at the
option of the holder, at a bank in the city of New York
to be designated by the governor, or, at the option
of the holder at such other bank or banks, within or
without the state, as may be designated or approved
by the governor. The bonds shall bear interest, pay-
able semiannually, to bearer, at the office of the treasurer
of the state of West Virginia, at the capitol of the state,
or at the banks designated and approved by the governor,
upon presentation and surrender of interest coupons then
due, in the case of coupon bonds. For the payment
of interest on registered bonds, the treasurer of the
state of West Virginia shall requisition a warrant from
the auditor of the state to be drawn on the state trea-
surer, and shall mail such warrant to the registered
owner at the address as shown by the record of registra-
tion. Both the principal and interest of the bonds shall
be made payable in lawful money of the United States
of America and the bonds shall be exempt from taxation
by the state of West Virginia, or by any county, dis-
trict, or municipality thereof, which facts shall appear
on the face of the bonds as part of the contract with
the holder thereof.

§3. Form of bond.

The bonds shall be executed on behalf of the state of
West Virginia, by the manual or facsimile signature of
the treasurer thereof, under the great seal of the state or
a facsimile thereof, and countersigned by the manual or
facsimile signature of the auditor of the state: Provided,
That one of said signatures on said bonds shall be a man-
The state of West Virginia, under and by virtue of authority of an amendment to the constitution, which was proposed by House Joint Resolution No. 10, adopted the seventh day of March, one thousand nine hundred sixty-three, and was ratified by a vote of the people at the general election on the third day of November, one thousand nine hundred sixty-four, which is here-by made a part hereof as fully as if set forth at length herein, acknowledges itself to be indebted to and hereby promises to pay to the bearer hereof (in case of a coupon bond) or to ___________ or assigns (the owner of record, in case of registered bonds) on the __________ day of __________________, 19__, in lawful money of the United States of America at the office of the treasurer of the state of West Virginia at the capitol of said state, or, at __________________ bank in the city of New York, or, at __________________ bank, at the option of the holder, the sum of __________ dollars, with interest thereon at __________ per centum per annum from the date, payable semiannually in like lawful money of the United States of America at the treasurer’s office or banks aforesaid, on the first day of __________ and the first day of __________ of each year (and in the case of coupon bonds) according to the tenor of the annexed coupons bearing the facsimile signature of the treasurer of the state of West Virginia, upon surrender of such coupons. This bond (in case of a coupon bond) may be exchanged for a registered bond of like tenor upon application to the treasurer of the state of West Virginia.

(Redemption provisions, if any, to be inserted here)

To secure the payment of the principal and interest of this bond, the state of West Virginia covenants and...
agrees with the holder as follows: (1) That this bond shall constitute a direct and general obligation of the state of West Virginia; (2) that the full faith and credit of the state is pledged to secure the payment of the principal and interest of this bond; (3) that an annual state tax shall be collected in an amount sufficient to pay as it may accrue the interest on this bond and the principal thereof; and (4) that such tax shall be levied in any year only to the extent that the moneys in the state road fund irrevocably set aside and appropriated for and applied to the payment of the interest on and principal of this bond becoming due and payable in such year are insufficient therefor.

This bond is hereby made exempt from any taxation by the state of West Virginia, or by any county, district, or municipal corporation thereof.

In testimony whereof, witness the manual or facsimile signature of the treasurer of the state of West Virginia, and the manual or facsimile countersignature of the auditor of the state, hereto affixed according to law, dated the ______ day of __________________, one thousand nine hundred _______, and the seal of the state of West Virginia or a facsimile thereof.

Treasurer of the State of West Virginia

(SEAL)

Countersigned:

Auditor of the State of West Virginia

§4. Form of coupon.

The form of coupon shall be substantially as follows, to wit:

STATE OF WEST VIRGINIA

Bond No. ____________    Coupon No. ____________

On the first day of ___________________, 19____, the state of West Virginia will pay to the bearer, in lawful money of the United States of America, at the office of the treasurer of the state, or, at __________________ bank in the city of New York, or, at __________________, at the option of the holder, the sum of ____________________
dollars, the same being semiannual interest on Road
Bond No.  

The signature of the treasurer to such coupon shall
be by his facsimile signature and the coupons shall be
numbered in the order of their maturity, from number
one consecutively. The bonds and coupons may be
signed, as provided in this act, by the present treasurer
and auditor, or by any of their respective successors
in office, and the bonds signed by the persons now in
the office may be sold by the governor or his successor
in office without being signed by the successor in office
of the present treasurer or auditor.

§5. Listing by auditor.

All coupons and registered bonds issued under this
act shall be separately listed by the auditor of the state
in books provided for the purpose, in each case giving
the date, number, character and amount of obligations
issued, and in case of registered bonds, the name and
post-office address of the person, firm or corporation
registered as the owner thereof.

§6. State road sinking fund sources used to pay bonds and
interest; investment of remainder.

Into the state road sinking fund there shall be paid
all money from any and all appropriations made by
the state from the state road fund for the purpose of
paying the interest on such bonds or paying off and
retiring the bonds, from transfer and registration fees
as herein provided, and from any other source what-
soever which is made liable by law for the payment
of the principal of such bonds or the interest thereon.

All such funds shall be kept by the treasurer in a
separate account, under the designation aforesaid, and
all money belonging to the fund shall be deposited in
the state treasury to the credit thereof.

Such fund shall be applied by the treasurer of the
state first to the payment of the semiannual interest
on such bonds as it shall become due as herein pro-
vided. The remainder of the fund shall be turned over by the state treasurer to the state sinking fund commission, whose duty it shall be to invest the same in obligations of the government of the United States, bonds of the state of West Virginia, or any political subdivision thereof: Provided, That bonds or other obligations so purchased by the state sinking fund commission shall mature so as to provide sufficient money to pay off all bonds herein provided to be issued as they become due; and the money so paid into the state road sinking fund under the provisions of this act shall be expended for the purpose of paying the interest and principal of the bonds hereby provided for as they severally become due and payable and for no other purpose except that the fund may be invested until needed, as herein provided.

§7. Covenants of state.

The state of West Virginia covenants and agrees with the holders of the bonds issued pursuant hereto as follows: (1) That such bonds shall constitute a direct and general obligation of the state of West Virginia; (2) that the full faith and credit of the state is hereby pledged to secure the payment of the principal and interest of such bonds; (3) that an annual state tax shall be collected in an amount sufficient to pay as it may accrue the interest on such bonds and the principal thereof; and (4) that such tax shall be levied in any year only to the extent that the moneys in the state road fund irrevocably set aside and appropriated for and applied to the payment of the interest on and principal of said bonds becoming due and payable in such year are insufficient therefor.

§8. Sale by governor; minimum price.

The governor shall sell the bonds herein authorized at such time or times as he may determine necessary to provide funds for the building and construction of state roads and highways, as herein provided, upon the recommendation of the West Virginia commissioner of highways, and after reviewing the program of the West
7 Virginia department of highways and subject to the limitations contained in this act. All sales shall be at not less than par and accrued interest. All interest coupons becoming payable prior to the sale date shall be cancelled by the treasurer and rendered ineffective, before the delivery of the bonds so sold.

§9. **Proceeds paid into separate account in state road fund; expenditures.**

1 The proceeds of all sales of bonds herein authorized shall be paid into a separate and distinct account in the state road fund and shall be used and appropriated solely for the building and construction of state roads and highways provided for by the state constitution and the laws enacted thereunder. Except for such sums necessary for current operating balances, such account shall be invested and reinvested in short-term obligations of the United States treasury: *Provided,*

10 That no such investment or reinvestment shall adversely affect the current operating balances of such account.

§10. **Plates, etc., property of state.**

1 The plates, casts, dies or other forms from which the bonds authorized by this act are produced or made shall be the property of the state of West Virginia.

§11. **Auditor to be custodian of unsold bonds.**

1 The state auditor shall be the custodian of all unsold bonds issued pursuant to the provisions of this act.

§12. **Interim certificates.**

1 The governor may authorize the issuance of interim certificates to be issued to the purchasers of such bonds to be held by them in lieu of permanent bonds. When interim certificates are so issued, they shall become full and legal obligations of the state of West Virginia under all of the provisions of this act just as fully and completely as the permanent bonds.

§13. **State treasurer to be financial advisor; redemption of bonds.**

1 The state treasurer shall serve as financial advisor to the governor for the issuance and sale of such bonds.
3 In addition to his other duties, the state treasurer may
4 provide in the bond resolution and on the face of the
5 bonds that said bonds are subject to redemption prior
6 to maturity, the redemption price, the redemption date,
7 and the manner in which the bonds shall be redeemed.

§14. Attorney general or his duly appointed legal representa-
tive to serve as bond counsel.
1 The attorney general, or his duly appointed legal
2 representative, shall serve as bond counsel and shall be
3 responsible for the issuance of a final approving opinion
4 regarding the legality of the sale of such bonds.

§15. Approval and payment of all necessary expenses.
1 All necessary expenses, including legal expenses ap-
2 proved by the attorney general, incurred in the execu-
3 tion of this act shall be paid out of state road fund on
4 warrants of the auditor of the state drawn on the state
5 treasurer.

CHAPTER 142
(Senate Bill No. 257—By Mr. Carrigan)

[Passed March 4, 1971; in effect ninety days from passage. Approved by the
Governor.]

AN ACT to amend and reenact section eleven, article three,
chapter twelve of the code of West Virginia, one thousand
nine hundred thirty-one, as amended, relating to travel
expenses, out-of-state travel rules and regulations, pay-
ment of dues or membership in organizations, recruit-
ment expenses for the West Virginia board of regents,
and moving expenses of employees of the West Virginia
board of regents.

Be it enacted by the Legislature of West Virginia:

That section eleven, 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.

§12-3-11. Travel expense; rules to be promulgated concerning same; dues to voluntary organizations; recruitment expenses for West Virginia board of regents; moving expenses of employees of West Virginia board of regents.

1 The governor shall promulgate rules and regulations concerning out-of-state travel by state officials and employees, except those in the legislative and judicial branches of the state government and except for the attorney general, auditor, secretary of state, treasurer and commissioner of agriculture and their employees. The Legislature, the supreme court of appeals and the attorney general, auditor, secretary of state, treasurer and commissioner of agriculture shall promulgate rules and regulations concerning out-of-state travel for their respective branches and departments of state government. Copies of such rules and regulations shall be filed with the auditor, and the secretary of state. It shall be unlawful for the auditor to issue a warrant in payment of any claim for out-of-state travel expenses incurred by a state officer or employee unless such claim meets all the requirements of the rules and regulations so filed.

Payment for dues or membership in annual or other voluntary organizations shall be made from the proper item or appropriation after an itemized schedule of such organizations, together with the amount of such dues or membership, has been submitted to the budget director and approved by the governor.

It shall be lawful for the West Virginia board of regents to authorize the payment of traveling expenses incurred by any person invited to visit the campus of any state institution of higher education or any other facility under control of the board to be interviewed concerning his possible employment by the board or agent thereof.

It shall be lawful for the West Virginia board of regents to authorize payment of: (1) All or part of the reasonable expense incurred by a person newly employed by the board in moving his household furniture, effects and immediate family to his place of employment;
and (2) all or part of the reasonable expense incurred
by an employee of the board in moving his household
furniture, effects and immediate family as a result of
a reassignment of the employee which is considered de-
sirable, advantageous to and in the best interest of the
state: Provided, That no part of the moving expenses
of any one such employee shall be paid more frequently
than once in twelve months.

CHAPTER 143

(Senate Bill No. 101—By Mr. McCourt, Mr. President, and Mr. Palumbo)

[Passed February 24, 1971; in effect ninety days from passage. Approved by the
Governor.]

AN ACT to amend and reenact sections one and three, article
two, chapter eighteen of the code of West Virginia, one
thousand nine hundred thirty-one, as amended, relating
to composition, terms of office, and compensation of state
board of education.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-1. Creation; composition; appointment, qualifications, terms and
removal of members; offices.
§18-2-3. Meetings; compensation and expenses of members.
§18-2-1. Creation; composition; appointment, qualifications,
terms and removal of members; offices.

1 There shall be a state board of education, to be known
2 as the West Virginia board of education, which shall be
3 a corporation and as such may contract and be contracted
4 with, plead and be impleaded, sue and be sued, and have
5 and use a common seal. The state board shall consist of
6 eleven members, of whom one shall be the state superin-
7 tendent of schools, ex officio, and one of whom shall be the
chancellor of the board of regents, ex officio, neither of whom shall be entitled to vote. The other nine members shall be citizens of the state, appointed by the governor, by and with the advice and consent of the Senate, for overlapping terms of nine years, except that the original appointments shall be for terms of one, two, three, four, five, six, seven, eight and nine years, respectively. Terms of office shall begin on the fifth day of November of the appropriate year and end on the fourth day of November of the appropriate year. At least two but not more than three members shall be appointed from each congressional district.

No more than five of the appointive members shall belong to the same political party, and no person shall be eligible for appointment to membership on the state board who is a member of any political party executive committee or holds any other public office or public employment under the federal government or under the government of this state or any of its political subdivisions, or who is an appointee or employee of the board. Members shall be eligible for reappointment. Any vacancy on the board shall be filled by the governor by appointment for the unexpired term.

Notwithstanding the provisions of section four, article six, chapter six of this code, no member of the state board may be removed from office by the governor except for official misconduct, incompetence, neglect of duty, or gross immorality and then only in the manner prescribed by law for the removal by the governor of state elective officers.

Before exercising any authority or performing any duties as a member of the state board, each member shall qualify as such by taking and subscribing to the oath of office prescribed by section five, article four of the constitution of West Virginia, the certificate whereof shall be filed with the secretary of state. A suitable office in the state department of education at the state capitol shall be provided for the use of the state board.

§18-2-3. Meetings; compensation and expenses of members.

The state board shall hold at least six meetings in every year at such times and places as it may prescribe. It may
meet at such other times as may be necessary, such meetings to be held upon its own resolution or at the call of the president of the state board. The members of the state board, other than the ex officio members of the board, shall be paid fifty dollars per diem each day or any part thereof spent in the performance of their duties under this article, and shall be reimbursed for all reasonable and necessary expenses actually incurred incident to the performance of their duties. The state superintendent of schools and the chancellor of the board of regents shall be reimbursed for such expenses, but shall not receive a per diem allowance. Upon presentation of itemized sworn statements, the per diem and reimbursement payments shall be made from appropriations made by the Legislature to the state board.

CHAPTER 144

(Senate Bill No. 104—By Mr. McKown and Mr. Hubbard)

[Passed February 24, 1971; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section ten, article two, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to correspondence, business, occupational and trade schools inside and outside this state; requiring permits in connection therewith; providing certain exemptions from the permit requirements; providing that the West Virginia board of education may refuse the granting of such exemptions; providing for annual reports to the West Virginia board of education by correspondence, business, occupational and trade schools located in this state; providing that permits shall be valid for one year; providing for the issuance of permits upon the furnishing of a surety bond; providing for the revocation of a permit for the failure of a school to fulfill its contract with one or more students, or for viola-
tion or failure to comply with any provisions of law or with any regulations of the West Virginia board of education; providing that a permit is not approval or accreditation of course or school; prohibiting actions by any such school to recover for services where there was no valid permit; authorizing enforcement by attorney general or prosecuting attorney; and providing penalties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-10. Permits required for certain correspondence, business, occupational and trade schools; reports, issuance, renewal and revocation of permits; penalty and enforcement.

Except for persons representing correspondence, occupational and trade schools that are members of nationally recognized accrediting associations approved by the West Virginia board of education, and for persons representing business schools that are members of the West Virginia association of business schools and are also members of the national association and council of business schools, it shall be unlawful for any person representing a correspondence, business, occupational or trade school inside or outside this state to solicit, sell or offer to sell courses of instruction to any resident of this state for consideration or remuneration unless he first obtains a permit from the West Virginia board of education in the manner and on the terms herein prescribed.

All schools whose representatives are exempted from the requirement of a permit under this section shall, before recruiting any students in West Virginia, secure authorization from the state board of education. The board may refuse authorization to any such school, regardless of that school's membership in any accrediting association, if the board has reason to believe that the school engages in
22 practices which are inconsistent with this section or with
23 rules and regulations issued pursuant thereto.

24 All correspondence, business, occupational and trade
25 schools located in this state, including those schools
26 whose representatives are not required to secure permits
27 under this section, shall make annual reports to the state
28 board of education, on forms furnished by the board, pro-
29 viding such appropriate information as the board reason-
30 ably may require.

31 The application for a permit shall be made on forms to
32 be furnished by the board. The application shall be
33 accompanied by a fee of five dollars and by a surety bond
34 in the penal sum of one thousand dollars. Such bond may
35 be continuous and shall be conditioned to provide in-
36 demnification to any student suffering loss as a result of
37 any fraud or misrepresentation used in procuring his
38 enrollment. The bond may be given by the representative
39 of a school or by the school itself as a blanket bond
40 covering all of its representatives in the amount of one
41 thousand dollars each. The surety on any such bond may
42 cancel the same upon giving thirty days’ notice in writing
43 to the principal on said bond and to the state board of
44 education and thereafter shall be relieved of liability for
45 any breach of condition occurring after the effective date
46 of said cancellation.

47 A permit shall be valid for one year from the date on
48 which it is issued, and, upon application, accompanied by
49 a fee of five dollars and the surety bond as herein re-
50 quired, may be renewed if a continuous bond has not
51 been furnished.

52 All fees collected for the issuance or renewal of such
53 permits shall be deposited in the state treasury to the
54 credit of the general school fund.

55 The state board of education may issue a permit to any
56 school representative who shall furnish the surety bond
57 required herein and who shall furnish proof satisfactory
58 to the board that he is of good moral character and that
59 the school he represents has a good reputation for honesty
60 and integrity in prior education transactions.
A permit issued hereunder, upon fifteen days' notice and after a hearing if a hearing is requested by the permit holder, may be revoked by the board of education for fraud or misrepresentation in soliciting or enrolling students, for failure of the school to fulfill its contract with one or more students who are residents of West Virginia, or for violation of or failure to comply with any provision of this section or with any regulation of the state board of education.

The issuance of a permit pursuant to this section does not constitute approval or accreditation of any course or school. No school nor any representative of a school shall make any representation stating, inserting or implying that a permit issued pursuant to this section constitutes approval or accreditation by the state of West Virginia, state board of education or any other department or agency of the state.

The state board of education is hereby authorized to adopt rules and regulations for the administration and enforcement of the provisions of this section, and to establish an advisory committee of not more than five owners or other representatives of privately owned correspondence, business, occupational and trade schools.

Any person violating any provision of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than two hundred dollars, or imprisoned in the county jail not more than sixty days, or both fined and imprisoned. No correspondence, business, occupational or trade school shall maintain an action in any court of this state to recover for services rendered pursuant to a contract solicited by the school's representative if the representative is required under this section to obtain a permit and did not hold a valid permit at the time the contract was signed by any of the parties thereto. The attorney general or any county prosecuting attorney, at the request of the state board of education or upon his own motion, may bring any appropriate action or proceeding in any court of competent jurisdiction for the enforcement of the provisions of this section relating to permits, bonds and sureties.
AN ACT to amend and reenact section thirteen, article five, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the powers and authority of county boards of education.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. COUNTY BOARD OF EDUCATION.


1 The boards, subject to the provisions of this chapter and the rules and regulations of the state board, shall have authority:

2 (1) To control and manage all of the schools and school interests for all school activities and upon all school property, whether owned or leased by the county, including the authority to require that records be kept of all receipts and disbursements of all funds collected or received by any principal, teacher, student or other person in connection therewith, any programs, activities or other endeavors of any nature operated or carried on by or in the name of the school, or any organization or body directly connected with the school, to audit such records and to conserve such funds, which shall be deemed quasi-public moneys, including securing surety bonds by expenditure of board moneys;

3 (2) To establish schools, from preschool through high school, inclusive of vocational schools; and to establish schools and programs, or both, for post high school instruction, subject to approval of the state board of education;

4 (3) To close any school which is unnecessary and to assign the pupils thereof to other schools: Provided, That
such closing shall be officially acted upon and teachers
and service personnel involved notified on or before the
first Monday in May, in the same manner as provided
in section four of this article, except in an emergency,
subject to the approval of the state superintendent, or
under subdivision (5) of this section;
(4) To consolidate schools;
(5) To close any elementary school whose average
daily attendance falls below twenty pupils for two months
in succession, and send the pupils to other schools in the
district or to schools in adjoining districts. If the teachers
in the schools so closed are not transferred or reassigned
to other schools, they shall receive one month's salary;
(6) To provide at public expense adequate means of
transportation for all children of school age who live
more than two miles distant from school by the nearest
available road and to provide at public expense and ac-
cording to such regulations as the board may establish,
adequate means of transportation for school children
participating in board-approved curricular and extra-
curricular activities; and provide in addition thereto,
by rules and regulations and within the available reve-
nues, transportation for those within two miles distance:
Provided, That in all cases the buses or other transpor-
tation facilities owned by the board of education shall
be driven or operated only by drivers regularly employed
by the board of education: Provided, however, That
buses shall be used for extracurricular activities as herein
provided only when the insurance provided for by this
section shall have been effected;
(7) To provide at public expense for insurance against
the negligence of the drivers of school buses, trucks or
other vehicles operated by the board; and if the trans-
portation of pupils be let out to contract, then the con-
tract therefor shall provide that the contractor shall
carry insurance against negligence in such an amount
as the board shall specify;
(8) To employ and to provide in-service training for
teacher aides, the training to be in accordance with rules
and regulations of the state board;
To establish and conduct a self-supporting dormitory for the accommodation of the pupils attending a high school or participating in a post high school program and of persons employed to teach therein;

To employ legal counsel;

The board shall be authorized to provide at public expense, adequate public liability insurance;

No policy or contract of public liability insurance providing coverage for public liability shall be purchased as provided herein, unless it shall contain a provision or endorsement whereby the company issuing such policy waives, or agrees not to assert as a defense to any claim covered by the terms of such policy, the defense of governmental immunity. In any action against the board, its officers, agents or employees, in which there is in effect liability insurance coverage in an amount equal to or greater than the amount sued for, the attorney for such board, the attorney for such insurance carrier, or any other attorney who may appear on behalf of the board, its agents, officers or employees shall not set up the defense of governmental immunity in any such action.

“Quasi-public funds” as used herein are defined as any money received by any principal, teacher, student or other person for the benefit of the school system as a result of curricular or noncurricular activities.

The board of any district shall expend under such regulations as it establishes for each child an amount not to exceed the proportion of all school funds of the district that each child would be entitled to receive if all the funds were distributed equally among all the children of school age in the district upon a per capita basis.

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CHAPTER 146

(Senate Bill No. 130—By Mr. McCourt, Mr. President, and Mr. Palumbo)

[Passed March 4, 1971; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section fifteen, article five,
chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to ages of persons to whom schools open.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-15. School term; employment term; instructional term; extension of terms; levies; ages of persons to whom schools are open.

1 The board shall provide a school term for its schools which shall be comprised of (a) an employment term for teachers, and (b) an instructional term for pupils.
2 The employment term for teachers shall be no less than ten months, a month to be defined as twenty employment days exclusive of Saturdays and Sundays: Provided, That the board may contract with all or part of the personnel for a longer term. The employment term shall be fixed within such beginning and closing dates as established by the state board: Provided, however, That the time between the beginning and closing dates does not exceed forty-three weeks.
3 Within the employment term there shall be an instructional term for pupils of not less than one hundred eighty nor more than one hundred eighty-five instructional days. Instructional and noninstructional activities may be scheduled during the same employment day. The instructional term shall start not later than the fifth day of the employment term.
4 Noninstructional days in the employment term may be used for curriculum development, preparation for opening and closing of the instructional term, in-service and professional training of teachers, teacher-pupil-parent conferences, professional meetings and other related activities.
Where the employment term overlaps a teacher's participation in a summer institute or institution of higher learning for the purpose of professional growth, the teacher may substitute, with the approval of the county superintendent, such participation for not more than four of the noninstructional days of the employment term.

The board may extend the instructional term beyond one hundred eighty-five instructional days provided the employment term is extended an equal number of days.

If the state revenues and regular levies, as provided by law, are insufficient to enable the board of education to provide for the school term, the board may at any general or special election, if petitioned by at least five percent of the qualified voters in the district, submit the question of additional levies to the voters. If at the election sixty percent of the qualified voters cast their ballots in favor of the additional levy, the board shall fix the term and lay a levy necessary to pay the cost of the additional term. The additional levy fixed by the election shall not continue longer than five years without submission to the voters. The additional rate shall not exceed by more than one hundred percent the maximum school rate prescribed by article eight, chapter eleven of the code, as amended.

The public schools shall be open for the full instructional term to all persons who have attained the entrance age as stated in section five, article two and section eighteen, article five, chapter eighteen of this code: Provided, That persons over the age of twenty-one may enter only those programs or classes authorized by the state board of education and deemed appropriate by the county board of education conducting any such program or class: And provided further, That authorization for such programs or classes shall in no way serve to affect or eliminate programs or classes offered by county boards of education at the adult level for which fees are charged to support such programs or classes.
AN ACT to amend and reenact section sixteen-a, article five, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to transfer of students between school districts.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-16a. Authorization to transfer pupils from one district to another; payment of tuition; and net enrollment.

1 Whenever, in the opinion of the board of education of any county, the education and welfare of a pupil will be enhanced, the board of education of such county shall have the authority to transfer any such pupil or pupils on a part-time or full-time basis from one school district to another school district within the state: Provided, That the boards of education of both the transferor and the transferee districts agree to the same. Whenever a pupil is transferred from one school district to another district on a full-time or part-time basis, the board of education of the school district in which the pupil is a bona fide resident shall pay to the board of education of the school district to which the pupil is transferred a tuition that is agreed upon by both such boards. Tuition for each full-time pupil shall not exceed the difference between the state aid per pupil received by the county to which the pupil is transferred and the county cost per pupil in the county to which said pupil is transferred.

For purposes of net enrollment as defined in section two of article nine-a of this chapter: (1) Whenever a
pupil is transferred on a full-time basis from one school
district to another district pursuant to the provisions of
this section, the county to which the pupil is transferred
shall include such pupil in its net enrollment; and (2)
whenever a pupil is transferred on a part-time basis
from one school district to another school district pur-
suant to the provisions of this section, the county in
which the student is a bona fide resident shall count the
pupil in its net enrollment.

CHAPTER 148
(Com. Sub. for Senate Bill No. 343—Originating in the Senate
Committee on Education)

[Passed March 13, 1971; in effect July 1, 1971. Approved by the Governor.]

AN ACT to amend and reenact section eighteen, article five,
chapter eighteen of the code of West Virginia, one thou-
sand nine hundred thirty-one, as amended, relating to
early childhood education.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. COUNTY BOARD OF EDUCATION.


County boards of education shall provide by the school
year one thousand nine hundred seventy-three—seventy-
four and continue thereafter early childhood education
programs for all children who shall have attained the
age of five prior to November first of the school year in
which the pupil enters such early childhood education
program and may establish early childhood education
programs designed for children below the age of five.
Persons employed as early childhood education teach-
ers, as distinguished from paraprofessional personnel,
shall be required to hold a certificate valid for teaching at the assigned level as prescribed by regulations established by the state board of education. The state board of education shall establish and prescribe guidelines and criteria setting forth the minimum requirements for all paraprofessional personnel employed in early childhood education programs established pursuant to the provisions of this section and no such paraprofessional personnel shall be employed in any early childhood education program unless he meets such minimum requirements.

The state board of education with the advice of the state superintendent of free schools shall establish and prescribe guidelines and criteria relating to the establishment and operation of early childhood education programs in accordance with the other provisions of this section. Guidelines and criteria so established and prescribed are also intended to serve for the establishment and operation of nonpublic early childhood education programs and shall be used for the evaluation and approval of such programs, provided application for such evaluation and approval is made in writing to the state board by proper authorities in control of such programs. The state superintendent of free schools at intervals not to exceed two years shall publish a list of nonpublic early childhood education programs that have been approved in accordance with the provisions of this section.

Pursuant to such guidelines and criteria, and only pursuant to such guidelines and criteria, the county boards may establish programs taking early childhood education to the homes of the children involved, using educational television, paraprofessional personnel in addition to and to supplement regularly certified teachers, mobile or permanent classrooms and other means developed to best carry early childhood education to the child in its home and enlist the aid and involvement of its parent or parents in presenting the program to the child; or may develop programs of a more formal kindergarten type, in existing school buildings, or both, as such county board may determine, taking into con-
sideration the cost, the terrain, the existing available facilities, the distances each child may be required to travel, the time each child may be required to be away from home, the child's health, the involvement of parents and such other factors as each county board may find pertinent.

Funds for implementing the early childhood education programs during the fiscal year nineteen hundred seventy-two and thereafter shall be allocated to counties from a special appropriation to the state department of education from the general revenue fund: Provided, however, That except for expenditures from the general revenue funds for regional early childhood demonstration centers, in no event shall any state money from the general fund be expended under the provisions of this section unless federal funds are available for the purpose of this section.

Allocations to counties will be made on the basis of approved early childhood programs. The West Virginia board of education shall establish criteria and standards necessary to guide counties in developing approvable early childhood education programs and shall determine funding levels of said programs on local operating costs.

An additional appropriation shall be made to the state department of education from the general revenue fund to establish and operate during the fiscal year nineteen hundred seventy-two, regional early childhood education demonstration centers in educational regions three, four, five, six and seven, and thereafter in regions one through seven. Said funds shall be allocated to said regions for establishing and operating regional demonstration centers in accordance with criteria and standards established by the West Virginia board of education. Said regional centers shall be established to provide exemplary and innovative early childhood education programs, to provide laboratory experiences for preservice and inservice education for professional personnel and staff development programs for training paraprofessional personnel, to establish organizational and administrative machinery designed to promote cooperation between and among all agencies involved in the education and de-
velopment of young children, and to promote cooperation
between counties in providing high cost supervisory, de-
velopmental, research and evaluative services not cur-
rently available to individual counties.

CHAPTER 149
(House Bill No. 1080—By Mr. Lohr)

[Passed March 13, 1971; in effect ninety days from passage. Approved by the
Governor.]

AN ACT to amend and reenact section three, article seven-a,
chapter eighteen of the code of West Virginia, one thou-
sand nine hundred thirty-one, as amended, relating to the
definition of "refund interest" in relation to teachers re-
tirement.

Be it enacted by the Legislature of West Virginia:

That section three, 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.


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) superintendents of schools and as-
6 ssistant county superintendents of schools; (e) any county
7 school attendance director holding a West Virginia
8 teacher's certificate; (f) the executive secretary of the
9 retirement board; (g) members of the research, exten-
10 sion, administrative or library staffs of the public schools;
11 (h) the state superintendent of schools, heads and as-
12 sistant heads of the divisions under his supervision, or
13 any other employee thereunder performing services of
14 an educational nature; (i) employees of the state board
of education who are performing services of an educational nature; (j) any person employed in a nonteaching capacity by the state board of education, the West Virginia board of regents, any county board of education, the state department of education or the teachers retirement board, if such person was formerly employed as a teacher in the public schools; (k) all classroom teachers, principals and educational administrators in schools under the supervision of the state commissioner of public institutions; (l) employees of the state board of school finance if such person was formerly employed as a teacher in the public schools.

"Members of the administrative staff of the public school" shall include deans of instruction, deans of men, deans of women, and financial and administrative secretaries.

"Members of the extension staff" of the public schools shall include every agricultural agent, boys' and girls' club agent, and every member of the agricultural extension staff whose work is not primarily stenographic, clerical or secretarial.

"Retirement system" shall mean the state teachers retirement system provided for in this article.

"Present teacher" shall mean any person who was a teacher within the twenty-seven years beginning July first, one thousand nine hundred thirty-four, and whose membership in the retirement system has been continuous.

"New entrant" shall mean a teacher who is not a present teacher.

"Present member" shall mean a present teacher who is a member of the retirement system.

"Total service" shall mean all service as a teacher while a member of the retirement system since last becoming a member and, in addition thereto, his credit for prior service, if any.

"Prior service" shall mean all service as a teacher completed prior to July first, one thousand nine hundred forty-one, and all service of a present member who was employed as a teacher, and did not contribute to retirement account because he was legally ineligible for membership during such service.
“Average final salary” shall mean the average annual salary earned as a teacher during the last fifteen years of prior service, including military service, as provided herein, or if prior service is less than fifteen years, the average annual salary for that period. If the records for determining each annual salary need cannot reasonably be established by the retirement board, then the term shall mean the average annual salary of the teacher for years for which records are available.

“Accumulated contributions” shall mean all deposits and all deductions from the earnable compensation of a contributor minus the total of all supplemental fees deducted from his compensation.

“Regular interest” shall mean interest at three percent compounded annually, or a higher earnable rate if approved by the retirement board.

“Refund interest” shall mean interest compounded annually at a rate of three percent.

“Employer” shall mean the agency of and within the state which has employed or employs a member.

“Contributor” shall mean a member of the retirement system who has an account in the teachers accumulation fund.

“Beneficiary” shall mean the recipient of annuity payments made under the retirement system.

“Refund beneficiary” shall mean the estate of a deceased contributor, or such person as he shall have nominated as beneficiary of his contributions by written designation duly executed and filed with the retirement board.

“Earnable compensation” shall mean the full compensation actually received by members for service as teachers whether or not a part of such compensation is received from other funds, federal or otherwise, than those provided by the state or its subdivisions. Allowances from employers for maintenance of members shall be deemed a part of earnable compensation of such members.

“Annuities” shall mean the annual retirement payments for life granted beneficiaries in accordance with this article.
“Member” shall mean a member of the retirement system.

“Public schools” shall mean all publicly supported schools, including normal schools, colleges, and universities in this state.

“Deposit” shall mean a voluntary payment to his account by a member.

The masculine gender shall be construed so as to include the feminine.

Age in excess of seventy years shall be deemed to be seventy years.

CHAPTER 150

(House Bill No. 649—By Mr. Speaker, Mr. Boiarzky, and Mr. Lohr)

[Passed March 6, 1971; in effect from passage. Approved by the Governor.]

AN ACT to repeal section thirteen-f, article two, and section five-c, article eleven; to amend article seven-a by adding thereto a new section, designated section fourteen-a; and to amend article twenty-three by adding thereto a new section, designated section four-a, all of chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to options of certain members of the state teachers retirement system to elect between paying into the state teachers retirement system, a combination of that system and a supplemental retirement system, and a retirement plan other than the state teachers retirement system, and the consequences of such elections, and also, relating to supplemental and additional retirement plans for employees of the West Virginia board of regents.

Be it enacted by the Legislature of West Virginia:

That section thirteen-f, article two, and section five-c, article eleven be repealed; that article seven-a be amended by adding thereto a new section, designated section fourteen-a; and that
article twenty-three be amended by adding thereto a new section, designated section four-a, all of chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all to read as follows:

Article
7A. State Teachers Retirement System.

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

§18-7A-14a. Options of certain members to elect between state teachers retirement system, a combination of that system and a supplemental retirement system, and a retirement plan other than the state teachers retirement system.

Notwithstanding any other provisions of this article to the contrary, any present member of the retirement system, or person who was a member on February twelve, one thousand nine hundred seventy, who, as an employee of the West Virginia board of regents was limited in the amount he could pay into the retirement system to two hundred sixteen dollars per year from July one, one thousand nine hundred sixty-three, to July one, one thousand nine hundred seventy, and to two hundred eighty-eight dollars from July one, one thousand nine hundred seventy, shall have the option, at any time within twelve months from the effective date hereof, to pay into the retirement system twice the amount of the difference between such limitations and the amount he would have paid therein had he been paying the full amount provided by law for members of the retirement system other than employees of the board of regents: Provided, That this additional payment into the retirement system by any such member who was employed by the board of regents while he was under thirty years of age shall be reduced to once the amount of such difference so far as any salary he received from the board while under thirty years of age is concerned.

If such a member makes such election, he must thereafter make contributions into the retirement system on his entire salary without limitation, unless later imposed
by law, and after such election is made the board of
regents as his employer shall no longer make payments
for such employee for the supplemental retirement plan
authorized by section four-a, article twenty-three of this
chapter, but the matching contributions made by the
state or employer in his behalf for retirement plans shall
be limited to those provided by sections fourteen and
sixteen of this article.

Notwithstanding the provisions of subsection (a) of
Plan B, section twenty-six of this article, or any other
 provision herein, any such member who exercises such
option and makes the required additional payment will
then be considered entitled to retirement, death, with-
drawal and all other benefits under the retirement sys-
tem to the same extent as if he had been paying into
the retirement system the full amount provided by law
for members of the system other than employees of the
board of regents throughout the period of his member-
ship in the retirement system.

Any such member who does not make such election
shall have the options of retaining his present status
under the retirement system and the supplemental retire-
ment plan as provided by section four-a, article twenty-
three of this chapter, or of ceasing to pay any portion
of his salary into the retirement system and paying a
percentage of his entire salary into a retirement plan es-
tablished by the board of regents pursuant to the provi-
sions of said section four-a, article twenty-three of this
chapter. In the event he makes the latter election he
shall, upon retirement, receive benefits under the retire-
ment system as if he had retired at the date he ceased
making payments into the system, except that between
such time and the time of actual retirement regular inter-
est shall be considered in computing such benefits.

A person employed by the West Virginia board of re-
gents in the future shall have the option, as of the date
of his employment, to elect whether he is to pay a per-
centage of his entire salary into the state retirement
system, or to pay a percentage of such salary into a
retirement plan established by the board of regents pur-
suant to the provisions of section four-a, article twenty-
three of this chapter, and shall receive benefits according to the retirement plan he selects.

Since persons employed by the former board of governors of West Virginia University, and by the state board of education at institutions of higher education, on July one, one thousand nine hundred sixty-nine, became employees of the West Virginia board of regents on that date, employment by such board of governors and the state board of education at institutions of higher education shall be deemed to have been employment by the board of regents for the purposes of this section.

ARTICLE 23. ADDITIONAL POWERS, DUTIES AND RESPONSIBILITIES OF GOVERNING BOARDS OF STATE INSTITUTIONS OF HIGHER EDUCATION.

§18-23-4a. Supplemental and additional retirement plans for employees; payroll deductions; authority to match employee contributions.

The governing boards shall have the authority to contract for a supplemental retirement plan for any or all of its employees to supplement the benefits such employees will receive under the state teachers retirement system. The governing boards shall have the authority to make additional periodic deductions from the salary payments due such employees in the amount they are required to contribute for the supplemental retirement plan selected by the board. The additional deductions shall not exceed five percent of the salary of employees under thirty-five years of age, six percent of the salary of those thirty-five through forty-four years of age, and seven and one-half percent of the salary of those forty-five years of age and above, and shall not cover any portion of an employee's salary which is covered by the state teachers retirement system.

The governing boards shall also have the authority to contract for an additional retirement plan for any of its employees who elect to participate solely in such a retirement plan selected by the governing boards without participating in the state retirement system. The governing boards shall have the authority to make periodic deductions from the salary payments due such employees.
in the amount they are required to contribute to the additional plan, which deductions shall be the same percentage of the participating employees' salaries as that deducted from the salaries of members of the state retirement system.

The board is further authorized, by way of additional compensation to such employees, to pay an amount equal to the contributions of such employees into either the supplemental or additional retirement plan from funds appropriated to it for personal services. Each participating employee shall have a full and immediate vested interest in the retirement and death benefits accrued from all the moneys paid into such supplemental or additional retirement plan for his benefit. Upon proper requisition of the board, the auditor shall periodically issue a warrant, payable as specified in the requisition, for the total contributions so withheld from the salaries of all participating employees and for the governing board's matching funds.

Notwithstanding any provisions contained in article seven-a and article twenty-three of this chapter, once a member has elected one of the options contained in section fourteen-a of article seven-a of this chapter and section four-a of article twenty-three of this chapter, he cannot thereafter change such election.

CHAPTER 151

(House Bill No. 648—By Mr. Speaker, Mr. Boiarsky, and Mr. Lohr)

[Passed March 12, 1971; in effect July 1, 1971. Approved by the Governor.]

AN ACT to amend and reenact section twenty-six, article seven-a, chapter eighteen 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 twenty-six-e, all relating to computation of benefits under the state teachers retirement system.
Be it enacted by the Legislature of West Virginia:

That section 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; and that said article be further amended by adding thereto a new section, designated section twenty-six-e, all to read as follows:

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.


§18-7A-26e. Supplemental benefits to certain annuitants.


1. Annuitants whose annuities were approved by the retirement board effective before July first, one thousand nine hundred seventy shall be paid the annuities which were approved by the retirement board, subject to the supplemental benefits authorized in this article.

2. Annuites approved by the board effective after June thirty, one thousand nine hundred seventy, shall be computed as provided herein.

3. Upon establishment of eligibility for a retirement allowance, a member shall be granted an annuity which shall be the sum of either Plan A or Plan B, whichever provides the larger annuity.

4. Plan A shall be computed as follows:

(a) The actuarial equivalent of the contributions and deposits of the member in his individual account up to the time of his retirement, with regular interest;

(b) The actuarial equivalent of the contributions of the employer up to the time of the member's retirement, which shall equal the sum in subdivision (a) of Plan A minus deposits with regular interest on such deposits;

(c) Where prior service credit has been granted, an allowance of one and one-half percent of the member's average final salary multiplied by the number of years of prior service credited to him;

(d) The actuarial equivalent of the amounts that would have accumulated under subdivisions (a) and (b) of Plan A, if the member had contributed to his individual account until he was fifty years old, at the annual rate of his past actual contributions, but this subdivision shall
(e) Twelve dollars multiplied by his total service credit as a teacher;

(f) The member shall receive in addition to the allowances under subdivisions (c) and (d) an amount equal to six dollars multiplied by his total service credit: Provided, That the maximum allowance under this subdivision shall be one hundred ninety-two dollars: Provided, however, That this subdivision shall be effective on and after July first, one thousand nine hundred fifty-seven;

(g) Twelve dollars multiplied by the member's total service credit as a teacher.

For the purpose of subdivision (c) in Plan A:

(1) An allowance for prior service shall in no case exceed three fifths of the member's average final salary;

(2) Average final salary for this purpose shall in no case exceed two thousand five hundred dollars, nor shall it be less than twelve hundred dollars.

Plan B shall be computed as follows:

(a) Two percent of the member's average salary multiplied by his total service credit as a teacher. In this paragraph "average salary" shall mean the average of the highest annual salaries received by the member during any five years contained within his last fifteen years of total service credit: Provided, That the highest annual salary used in this calculation for members employed by the West Virginia board of regents at institutions of higher education under its control, shall be four thousand eight hundred dollars;

(b) The actuarial equivalent of the deposits of the member in his individual account up to the time of his retirement, with regular interest.

The disability annuities of all teachers retired for disability shall be based upon a disability table prepared by a competent actuary approved by the retirement board.

Upon the death of an annuitant who qualified for an annuity as a surviving spouse or because of permanent
disability, the estate of the deceased or beneficiary designated for such purpose, shall be paid the difference, if any, between the member's contributions with regular interest thereon, and the sum of the annuity payments.

All annuities shall be paid in twelve monthly payments. In computing such monthly payments, fractions of a cent shall be deemed a cent. Such monthly payments shall cease with the payment for the month within which the beneficiary dies, and shall begin with the payment for the month succeeding the month within which the annuitant became eligible under this article for the annuity granted; in no case, however, shall an annuitant receive more than four monthly payments which are retroactive after the board receives his application for annuity.

In case the retirement board receives data affecting the approved annuity of a retired teacher, the annuity shall be changed in accordance with such data, the change being effective with the payment for the month within which the board received the new data.

Any person who has attained the age of sixty-five and who has served at least twenty-five years as a teacher prior to July one, one thousand nine hundred forty-one, shall be eligible for prior service credit and for prior service pensions as prescribed in this section.

§18-7A-26e. Supplemental benefits to certain annuitants.

(a) An annuitant whose annuity was approved by the board effective after June thirty, one thousand nine hundred sixty-three, and before July one, one thousand nine hundred seventy, may receive, at his election, an annuity of two percent of his average final salary times his total service credit, plus deposits and tax sheltered annuities, but not including the supplemental benefits permitted pursuant to sections twenty-six-a, twenty-six-b, twenty-six-c and twenty-six-d of this article. Any additional benefit conferred herein shall not be retroactive, but shall be paid beginning July one, one thousand nine hundred seventy-one, if the option to elect the above plan is exercised by the annuitant prior to May thirty-one, one thousand nine hundred seventy-one.
(b) An annuitant whose annuity was approved by the board effective before July one, one thousand nine hundred sixty-three, and any annuitant who is eligible for, but does not elect the plan specified in subsection (a) of this section shall receive, upon application, an additional amount equal to twenty-five percent of his present retirement allowance.

(c) Any retired teacher who was an employee of the West Virginia board of governors or the state board of education and who was limited in the amount he could pay into the retirement system to two hundred sixteen dollars per year from July one, one thousand nine hundred sixty-three, to July one, one thousand nine hundred seventy, and who retired prior to February one, one thousand nine hundred seventy, shall have the option at any time within six months from the effective date hereof, to pay into the retirement system the difference between such limitations and twice the amount he would have paid therein had he been paying the full amount provided by law for members of the retirement system other than employees of the West Virginia board of governors or the state board of education. Upon completion of such above-named contributions the annuitant shall be entitled to benefits under the formula specified in subsection (a) of this section, plus deposits and tax sheltered annuities, but not including the supplemental benefits permitted pursuant to sections twenty-six-a, twenty-six-b, twenty-six-c and twenty-six-d of this article. Any additional benefit conferred herein shall not be retroactive to the time of retirement, but shall be paid beginning July one, one thousand nine hundred seventy-one.

CHAPTER 152

(House Bill No. 1040—By Mr. Lohr)

[Passed March 9, 1971; in effect July 1, 1971. Approved by the Governor.]

AN ACT to amend and reenact section thirty-four, article seven-a, chapter eighteen of the code of West Virginia,
one thousand nine hundred thirty-one, as amended, relating to loans to members of the state teachers retirement system.

Be it enacted by the Legislature of West Virginia:

That section thirty-four, 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-34. Loans to members.

1 A member of the retirement system upon written application may borrow from his individual account in the teachers accumulation fund, subject to these restrictions:

2 (1) Loans shall be made in multiples of ten dollars, the minimal loan being forty dollars and the maximum being three thousand dollars.

3 (2) Loans to any one member shall not exceed one half of his contributions to his individual account in the teachers accumulation fund.

4 (3) Interest charged on the amount of the loan shall be six percent per annum, and minimal interest charge shall be for six months.

5 (4) No member shall be eligible for more than one loan in any one year, except in cases of accidents, illness requiring medical or hospital care for himself or a member of his immediate family.

6 (5) If a refund or benefit is payable to the borrower or his beneficiary before he repays the loan with interest, the balance due with interest to date shall be deducted from such benefit or refund.

7 (6) From his monthly salary as a teacher the member shall pay the loan and interest by deductions which will pay the loan and interest in not more than forty-eight nor less than six months. Upon notice of loan granted and payment due, the employer shall be responsible for making such salary deductions and reporting them to the retirement board. At the option of the retirement board, loan deductions may be collected as prescribed
AN ACT to repeal sections six and six-a, article nine, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact article nine-a, chapter eighteen of said code; and to amend and reenact sections two, seven and eight, article four, chapter eighteen-a of said code, all relating to the financial support of the free public school system, the powers and duties of the state board of school finance and the minimum salary schedule for public school teachers and auxiliary and service personnel.

Be it enacted by the Legislature of West Virginia:

That sections six and six-a, article nine, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that article nine-a, chapter eighteen of said code be amended and reenacted; and that sections two, seven and eight, article four, chapter eighteen-a of said code be amended and reenacted, all to read as follows:

Chapter
18. Education.
18A. School Personnel.

CHAPTER 18. EDUCATION.

ARTICLE 9A. PUBLIC SCHOOL SUPPORT.

§18-9A-1. Public school support plan.
§18-9A-3. Total state basic foundation program.
§18-9A-4. Foundation allowance for professional educators.
§18-9A-1. Public school support plan.

1 The intent of this article is to provide a plan of financial support for the public schools to be known as the West Virginia public school support plan, and to fix statutorily both state and county responsibility for the financing of the same. In enacting this plan, the Legislature has in mind the following purpose: To effect a basic foundation support plan that shall provide for program growth which will assure more equitable educational opportunity for all children and youth irrespective of where they may live.


1 For the purpose of this article:
2 "State board" means the West Virginia board of education.
3 "County board" or "board" means a county board of education.
4 "Professional salaries" means the state legal-mandated salaries of the professional educators as provided in article four, chapter eighteen-a of this code.
5 "Professional educator" shall be synonymous with and shall have the same meaning as "teacher" as defined in section one, article one, chapter eighteen of this code.
6 "Employment term" means the months of employment as defined in section fifteen, article five of this chapter.
7 "Net enrollment" means the number of pupils enrolled in special education programs, early childhood programs
and grades one to twelve, inclusive, of the public schools
of the county.

"Adjusted enrollment" means the net enrollment plus
twice the number of pupils enrolled for special education,
all adjusted to the equivalent of the instructional term and
in accordance with such eligibility requirements and
regulations as established by the state board, but no pupil
shall be counted more than once by reason of transfer
within the county or from another county within the
state, and no pupil shall be counted who attends school
in this state from another state.

"Levies for general current expense purposes" means
on each hundred dollars of valuation, nineteen and six-
tenths cents on Class I property, thirty-nine and two-
tenths cents on Class II property, and seventy-eight and
four-tenths cents on Classes III and IV property.

§18-9A-3. Total state basic foundation program.

1 The total basic foundation program for the state for
any year shall be the sum of the computed costs for the
 counties in aggregate, as hereinafter determined, for the
following:

(1) Allowance for professional educators;
(2) Allowance for other personnel;
(3) Allowance for fixed charges;
(4) Allowance for transportation cost;
(5) Allowance for administrative cost;
(6) Allowance for other current expense; and
(7) Allowance toward national average attainment.

§18-9A-4. Foundation allowance for professional educators.

1 The basic foundation allowance to the county for pro-
fessional educators shall be the amount of money re-
quired to pay the state minimum salaries, in accordance
with provisions of article four, chapter eighteen-a of the
code, to such personnel employed: Provided, That in
making this computation no county shall receive an al-
lowance for such personnel which number is in excess
of fifty-five professional educators to each one thousand
students in adjusted enrollment: Provided, That any
county not qualifying under the provision of section four-
teen of this article shall be eligible for a growth-rate in
professional personnel in any one year not to exceed
twenty percent of its total potential increase under this
provision, except that in no case shall such limit be fewer
than five professional: Provided, however, That the num-ber of and the allowance for personnel paid in part by
state and county funds shall be prorated: Provided further,
That where two or more counties join together in sup-
port of a vocational or comprehensive high school or any
other program or service, the professional educators for
such school or program may be prorated among the
participating counties on the basis of each one's enroll-
ment therein and that such personnel shall be considered
within the above stated limit.

§18-9A-5. Foundation allowance for other personnel.

1 The total allowance for other personnel shall be the
2 sum of the following:
3 (1) An amount equal to thirteen and one-half percent
4 of the computed total state allocation for professional
5 educators, as defined in section four, above, such amount
6 to be distributed to the counties in proportion to the ad-
7 justed enrollment; and
8 (2) An amount equal to five and one-half percent of
9 the total state allocation for professional educators, such
10 amount to be distributed in proportion to the number of
11 full-time school bus drivers employed within the several
12 counties.

§18-9A-6. Foundation allowance for fixed charges.

1 The total allowance for fixed charges shall be equal to
2 the sum of the foundation allowance for professional edu-
3 cators and the foundation allowance for other personnel,
4 as determined in sections four and five above, multiplied
5 by the sum of the current social security rate of con-
6 tribution plus two percent. Computation for distribution
7 to the counties shall be made in the same manner.

1. The allowance in the foundation school program for each county for transportation shall be the sum of the following computations:

2. (1) Eighty percent of the transportation cost within each county for maintenance, operation and related costs, exclusive of all salaries;

3. (2) The total cost, within each county, of insurance premiums on buses, buildings and equipment used in transportation: Provided, That such premiums were procured through competitive bidding;

4. (3) An amount equal to ten percent of the current replacement value of the bus fleet within each county as determined by the state board, such amount to be used only for the replacement of buses;

5. (4) Eighty percent of the cost of contracted transportation services and public utility transportation with each county; and

6. (5) Aid in lieu of transportation equal to the state average amount per pupil for each pupil receiving such aid within each county.

The total state share for this purpose shall be the sum of the county shares: Provided, That no county shall receive an allowance which is greater than one third above the computed state average allowance per mile multiplied by the total mileage in the county.


1. The allowance for administrative cost shall be equal to one percent of the allocation for professional educators, as determined in section four of this article. Distribution of the computed allowance shall be made to the counties in equal amounts.


1. The total allowance for other current expense shall be equal to ten percent of the sum of the computed state allocation for professional educators and other personnel as determined in sections four and five of this article. Distribution to the counties shall be made proportional to adjusted enrollment.
§18-9A-10. Foundation allowance toward national average attainment.

So long as the average expenditure per pupil in West Virginia remains below the national average as computed by the United States office of education, funds which accrue from allocations due to increase in total local share, from balances in the general school fund, or from appropriations for such purpose shall be allocated proportional to adjusted enrollment.


On the basis of the most recent survey of property valuations in the state, completed as to all classes of property in all counties determined by the tax commissioner under present or former provisions of this article, the state board shall for each county compute by application of the levies for general current expense purposes, as defined in section two of this article, the amount of revenue which such levies would produce if levied upon one hundred percent of the appraised value of each of the several classes of property contained in the report or revised report of such value, made to it by the tax commissioner as follows: (1) The state board shall first take ninety-seven and one-half percent of the amount ascertained by applying these rates to the total assessed public utility valuation in each classification of property in the county. (2) The state board shall then apply these rates to the appraised value of other property in each classification in the county as determined by the tax commissioner and shall deduct therefrom five percent as an allowance for the usual losses in collections due to discounts, exonerations, delinquencies and the like. Fifty percent of the amount so determined shall be added to the ninety-seven and one-half percent of public utility taxes computed as provided above and this total shall be the local share of the particular county.

The tax commissioner shall make or cause to be made an appraisal in the several counties of the state of all nonutility real property and of all nonutility personal
property which shall be based upon true and actual
value as set forth in article three, chapter eleven of this
code. In determining the value of personal property—
other than all machinery, equipment, furniture and fix-
tures of any industrial plant, mine, quarry or installation
and of any commercial, industrial, or professional estab-
ishment—the tax commissioner shall prescribe accepted
methods of determining such values. The tax commissioner
shall in accordance with such methods determine the
value of such property.

For the purpose of appraising commercial, industrial
and professional properties, the tax commissioner, after
consultation with the county court, may employ a com-
petent property appraisal firm or firms, which appraisals
shall be under his supervision and direction.

In making or causing to be made such appraisal, the
tax commissioner shall employ such assistance as avail-
able appropriations will permit and shall prescribe and
use such accepted methods and procedures for checking
property values and determining the amount of property
in the several classes of property provided by law as are
customarily employed for appraisal purposes.

Such appraisal of all said property in the several coun-
ties shall be completed prior to the first day of July,
one thousand nine hundred sixty-seven. Each year after
the completion of the property appraisal in a county
the tax commissioner shall maintain the appraisal by
making or causing to be made such surveys, examina-
tions, audits, maps and investigations of the value of
the several classes of property in each county which
should be listed and taxed under the several classifica-
tions, and shall determine the appraised value thereof.
On the basis of information so ascertained, the tax com-
misioner shall annually revise his reports to the Legis-
lature and to the state board concerning such appraisals,
such reports to be made not later than the first day of
January of each year.

As information from such appraisal of property in a
able for a district, municipality and county, the tax
commissioner shall notify the county court and the as-
sessor of said county that such information is available
and shall make available to said county court and assessor
all data, records and reports or other information relating
to said work, along with a list of any properties in said
district, municipality and county which are entered on
the assessment rolls but for which no appraisal has been
made, a list of any properties which were appraised but
which cannot be found on the assessment rolls and a
list of all properties carried on the assessment rolls which
have not been identified on the map. Said list shall set
forth the name of the owner and a description of the
property and the reason, if known, for its failure to have
been entered on the assessment rolls or to have been
appraised or to have been identified on the map, as the
case may be.

As such appraisal of property in a county, under this
section, is completed to the extent that a total valuation
for each class of property can be determined, such ap-
praisal shall be delivered to the assessor and the county
court, and in each assessment year commencing after
such appraisal is so delivered and received, the county
assessor and the county court, sitting as a board of
equalization and review, shall use such appraised valua-
tions as a basis for determining the true and actual value
for assessment purposes of the several classes of property.
The total assessed valuation in each of the four classes
of property shall be not less than fifty percent nor more
than one hundred percent of the appraised valuation of
each said class of property.

Whenever in any year a county assessor or a county
court shall fail or refuse to comply with the provisions
of this section in setting the valuations of property for
assessment purposes in any class or classes of property
in the county, the state tax commissioner shall review
the valuations for assessment purposes made by the
county assessor and the county court and shall direct the
county assessor and the county court to make such cor-
rections in the valuations as may be necessary so that
they shall comply with the requirements of chapter eleven of this code and of this section, and the tax commissioner shall enter the county and fix the assessments at the required ratios. Refusal of the assessor or the county court to make such corrections shall constitute grounds for removal from office.

In any year in which the total assessed valuation of a county shall fail to meet the minimum requirements above set forth, the county court of such county shall allocate for such year to the county board of education from the tax levies allowed to the county court a sufficient portion of its levies as will, when applied to the valuations for assessment purposes of such property in the county, provide a sum of money equal to the difference between the amount of revenue which will be produced by application of the allowable school levy rates defined in section two of this article upon the valuations for assessment purposes of such property and the amount of revenue which would be yielded by the application of such levies to fifty percent of the total of appraised valuations of such property. In the event the county court shall fail or refuse to make the reallocation of levies as provided for herein, the county board of education, the tax commissioner, the state board, or any other interested party, shall have the right to enforce the same by writ of mandamus in any court of competent jurisdiction.

In conjunction with and as a result of the appraisal herein set forth the tax commissioner shall have the power, and it shall be his duty, to establish a permanent records system for each county in the state, consisting of:

(1) Tax maps of the entire county drawn to scale or aerial maps, which maps shall indicate all property and lot lines, set forth dimensions or areas, indicate whether the land is improved, and identify the respective parcels or lots by a system of numbers or symbols and numbers, whereby the ownership of such parcels and lots can be ascertained by reference to the property record cards and property owner's index;
(2) Property record cards arranged geographically according to the location of property on the tax maps, which cards shall set forth the location and description thereof, the acreage or dimensions, description of improvements, if any, the owner's name, address and date of acquisition, the purchase price, if any, set forth in the deed of acquisition, the amount of tax stamps, if any, on the deed, the assessed valuation, and the identifying number or symbol and number, shown on the tax map; and

(3) Property owner's index consisting of an alphabetical listing of all property owners, setting forth brief descriptions of each parcel or lot owned and cross-indexed with the property record cards and the tax map.

The tax commissioner is hereby authorized and empowered to enter into such contracts as may be necessary, and for which funds may be available, to establish the permanent records system herein provided for, or may through his staff and employees, prepare and complete such system.

All microfilm photography and original copies of tax maps created under the provisions of this section are the property of the state of West Virginia and the reproduction, copying, distribution or sale of such microfilm, photography or tax maps or any copies thereof without the written permission of the state tax commissioner is prohibited. Any person who shall violate the provisions of this paragraph shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than fifty dollars nor more than three hundred dollars, or imprisoned in the county jail not less than thirty days nor more than one year, or both fined and imprisoned. Justices of the peace shall have concurrent jurisdiction with other courts having jurisdiction for the trial of all misdemeanors arising under this paragraph.

The tax commissioner shall by uniform regulations establish a procedure for the sale of reproduction of microfilm, photography and maps and may pay for having such reproductions made from the appropriation for "property appraisal." Any funds received as a result of the sale of such reproductions shall be deposited to
the appropriated account from which the payment for
reproduction is made.

The cost of conducting the appraisal herein provided
for shall be borne jointly by the state and the several
counties in the following manner and terms: There
shall be appropriated from the general revenue fund
annually an amount sufficient to maintain the appraisal
in all counties of the state. Each county shall furnish,
through its county court, not more than ten percent of
the cost of such appraisal or reappraisal and permanent
records system for each county. Such county costs may
be paid over a period of three years with the approval
of the tax commissioner. In those instances where the
cost of the appraisal, reappraisal or permanent records
system required by this section has been paid by the
tax commissioner from funds appropriated for these
purposes, the share of such cost allocated to each coun-
ty shall, upon receipt thereof by the tax commissioner,
be deposited to the appropriated account from which
such payments have been made.

The county assessor and the county court shall comply
with the provisions of chapter eleven of this code in de-
termining the true and actual value of property for
assessment purposes and shall not arbitrarily use a direct
percentage application to the appraisal valuations, wheth-
er complete appraisal or spot survey, of any class of
property or property within a class for such purpose.

The provisions of this section shall not be construed to
alter or repeal in any manner the provisions of chapter
eleven of this code, but shall be construed in pari
materia therewith, and compliance with this section by
the assessor and county court shall be considered, pro
tantum, as compliance with said chapter eleven.

§18-9A-12. County basic foundation; total basic state aid al-
lowance.

1. The basic foundation program for each county for the
fiscal year shall be the sum of the amounts computed in
accordance with the provisions of sections four, five, six,
seven, eight, nine and ten of this article. On the first
working day of July in each year, the state board shall
determine the basic foundation program for each county
for that fiscal year. Data used in the computations re-
lating to net and adjusted enrollment, and the number
of professional educators, shall be for the third month of
the prior school term. Transportation expenditures used
in these computations shall be for the most recent year
in which data are available. The allocated state aid
share of the county's basic foundation program shall be
the difference between the cost of its basic foundation
program and the county's local share as determined in
section eleven of this article.

Total basic state aid to the county shall be the com-
puted state share of basic foundation support. After such
computation is completed, the state board shall imme-
diately certify to each county board the amount of state
aid allocated to the county for that fiscal year, subject to
any qualifying provisions of this article.


For the fiscal year beginning on the first day of July,
one thousand nine hundred seventy-one, and for each of
the next three fiscal years, there shall be an allowance
for loss reduction which shall be distributed as provided
in this section.

In order to determine which counties are entitled to
such allowance, and the amount of such aid, the state
board shall first compute the amount to be received by
each county from the regular state aid appropriation for
the fiscal year beginning on the first day of July, one
thousand nine hundred seventy-one, allocated as pro-
vided in section twelve of this article. The state board
shall then compare such amount with the state aid the
county would have received from the plan in effect dur-
ing the fiscal year one thousand nine hundred seventy—
one thousand nine hundred seventy-one. From the funds
appropriated for the purpose, the state board shall then
allocate to each county showing a loss in state aid on the
basis of such comparison, eighty percent of such loss the
first year, sixty percent the second year, forty percent

In order to encourage counties to move toward new and improved programs and to reduce class size, counties having ratios of adjusted enrollment to professional staff higher than the state average will be granted advance funds to employ sufficient additional staff to reach the state average: Provided, That in any one fiscal year no more than one half of such additional staff may be counted under this provision. Such funds shall be granted to each eligible county based on data at the end of the third month of school but only on the basis of actual staff members employed.


To provide for the support of increased net enrollments in the counties in a school year over the net enrollments used in the computation of total state aid for that year, there shall be appropriated for that purpose from the general revenue fund an amount equal to the average total state aid per net pupil multiplied by the total of all of the increases in the net enrollments of the counties made by comparing the most recent reports of net enrollment for the third school month to the immediately previous year's reports for the same school month.

Upon determination of the several increases in the respective counties' net enrollments, as of the close of the third school month, each county showing such increase shall be allocated an amount equal to that county's average per net pupil total state aid multiplied by the increase in that county's net enrollment found as provided heretofore. Such allocations shall be distributed not later than December thirty-one of each year to the counties having increases in net enrollment as heretofore provided. If the amount appropriated for this purpose shall not be sufficient to provide payment in full for the total of these several allocations, each county allocation shall be reduced to an amount which is proportionate to the appropriation compared to the total of the several alloca-
tions, and the allocations as thus adjusted shall be dis-
tributed to the counties as provided in this section.

No provision of this section shall be construed to in any
way affect the allocation of moneys for educational pur-
poses to a county under other provisions of law.


There shall be established a separate school fund to
be known as the "general school fund" which shall be
administered by the same board as provided in section
five, article nine of this chapter. The proceeds from the
income of this school fund, and the interest thereon, as
provided for under the irreducible school fund amend-
ment to the constitution shall accrue to the general school
fund which, with moneys appropriated by the Legislature,
shall be used to support the public schools of the state.

All other state funds and taxes formerly dedicated to
the general school fund shall hereafter be paid into the
state general fund.

No person who, at the time of passage of this article,
depended on the general school fund in part or in whole
for payment of his salary shall have his salary reduced
by virtue of this article.


Notwithstanding any and all references to the board
of school finance as found in article nine-b of this chap-
ter, the West Virginia board of education, through its
chief executive officer, shall direct and carry out all pro-
visions of said article nine-b.


The state board shall have authority to make such
reasonable rules and regulations as may be necessary to
enable it to carry out the purposes and intent of this ar-
ticle with respect to the allocation of state aid for schools.


Each county board of education shall file a request
schedule with the state board for payments of state aid
to which it is entitled in each fiscal year. The state board
shall have authority to examine and approve, disapprove
or modify the schedule of payments, so long as its action does not unreasonably curtail the educational program of any county. The state board shall pay state aid by requisition upon the state auditor in favor of the fiscal officer of each county board in installments according to the schedule as finally approved or modified.


The provisions of any section or parts of sections, or articles or parts of articles, of the code of West Virginia, one thousand nine hundred thirty-one, as amended, which are inconsistent with the provisions of this article, are hereby repealed to the extent of such inconsistency.

CHAPTER 18A. SCHOOL PERSONNEL.

ARTICLE 4. SALARIES, WAGES, AND OTHER BENEFITS.

§18A-4-2. State minimum salary schedule.

§18A-4-7. Substitute teachers.

§18A-4-8. Minimum pay for service and auxiliary personnel.

§18A-4-2. State minimum salary schedule.

STATE MINIMUM SALARY SCHEDULE

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§18A-4-7. Substitute teachers.
1 The pay of the substitute teacher shall be based upon
2 his training classification and experience and shall be in
3 accordance with the salary schedule of the regularly em-
4 ployed teachers of the county in which he is employed;
5 except that any substitute teacher who teaches five con-
6 secutive instructional days or less in the same position
7 shall be paid only the basic salary in effect in his county.

§18A-4-8. Minimum pay for service and auxiliary personnel.
1 Until such time as a state minimum pay scale is estab-
2 lished for service and auxiliary personnel, the foundation
3 allowance as provided in section five, article nine-a,
4 chapter eighteen of the code shall be used for the employ-
5 ment, adjustment of and increase in the pay of such
6 personnel: Provided, That any increase in allocation
7 under this computation resulting solely from an increase
8 in the minimum pay schedule of teachers effective with
9 the date of passage of this act, or for any year thereafter,
10 shall be used solely to increase the pay of all such per-
11 sonnel included under the provisions of this section.

CHAPTER 154
(Senate Bill No. 415—By Mr. McCourt, Mr. President)

[Passed March 11, 1971; in effect ninety days from passage. Approved by the
Governor.]

AN ACT to amend and reenact section three, article ten-a, chap-
ter eighteen of the code of West Virginia, one thousand
nine hundred thirty-one, as amended, relating to the
powers and duties of the division of vocational rehabili-
tation.

Be it enacted by the Legislature of West Virginia:
That section three, article ten-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 10A. VOCATIONAL REHABILITATION.

§18-10A-3. Director of division of vocational rehabilitation; powers and duties.

The division shall be administered, under the general supervision and direction of the state board, by a director appointed by such board in accordance with established personnel standards and on the basis of his education, training, experience and demonstrated ability.

In carrying out his duties under this article, the director shall:

1. Appoint, with the approval of the state board, such personnel as he deems necessary for the efficient performance of the functions of the division.

2. Establish a merit system of personnel management, or in lieu thereof, avail himself of the services of the state merit system upon payment of a fair share of the expenses of the operation of such system.

3. Make regulations governing the protection of records and confidential information; the manner and form of filing applications for vocational rehabilitation services, eligibility therefor, and investigation and determination thereof; procedures for fair hearings; and such other matters as may be necessary or desirable in accomplishing the purposes of this article.

4. Have the authority to establish and operate a staff development program for the employees of the division and may, in furtherance of such a program, and utilizing any funds appropriated or made available, for such purpose, pay to such employees compensation or expenses, or both, while such employees are pursuing approved training courses or academic studies for the purpose of becoming better equipped for their employment in such division; such staff development program shall be conducted subject to appropriate rules and regulations as adopted by the director and approved by the state board: Provided, That such rules and regulations shall include reasonable provisions for the return of any employee, receiving the benefits of such training, for a reasonable period of duty, or for reimbursement to the state for expenditures incurred on behalf of the training of such employee.
(5) Establish, with the approval of the state board, appropriate subordinate administrative units within the division.

(6) Prepare and submit to the state board annual reports of activities and expenditures and, prior to each regular session of the Legislature, estimates of sums required for carrying out the provisions of this article and estimates of the amounts to be made available for this purpose from all sources.

(7) Make requisition for disbursement, in accordance with regulations of the funds available for vocational rehabilitation purposes.

(8) Take such other action, with the approval of the state board, as may be deemed necessary or appropriate to carry out the purposes of this article.

In addition to the foregoing, the director may, with the approval of the state board, delegate to any officer or employee of the division such of his powers and duties, except the making of regulations and the appointment of personnel, as may be necessary or appropriate for the purposes of this article.

CHAPTER 155
(House Bill No. 1002—By Mr. Lohr)

[Passed March 3, 1971; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article ten-d, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to West Virginia's members on the education commission of the states under the compact for education.

Be it enacted by the Legislature of West Virginia:

That section two, article ten-d, 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 10D. COMPACT FOR EDUCATION.

§18-10D-2. Members of the education commission of the states; term; qualifications.

1 In pursuance of Article III A of said compact, there shall be seven members of the education commission of the states from the state of West Virginia consisting of the governor and four persons appointed by the governor, by and with the advice and consent of the Senate, who shall serve at the pleasure of the governor, and two members of the Legislature, one appointed from the Senate by the president thereof and one appointed from the House of Delegates by the speaker thereof, who shall serve at the pleasure of the appointing officer. Members so appointed shall have the qualifications specified in said Article III A of the compact.

CHAPTER 156

(Senate Bill No. 149—By Mr. McCourt, Mr. President)

[Passed March 13, 1971: in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article ten-g, relating to the operation of food service in public office buildings by the West Virginia society for the blind and severely disabled.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10G. PROVIDING OF FOOD SERVICE IN PUBLIC OFFICE BUILDINGS BY THE WEST VIRGINIA SOCIETY FOR THE BLIND AND SEVERELY DISABLED.

§18-10G-1. Policy and purposes; construction of article.
§18-10G-2. Definitions.
§18-10G-3. Operation of food service in public office buildings by West Virginia division of vocational rehabilitation; operation of food service by governmental agency in violation of article prohibited.

§18-10G-1. Policy and purposes; construction of article.
1 It is hereby declared to be the policy of this state and the purposes of this article to provide blind and severely disabled persons with the maximum opportunities for remunerative employment and for training for such employment; to enlarge the economic opportunities of the blind and severely disabled; and to stimulate them to greater effort in striving to make themselves self-supporting. This article shall be construed so as to most effectively carry out this policy and to accomplish these purposes.

§18-10G-2. Definitions.
1 For the purpose of this article:
2 (a) "Public office building" shall mean and include the state capitol, all county courthouses, all city and town halls, all buildings used primarily for governmental offices of the state and of any county, city and town within the state, but shall not include public school buildings and buildings of institutions under the jurisdiction of the West Virginia board of regents, the department of health, the department of mental health, the department of natural resources or the commissioner of public institutions.
3 (b) "Food service" shall mean and include a restaurant, cafeteria, snack bar, vending machine for the dispensing of foods, beverages, confections, tobacco, or other products for human consumption, and other facilities for the sale or providing of goods and services of the types customarily offered in connection with the operation of any of the foregoing: Provided, That the term "food service" shall not include, and there is expressly excepted therefrom, goods and services sold, dispensed, or provided by the veterans administration and the facilities for the sale, dispensing, or providing thereof.
4 (c) "Society" shall mean the West Virginia society for the blind and severely disabled, a nonstock corporation.
(d) "Governmental agency" shall mean and include the state of West Virginia, each instrumentality and agency thereof, and every county, city and town within and every political subdivision of, the state of West Virginia, except county boards of education, the West Virginia board of regents, the department of health, the department of mental health, the department of natural resources or the commissioner of public institutions.

§18-10G-3. Operation of food service in public office buildings by West Virginia division of vocational rehabilitation; operation of food service by governmental agency in violation of article prohibited.

(a) If a governmental agency proposes operating in a public office building a food service, whether such operation be of a food service in existence on the effective date of this article or be one thereafter to be instituted, the governmental agency, before continuing such existing operation beyond the period of six months immediately following the effective date of this article or before instituting such proposed new operation, shall in writing offer to the society the opportunity to operate such food service in such public office building.

(b) If the society within sixty days from the receipt of the offer mentioned in subsection (a) of this section elects to operate such food service as is mentioned in the offer and if the governmental agency by which such offer shall have been made does not, within such sixty-day period, make the determination of inability mentioned in subsection (d) of this section in the manner prescribed in that subsection, the society may institute and conduct the operation of such proposed food service in such public office building without the payment of rent or other compensation for the premises occupied by it in the rendition of such service therein or for the privilege of conducting such operation.

(c) If the society under the authority of subsection (b) of this section shall institute and conduct the operation of such food service as is mentioned therein, the governmental agency shall not during the course of such operation, operate a food service in such public
office building or by contract, lease, license, or otherwise, permit any other person, firm, corporation, or agency so to do.

(d) If within sixty days from the receipt by the society of the offer mentioned in subsection (a) of this section, the society shall reject or shall fail to accept the offer, or the governmental agency by which the offer was made shall, in good faith and after a full and thorough study of the relevant circumstances, determine that the society is unable satisfactorily to operate such proposed food service, or the society shall have accepted such offer, but, within the period of six months from such acceptance, shall have failed to institute such food service, such proposed food service may thereupon be provided in such other manner as may be permitted by law, free from the requirements of this article, and if so instituted, the society shall not thereafter, without the express permission of the offering agency, institute such proposed food service in the public office building designated in such offer. If the governmental agency by which such offer shall have been made shall make the determination of inability of the society to operate the proposed food service, the governmental agency shall, within the aforementioned sixty-day period, provide the society with a full written statement of the reasons upon which such determination was predicated, and a food service shall not be operated in such public office building free from the requirements of this article until the written statement mentioned in this subsection shall have first been given.

(e) Notwithstanding any other provisions contained in this article, no governmental agency shall by reason of the provisions of this article take any action which will result in the violation of the terms of any valid contract, lease or license existing on the effective date hereof, nor shall such governmental agency be precluded from extending the period of such an existing contract, lease or license upon the same terms, and with the same contracting parties, as in the contract, lease or license so extended.
AN ACT to amend and reenact section ten-b, article eleven, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, authorizing security officers at West Virginia University to assist local police officers on public highways in the control of traffic in and around premises owned by the state whenever such traffic is generated as a result of athletic or other activities conducted or sponsored by West Virginia University.

Be it enacted by the Legislature of West Virginia:

That section ten-b, 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.

§18-11-10b. Security officers.

1 The board of regents is hereby authorized to appoint bona fide residents of this state to act as security officers upon any premises owned or leased by the state of West Virginia and under the jurisdiction of the board, subject to the conditions and restrictions hereinafter imposed.

2 Before entering upon the performance of his duties as such security officer in any county, each person so appointed shall qualify therefor in the same manner as is required of constables by the taking and filing of an oath of office as required by article one, chapter six of this code and by the posting of an official bond as required by article two, chapter six of this code. No such person shall have authority to carry a gun or any other dangerous weapon until he shall have obtained a license therefor in the manner prescribed by section two, article seven, chapter sixty-one of this code: Provided, That no enrolled student of West Virginia University shall be appointed as a security officer.

3 It shall be the duty of any person so appointed and qualified to preserve law and order on any premises under
the jurisdiction of the board to which he may be assigned
by the president of the university. For this purpose he
shall as to offenses committed on such premises have
and may exercise all the powers and authority and shall
be subject to all the responsibilities of regularly elected
constables of the county. The assignment of security offi-
cers to any premises under the jurisdiction of the board
shall not be deemed to supersede in any way the authority
or duty of other peace officers to preserve law and order
on such premises. In addition, the security officers ap-
pointed under provisions of this section shall have author-
ity to assist local peace officers on public highways in the
control of traffic in and around premises owned by the
state of West Virginia whenever such traffic is generated
as a result of athletic or other activities conducted or
sponsored by West Virginia University.

The salary of all such security officers shall be paid by
the board. The board may also furnish such security
officers with an official uniform and shall furnish and
require each such officer while on duty to wear a metal-
lic shield with an appropriate inscription and to carry cre-
dentials certifying to his identity and to his authority as
a security officer.

The board of regents may at its pleasure revoke the
authority of any such officer by filing a notice to that
effect in the office of the clerk of each county in which
his oath of office was filed, and in the case of officers
licensed to carry a gun or other dangerous weapons by
notifying the clerk of the circuit court of the county in
which the license therefor was granted.

CHAPTER 158

(Senate Bill No. 148—By Mr. McCourt, Mr. President)

[Passed March 11, 1971; in effect ninety days from passage. Approved by the
Governor.]

AN ACT to amend and reenact section one, article seventeen,
chapter eighteen of the code of West Virginia, one thou-
sand nine hundred thirty-one, as amended, relating to the establishment of a minimum salary scale for employees of the West Virginia schools for the deaf and blind, and granting such employees the same tenure as school teachers.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 17. WEST VIRGINIA SCHOOLS FOR THE DEAF AND THE BLIND.

§18-17-1. Continuation; management; minimum salary scale.
1. The West Virginia schools for deaf pupils and blind pupils heretofore established and located at Romney, in Hampshire county, shall be continued and shall be known as the "West Virginia schools for the deaf and the blind."
2. The schools shall be maintained for the care and education of the deaf youth and blind youth of the state. The educational or business affairs of the schools shall be under the control, supervision and management of the state board of education and the state board shall employ the superintendent, principals, teachers and other employees and shall fix the yearly or monthly salary to be paid to each person so employed.
3. The minimum salary scale for said principals and teachers shall be the same as set forth in chapter eighteen-a, article four, sections two and three of the code of West Virginia, one thousand nine hundred thirty-one, as amended.

CHAPTER 159

(House Bill No. 869—By Mr. Speaker, Mr. Boiarsky, and Mr. Lohr)

[Passed March 13, 1971; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article twenty, chapter eighteen of the code of West Virginia, one thou-
sand nine hundred thirty-one, as amended, relating to establishment of special schools and teaching services for exceptional children.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 20. EDUCATION OF EXCEPTIONAL CHILDREN.

§18-20-1. Establishment of special programs and teaching services for exceptional children.

1 In accordance with the following provisions, county boards of education throughout the state having five or more exceptional children of any one of the types or classifications hereinafter provided for shall establish and maintain special educational programs, including but not limited to special schools, classes, home-teaching or visiting-teacher services for such type or classification in order to provide for educating exceptional children who meet the public school age requirement but who differ from the average or normal in physical, mental or emotional characteristics, or in communicative or intellectual deviation characteristics, or in both communicative and intellectual deviation characteristics, to the extent that they cannot be educated safely or profitably in the regular grades of the public schools, and for whom special educational provisions need to be made in order to educate them in accordance with their capacities, limitations and needs. In addition, county boards of education may establish and maintain other educational services for such types or classifications as the state superintendent of free schools may approve.

2 The general types and classifications of exceptional children for whom provision may be made under this article are the following areas of exceptionality: Visually impaired, hearing impaired, physically or orthopedically handicapped, epileptic, mentally retarded, speech handicapped, multiple handicapped, autistic, intellectually gifted, socially or emotionally maladjusted including the delinquent, learning disabilities both phy-
By the school year beginning on the first day of July, one thousand nine hundred seventy-four, county boards of education shall establish and maintain these special educational programs, including but not limited to special schools, classes, home-teaching and visiting-teacher services. The state superintendent of free schools shall adopt rules and regulations to advance and accomplish this program.

Nothing in this section shall be construed to prevent county boards of education from providing special educational programs, including but not limited to special schools, classes, home-teaching or visiting-teacher services for exceptional children who are three years of age or older.

CHAPTER 160

(Senate Bill No. 419—By Mr. Palumbo)

[Passed March 12, 1971; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article twenty-two-b, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to increasing the maximum scholarship award available to scholarship recipients under the state scholarship program.

Be it enacted by the Legislature of West Virginia:

That section six, article twenty-two-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 22B. STATE SCHOLARSHIP PROGRAM.

§18-22B-6. Recipients and awards of scholarships.

1 The scholarship recipient shall be free to attend any approved institution of higher education in this state. The
institutions is not required to accept the scholarship recipient for enrollment, but is free to exact compliance with its own admission requirements, standards and policies. Scholarship grants shall be made to undergraduate students only.

Each scholarship is renewable until the course of study is completed, but not to exceed an additional three academic years beyond the first year of the award. These may not necessarily be consecutive years and the scholarship will be terminated if the student receives his degree in a shorter period of time. Qualifications for renewal will include maintaining satisfactory academic standing, making normal progress toward completion of the course of study and continued eligibility, as determined by the commission.

Scholarship awards shall be made without regard to the applicant's race, creed, color, sex, national origin or ancestry; and in making scholarship awards, the commission shall provide a fair and equitable geographical distribution of the awards and shall treat all approved institutions of higher education in a fair and equitable manner.

The maximum scholarship award shall be six hundred dollars per academic year: Provided, however, That for those recipients attending an approved institution of higher education in this state where the tuition exceeds six hundred dollars per academic year, the maximum scholarship award shall be nine hundred dollars or the amount of tuition and fees generally charged by the institution to all students per academic year, whichever is the lesser amount.

Payments of scholarships shall be made directly to the institution.

In the event that a scholarship recipient transfers from one approved institution of higher education to another, his scholarship shall be transferable only with the approval of the commission.

Should the recipient terminate his enrollment for any reason during the academic year, the unused portion of the scholarship shall be returned to the commission by
the institution according to the institution's own policy for issuing refunds.

CHAPTER 161
(House Bill No. 1115—By Mr. Speaker, Mr. Boiarsky, and Mr. Seibert)

[Passed March 13, 1971: in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article twenty-four, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the creation of a state system special capital improvements fund to be expended for all state institutions of higher education.

Be it enacted by the Legislature of West Virginia:

That section four, 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.

§18-24-4. Collection, disposition and use of additional registration fee; creation of special capital improvements funds; revenue bonds.

1 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 hereinafter provided.

2 For full-time students at each state institution of higher education, the additional registration fee shall be fifty dollars per semester. The board of 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 proportion to, but not exceeding, that paid by full-time students.

The fee imposed by this section shall be in addition to the maximum fees allowed to be collected under the provisions of section one of this article and shall not be limited thereby. Refunds of such fee may be made in the same manner as any other fee collected at state institutions of higher education.

There is hereby created in the state treasury a special capital improvements fund into which shall be paid on and after the first day of July, one thousand nine hundred sixty-three, all proceeds of the additional registration fees collected from students at West Virginia University and at Potomac State College. Subject to any lien created by a pledge of the moneys in said special capital improvements fund for the payment of the principal of and interest on any revenue bonds issued pursuant to this section prior to the first day of July, one thousand nine hundred seventy-one, to finance capital improvements at West Virginia University and at Potomac State College, the board of regents is empowered to expend moneys from this fund for the benefit of any state institution of higher education as provided in this section.

There is hereby created in the state treasury a second special capital improvements fund into which shall be paid on and after the first day of July, one thousand nine hundred sixty-three, all proceeds of the additional registration fees collected from students at all state institutions of higher education other than West Virginia University and Potomac State College. Subject to any lien created by a pledge of the moneys in said capital improvements fund for the payment of the principal of and interest on any revenue bonds issued pursuant to this section prior to the first day of July, one thousand nine hundred seventy-one, to finance capital improvements at state institutions of higher education other than West Virginia University and Potomac State College, the board of regents is empowered to
53 expend moneys from this fund for the benefit of any
54 state institution of higher education as provided in this
55 section.
56
57 There is created in the state treasury a state system
58 special capital improvements fund to be expended by
59 the board of regents for the benefit of any and all
60 state institutions of higher education. On and after the
61 first day of July, one thousand nine hundred seventy-
62 one, the board of regents may periodically transfer from
63 each of the two special capital improvements funds
64 previously established by this section into the state sys-
65 tem special capital improvements fund moneys in excess
66 of the amount pledged for the payment of the prin-
67 cipal of and interest on any revenue bonds issued pur-
68 suant to this section prior to the first day of July, one
69 thousand nine hundred seventy-one.
70
71 The board of regents may make expenditures from
72 any of the special capital improvements funds established
73 in this section to finance in whole or in part, together
74 with any federal, state or other grants or contributions,
75 any one or more of the following purposes: (1) The
76 acquisition of land or any rights or interest therein,
77 (2) the construction or acquisition of new buildings,
78 (3) the renovation or construction of additions to exist-
79 ing buildings, (4) the acquisition of furnishings and
80 equipment for any such buildings, and (5) the con-
81 struction or acquisition of any other capital improve-
82 ments or capital educational facilities at such state
83 institutions of higher education, including any roads,
84 utilities or other properties, real or personal, or for
85 other purposes necessary, appurtenant or incidental to
86 the construction, acquisition, financing and placing in
87 operation of such buildings, capital improvements or
88 capital educational facilities.
89
90 The board of regents, in its discretion, may use the
91 moneys in such special capital improvements funds to
92 finance the costs of the above purposes on a cash basis,
93 or may from time to time issue revenue bonds of the
94 state as provided in this section to finance all or part
95 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 pur-
poses 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 Legis-
lature as indicated by direct appropriation for the pur-
pose.

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 reason-
able margins for a reserve therefor from the moneys in
such special funds.

The issuance of such revenue bonds shall be autho-
rized 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 me-
dium 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 man-
er 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 regis-
tration 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 uniform commercial code of this
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 sub-
division thereof; and such revenue bonds shall not be
deemed to be obligations or debts of the state, and the
173 credit or taxing power of the state shall not be pledged
174 therefor, but such revenue bonds shall be payable only
175 from the revenue pledged therefor as provided in this
176 section.

CHAPTER 162
(House Bill No. 864—By Mr. Speaker, Mr. Boiarsky,
and Mr. Seibert)

[Passed March 5, 1971; in effect ninety days from passage. Approved by the
Governor.]

AN ACT to amend and reenact section two, article twenty-six,
chapter eighteen of the code of West Virginia, one thou-
sand nine hundred thirty-one, as amended, relating to
definitions applicable to the West Virginia board of re-
gents.

Be it enacted by the Legislature of West Virginia:

That section two, article twenty-six, 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 26. WEST VIRGINIA BOARD OF REGENTS.

§18-26-2. Definitions.

1 Notwithstanding the provisions of section one, article
2 one of this chapter, the following words when used in
3 this article, shall have the meaning hereafter ascribed
4 to them unless the context clearly indicates a different
5 meaning:
6 (a) The term “board” shall mean the West Virginia
7 board of regents.
8 (b) The term “state colleges” shall mean Bluefield
9 State College, Concord College, Fairmont State College,
10 Glenville State College, Shepherd College, West Liberty
11 State College, West Virginia Institute of Technology,
12 West Virginia State College and any state community
13 college or other state institution of higher education
14 which may hereafter be established and not designated
15 as a “university”.

Ch. 163] SCHOOLS AND EDUCATIONAL INSTITUTIONS 851

16  (c) The term "state college" shall mean one of the state colleges.
18  (d) The terms "state universities" and "universities" shall mean Marshall University and West Virginia University and any other state institution of higher education which may hereafter be established and designated as a "university".
23  (e) The terms "state university" and "university" shall mean one of the state universities.
25  (f) The term "community college" shall mean any institution of higher education which has been designated as a community college by the West Virginia board of regents under the provisions of section thirteen-b, article twenty-six, chapter eighteen of this code.
30  (g) The term "higher educational institution" shall mean any institution as defined by sections 401 (f), (g), (h) of the Federal Higher Education Facilities Act of 1963, as amended.

CHAPTER 163

(House Bill No. 729—By Mr. Speaker, Mr. Boaliisky)

(Passed March 4, 1971; in effect July 1, 1971. Approved by the Governor.)

AN ACT to repeal articles twenty-two and twenty-two-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section ten, article twenty-six of said chapter; to further amend article twenty-six of said chapter by adding thereto twelve new sections, designated sections thirteen, fourteen, fifteen, sixteen, seventeen, eighteen, nineteen, twenty, twenty-one, twenty-two, twenty-three and twenty-four, all relating to the transfer of powers, duties and authorities with respect to the academic facilities program, the state scholarship program and the guaranteed student loan program from the state commission on higher education to the board of regents; the creation of an advisory commission; its membership,
terms and organization; the abolishment of the state com-
mission on higher education.

Be it enacted by the Legislature of West Virginia:

That articles twenty-two and twenty-two-a, chapter eighteen
of the code of West Virginia, one thousand nine hundred
thirty-one, as amended, be repealed; and that section ten, ar-
ticle twenty-six of said chapter be amended and reenacted;
and that article twenty-six be further amended by adding
thereto twelve new sections, designated sections thirteen,
fourteen, fifteen, sixteen, seventeen, eighteen, nineteen, twenty,
twenty-one, twenty-two, twenty-three and twenty-four, all to
read as follows:

ARTICLE 26. WEST VIRGINIA BOARD OF REGENTS.

§18-26-10. State agency for participation in federal and private
grants to higher education; further powers and duties of board
of regents.

§18-26-13. Transfer of powers, duties, and authorities, title to property,
agreements, and orders, resolutions, etc., of the state
commission on higher education to board of regents.

§18-26-14. Creation of advisory council on federal resources; appoint-
ment, terms and qualifications of members; vacancies;
compensation and expenses; meetings; quorum.

§18-26-15. Guaranteed student loan program to be administered by
board of regents.

§18-26-16. “Act,” “undertaking” and “obligations” defined.

§18-26-17. Board’s authority to buy and sell certain student obliga-
tions; undertakings not to constitute state debt; under-
takings limited to available funds.

§18-26-18. Powers and duties of board of regents regarding loan
program.

§18-26-19. Title to property.

§18-26-20. Acquisition of contingent interests in obligations from
lending institutions; collection of delinquent obligations.

§18-26-21. Terms of acquisitions.

§18-26-22. Trust fund established; limitations on use of fund; duties
of treasurer in connection therewith; special account
created.

§18-26-23. Construction of provisions of article relating to loan pro-
gram.

§18-26-24. Purpose of provisions of article relating to loan program.

§18-26-10. State agency for participation in federal and private
grants to higher education; further powers and
duties of board of regents.

1 The board of regents, on behalf of the state of West
2 Virginia, is authorized and empowered to apply for, to
3 accept and administer and expend for the purpose or
4 purposes designated, any funds which now are, or may
5 be made available to the board or to any institution
The board of regents shall have the power:

(1) To receive and disburse funds appropriated by the federal government for the construction, equipment, and improvement of academic facilities of institutions of higher education as required by the federal Higher Education Facilities Act of 1963, and any and all subsequent acts of Congress relating to the same subject;

(2) To apply for, receive, and administer, subject to any applicable regulations or laws of the federal government or any agency thereof, any federal grants, appropriations, allocations, and programs for the development of academic facilities on behalf of the state of West Virginia, or any institution of higher education, public or private, within the state;

(3) To develop, alter, amend, and submit to the federal government state plans for participation in federal grants, appropriations, allocations, and programs for the development of academic facilities and to formulate regulations, criteria, methods, forms, procedures, and to do all other things which may be necessary to make possible the participation of the state in such federal grants, appropriations, allocations, and programs for the development of academic facilities;

(4) To hold hearings, and render decisions as to the priority assigned to any project, or as to any other matter or determination affecting any applicant for federal grants, appropriations, allocations and programs for the development of academic facilities;

(5) To hire personnel, purchase materials, make studies and reports, enter into contracts, and do all other things necessary to accomplish the duties as set forth in this section within the limits of the funds available.

§18-26-13. Transfer of powers, duties, and authorities, title to property, agreements, and orders, resolutions, etc., of the state commission on higher education to board of regents.

All powers, duties, and authorities vested in the state
commission on higher education by articles twenty-two, twenty-two-a and twenty-two-b of this chapter or by any other provisions of law are hereby transferred to the West Virginia board of regents; and on and after the effective date of this article all of the powers, duties, and authorities of the state commission on higher education shall be exercised and performed by the West Virginia board of regents, and the state commission on higher education shall be abolished and repealed.

The title to all property heretofore acquired in the name of the state commission on higher education is hereby transferred to and vested in the West Virginia board of regents.

Each valid agreement and obligation of the state commission on higher education shall on or after the effective date of this section become and be deemed the agreement and obligation of the West Virginia board of regents.

All orders, resolutions, rules and regulations adopted or promulgated by the state commission on higher education and in effect immediately prior to the effective date of this section shall continue and shall be deemed the orders, resolutions, rules and regulations of the West Virginia board of regents until rescinded by the board; and all such orders, resolutions, rules and regulations may be rescinded, revised, altered or amended by the board in the manner and to the extent authorized and permitted by law.

§18-26-14. Creation of advisory council on federal resources; appointment, terms and qualifications of members; vacancies; compensation and expenses; meetings; quorum.

There is hereby created an advisory council to be known as the higher education advisory council on federal resources. The council shall review the state plan for administration of the federal Higher Education Facilities Act of 1963 and Titles I and VI of the federal Higher Education Act of 1965, as amended. The council shall also evaluate proposals pertaining to the aforementioned federal acts and shall submit such recommendations as it deems appropriate to the board of
regents. The council shall be involved in every significant
function of the board of regents pertaining to said federal
acts.

The advisory council shall consist of nine members to
be appointed as follows: One member shall be a member
of the board of regents appointed by the president of the
board of regents, three members appointed by the board
of regents to represent the public at large, two members
appointed by the board of regents to represent public
institutions of higher education, and three members ap-
pointed by the board of regents to represent nonpublic
institutions of higher education: Provided, That of the
three members representing nonpublic institutions of
higher education, one shall be a president of a nonpublic
institution, and of the two members representing public
institutions of higher education, one shall be a president
of a public institution. The board of regents shall appoint
a chairman of the advisory council who shall be selected
from the representatives of the public at large.

The members shall serve for a term of six years, ex-
cept that the original appointments shall be as follows:
Three members shall serve two years, three members to
serve four years, and three members to serve six years.
The board of regents shall appoint a member to fill any
vacancy, which member shall serve for the unexpired
term of the vacating member. All shall be eligible for
reappointment.

The members of the advisory council shall serve with-
out compensation, but shall be reimbursed for their
necessary expenses actually incurred in the performance
of their duties not to exceed twenty-five dollars per day
plus an allowance of ten cents per mile actually traveled
to and from such meetings.

A meeting of the advisory council shall be held within
sixty days after the effective date of this section, and
thereafter the advisory council shall meet at least an-
ually and at such other times as necessary upon the
call of the chairman. Five members of the advisory coun-
cil shall constitute a quorum, and a majority vote of the
quorum shall be necessary to pass upon matters before
the council.
§18-26-15. Guaranteed student loan program to be administered by board of regents.

The guaranteed student loan program established and authorized by this article shall be administered by the West Virginia board of regents.

§18-26-16. “Act,” “undertaking” and “obligations” defined.

As used in this article, the following words and terms shall have the following meanings, unless the context shall indicate another or different meaning or intent:

(a) The words “act” or “undertaking” shall mean the official act of the board in connection with the acquisition or deposition of all or any part of obligations or interest therein which the board of regents is authorized to buy or sell hereunder.

(b) The word “obligations” shall mean those evidences of debt which the board may buy, sell, endorse, or guarantee under the provisions of this article.

§18-26-17. Board’s authority to buy and sell certain student obligations; undertakings not to constitute state debt; undertakings limited to available funds.

In order to facilitate the education of residents in this state and promote the industrial and economic development of the state, the board of regents is hereby authorized and empowered to buy and sell obligations of students who are residents of West Virginia, who have been residents of this state for at least one year and who are students at state supported or private institutions of higher education or vocational schools accredited by a nationally recognized accrediting agency or by a state agency designated by the governor and representing loans made to such students who have met the requirement of financial need as determined by the board of regents, such loans having been made for the purpose of an education.

No act or undertaking of the board shall be deemed to constitute a debt of the state or of any political subdivision thereof or a pledge of the faith and credit of the state or of any such political subdivision, but shall be payable solely from the funds of the board specifically
appropriated for the guaranteed student loan program. All such acts and undertakings shall contain on the face thereof a statement to the effect that neither the state nor the board shall be obligated to pay the same or the interest thereon except from revenues of the board and that neither the faith and credit nor the taxing power of the state or of any political subdivision thereof is pledged to the payment of the principal of or the interest on such acts and undertakings.

All expenses incurred in carrying out the provisions of this article dealing with the guaranteed student loan program shall be payable solely from funds provided for the purpose and no liability or obligation shall be incurred by the board hereunder beyond the extent to which money shall have been provided under the applicable provisions of this article for the guaranteed student loan program.

§18-26-18. Powers and duties of board of regents regarding loan program.

The board of regents is hereby authorized and empowered:

1. To fix and revise from time to time and charge and collect fees for its acts and undertakings;
2. To establish rules and regulations concerning the acts and undertakings;
3. To acquire, hold and dispose of personal property in the exercise of its powers and the performance of its duties;
4. To make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this article;
5. To employ in its discretion such employees as it may deem necessary to carry out its powers and duties as enumerated in this article;
6. To receive and accept from any federal or private agency, corporation, association or person, grants to be expended in accomplishing the objectives of this article and to receive and accept from the state, from any municipality, county or other political subdivision thereof and
from any other source, aid or contributions of either
money, property, or other things of value to be held,
used and applied only for the purposes for which such
grants and contributions may be made;
(7) To sue and be sued as provided by law;
(8) To do all other acts and things necessary or con-
venient to carry out the powers expressly granted by
the provisions of this article which relate to the guar-
anteed student loan program. Nothing in this article
shall be construed to empower the board to engage in
the business of banking or insurance.

§18-26-19. Title to property.
Title to any property acquired by the board of regents
under the provisions of this article which relate to the
guaranteed student loan program shall be taken and
held in the name of the board of regents.

§18-26-20. Acquisition of contingent interests in obligations
from lending institutions; collection of delinquent
obligations.
With funds available to the board of regents for pur-
poses other than the payment of compensation to per-
sonnel and the lease or rental of offices or equipment,
the board may acquire from any bank or other lending
institution of this state a contingent interest in student
obligations; the total contingent interest of the board
on all such obligations shall not exceed at any one time
a sum of twelve and one-half times the total funds which
the board can employ to acquire such contingent in-
terests. When the board acquires any such contingent
interest, it may require the payment to it of a portion
of the interest payable upon any such obligation. In each
such acquisition, the board shall provide that at such time
as the obligation becomes delinquent, the bank or other
lending institution shall notify the board forthwith and
shall transfer forthwith to the board, by assignment or
otherwise, an interest in such obligation equal to the
contingent interest of the board therein. The bank or
other lending institution and the board shall forthwith
take such steps as may be necessary to recover the bal-
ance due upon any such obligation, and such recovery
§18-26-21. Terms of acquisitions.
1 The board of regents shall prescribe the terms, conditions and limitations upon which it will acquire a contingent or direct interest in any obligation and such terms, conditions and limitations shall include, but without limiting the generality thereof, the terms for payment of principal and interest, applicable life or other insurance which may be required in connection with any such obligation and who shall pay the premiums thereon, the safekeeping of assets pledged to secure any such undertaking, and any and all matters in connection with the foregoing as will protect the assets of the board.

§18-26-22. Trust fund established; limitations on use of fund; duties of treasurer in connection therewith; special account created.
1 The appropriation made to the board under the provisions of this article which relate to the guaranteed student loan program shall be used exclusively for the purpose of acquiring contingent or vested rights in obligations which it may acquire under this article, and such appropriation, payments, revenue and interest, as well as other income received in connection with such obligations, is hereby established as a trust fund. Such fund shall be used for the purposes of the board other than maintenance and operation.
11 The maintenance and operating expenses of the board shall be paid from funds specifically appropriated for such purposes. No part of the trust fund established under this section shall be expended for such purposes.
15 The board of regents shall be the trustee of the trust fund hereby created and all investments to be made from the assets of such trust shall be made by the state treasurer in the manner provided by law. For the purposes of this article there is hereby created in the treasury of this state a special revolving account for deposits and withdrawals as herein provided. The state treasurer shall
be the custodian of the assets of the board. All payments from the accounts thereof shall be made by him upon warrants issued by the auditor upon vouchers signed by such persons as are designated by the board. A duly attested copy of a resolution of the board designating such persons shall be filed with the state treasurer as his authority for issuing warrants upon such vouchers.

§18-26-23. Construction of provisions of article relating to loan program.

1 The provisions of this article which relate to the guaranteed student loan program shall be liberally construed to the end that its beneficial purposes may be effectuated.

§18-26-24. Purpose of provisions of article relating to loan program.

1 The Legislature enacts the provisions of this article which relate to the establishment of the guaranteed student loan program to continue and encourage education of citizens of this state who are in need of financial assistance, such assistance and education being for the welfare of this state, and the Legislature hereby declares such to be a public purpose.

CHAPTER 164

(Senate Bill No. 66—By Mr. McKown)

[Passed March 4, 1971; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article twenty-six, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section thirteen-a, relating to empowering the West Virginia board of regents to determine minimum standards for institutions of higher education and the conferring of higher education degrees.
Be it enacted by the Legislature of West Virginia:

That article twenty-six, 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 thirteen-a, to read as follows:

 ARTICLE 26. WEST VIRGINIA BOARD OF REGENTS.

§18-26-13a. Accreditation of institutions of higher education; standards for degrees.

1 The West Virginia board of regents shall make rules and regulations for the accreditation of all colleges, universities and other institutions of higher education in the state, and shall determine the minimum standards for the conferring of degrees. No institution of higher educational status may confer any degree on any basis of work or merit below the minimum standards prescribed by the West Virginia board of regents. Nothing contained herein shall infringe upon the rights granted to any institution by charter given according to law previous to the adoption of this section.

2 No charter or other instrument containing the right to confer degrees of higher educational status shall be granted by the state of West Virginia to any institution, association or organization within the state, nor shall any such degree be awarded until the condition of conferring such degree has first been approved in writing by the West Virginia board of regents.

CHAPTER 165

(Senate Bill No. 255—By Mr. Carrigan)

[Passed March 9, 1971; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section fifteen-a, article two; section nine-b, article eleven; section one, article sixteen; and section eleven, article twenty-four, all of chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-
one, as amended; and to amend article twenty-six, chapter eighteen of said code by adding thereto a new section, designated section thirteen-b, relating to branch colleges, off-campus locations of state universities and colleges, community colleges, and all other state institutions of higher education offering only programs of two years or less duration.

**Be it enacted by the Legislature of West Virginia:**

That section fifteen-a, article two; section nine-b, article eleven; section one, article sixteen; and section eleven, article twenty-four, all of chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that article twenty-six, chapter eighteen of said code be amended by adding thereto a new section, designated section thirteen-b, to read as follows:

**ARTICLE 26. WEST VIRGINIA BOARD OF REGENTS.**

§18-26-13b. Continuance, establishment and operation of branch colleges, off-campus locations of state universities and colleges, and community colleges.

1 (a) The board of regents is authorized and empowered to continue to operate and maintain any branch colleges and off-campus locations of state universities and colleges heretofore established including Potomac State College of West Virginia University, the Parkersburg branch of West Virginia University, the Logan and Williamson branches of Marshall University, the Hancock county branch and the Wheeling campus of West Liberty State College.

10 (b) Notwithstanding any other provisions of this code to the contrary, the board of regents may designate any one, several or all of the existing branches or off-campus locations of the state universities and colleges (including Potomac State College of West Virginia University, the Parkersburg branch of West Virginia University, the Logan and Williamson branches of Marshall University, and the Hancock county branch and the Wheeling campus of West Liberty State College) to be established as community colleges responsible directly to and subject to the governance of the board of regents. The board of regents
shall determine programs to be offered in each community
college, provided such programs are of two years or less
duration, fix enrollments, designate a name for each com-
munity college, employ a president and such staff and
faculty as determined appropriate, appoint an advisory
board for each institution consistent with section nine
of this article and exercise such general determination,
control, supervision and management of the financial,
business and educational policies and affairs of each com-
munity college as is provided in this chapter.

(c) The board of regents may fix tuition and establish
and set such other fees to be charged students as it deems
appropriate, retaining the same in a revolving fund for
the partial or full support, including the making of capital
improvements, of any branch college or off-campus loca-
tion of a state university or college authorized to be con-
tinued in subsection (a) of this section or of any commu-
nity college designated or established under the authority
granted in subsection (b) of this section. Funds collected
at any such branch college, off-campus location of a state
university or college, or community college may be used
only for the benefit of the institution at which collected.
The board of regents may also establish special fees for
such purposes as, including but not limited to, health
services, student activities, student recreation, athletics
or any other extracurricular purposes. Such special fees
shall be paid into special funds and used only for the
purposes for which collected.

(d) The board of regents may allocate from the ap-
propriations for the state system of higher education fund
for the operation and capital improvement of any insti-
tution continued under authority of subsection (a) of
this section or designated or established as a community
college under authority of subsection (b) of this section
and may accept federal grants, funds from county boards
of education, other local governmental bodies, corpora-
tions or persons. The board may enter into memoranda
of agreements with such governmental bodies, corpora-
tions or persons for the use or acceptance of local plant
facilities and/or the acceptance of grants or contribu-
tions toward the cost of the acquisition or construction
of such facilities. Such local governmental bodies may convey capital improvements, or lease the same without monetary consideration, to the board, for the use by the institution, and the board may accept such facilities or the use or lease thereof, and such grants or contributions, for such purposes from such governmental bodies, the federal government or any corporation or person.

CHAPTER 166
(Senate Bill No. 183—By Mr. Poffenbarger)

[Passed March 2, 1971; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article one, chapter thirty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to securities; and providing that the provisions of the chapter shall not be applicable to transactions by an issuer not involving any public offering.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. SECURITIES; DEFINITIONS; REGISTRATION; UNLAWFUL ACTS; PENALTIES; LIABILITIES.

§32-1-4. Transactions not included.

1 The provisions of this chapter shall not apply to any of the following transactions:

3 (a) Any judicial, sheriff's, constable's, executor's, administrator's, guardian's or conservator's sale or any sale by a receiver or trustee in insolvency or bankruptcy, or the sale by a pledgee, in good faith and in the ordinary course of business and not for the purpose of evading any provision of this chapter, of a security pledged for a bona fide debt;
(b) An isolated transaction in which any security is sold, offered for sale, subscription or delivery by the owner thereof, such sale or offer for sale, subscription or delivery not being made in the course of repeated and successive transactions of a like character by such owner;

(c) A sale upon a customer's order of any security, if sale is made to a person outside this state: Provided, That such sale in another state is not a violation of the securities laws of that state;

(d) The distribution by a corporation actively engaged in the business authorized by its charter, of capital stock, bonds or other securities to its stockholders or its other security holders as a stock dividend or other distribution out of earnings or surplus;

(e) The sale, transfer or delivery to any bank, savings institution, trust company, insurance company or to any broker or dealer: Provided, That such broker or dealer is actually engaged in buying and selling securities as a business;

(f) Bonds or notes, or other obligations secured by mortgage, deed of trust, or other lien upon property, where the entire lien, together with all of the bonds or notes secured thereby, is sold to a single purchaser at a single sale, or where the lien is given or incurred to secure the payment of unpaid purchase money;

(g) The issue and delivery of any security in exchange for any other security of the same issuer pursuant to a right of conversion entitling the holder of the security surrendered in exchange to make such conversion: Provided, That the security so surrendered has been registered under the provisions of this chapter or was, when sold, exempt through the provisions of said chapter;

(h) Transactions by an issuer not involving any public offering;

(i) The transfer or exchange by one corporation to another corporation of its own securities in connection with a consolidation or merger of such corporations;

(j) The solicitation or execution by a registered dealer of orders for the purchase of any security, provided such
50 dealer acts as agent for the purchaser, has no direct
51 material interest in the sale or distribution of such
52 security, receives no commission, profit or other com-
53 pensation from any source other than the purchaser,
54 and delivers to the purchaser written confirmation of
55 the transaction which clearly itemizes his commission,
56 profit or other compensation.

CHAPTER 167

(House Bill No. 944—By Mr. Speaker, Mr. Boiarsky)

[Passed March 13, 1971; in effect from passage. Approved by the Governor.]

AN ACT to conform article six, chapter five of the code of West
Virginia, one thousand nine hundred thirty-one, as
amended, with the principles recently declared with re-
spect thereto in a decision by the supreme court of appeals
of West Virginia and to provide funds for the payment of
outstanding “State Building Revenue Bonds” issued pur-
suant to said article, by amending and reenacting said
article six and sections nine-a and nineteen-a, article
three, chapter sixty of said code; relating to the state
building commission of West Virginia, its composition,
the appointment, terms and qualifications of its members,
its chairman and secretary, the compensation and expenses
of its members, and its powers and duties generally;
setting forth certain legislative findings with respect to
said “State Building Revenue Bonds”, the public purpose
of the projects constructed with the proceeds from said
bonds, and said decision of the supreme court of appeals
of West Virginia; defining various terms used in said
article six; specifying various specific powers of said
commission; relating to the deposits and disbursements
of the commission; relating to security for its deposits
and audits of its accounts; relating to the authority of
the city of Charleston to make certain dedications to the
commission; providing that contracts with the commission
shall be secured by bonds; requiring competitive bids for
certain contracts and specifying requirements with re-
spect thereto; authorizing the issuance of state building
revenue bonds; relating to the form of and requirements
and procedures for the issuance of such bonds; relating to the interest on such bonds and the maturity thereof; exempting said bonds and the interest thereon from taxation; relating to the sale of said bonds and the proceeds therefrom; relating to temporary bonds; authorizing such bonds as investments for certain state funds; authorizing a trustee for the holders of said bonds; relating to the contents of any trust agreement; providing that a trust exists in favor of the holders of existing "State Building Revenue Bonds"; relating to the management and control of projects of the commission; specifying that article shall not authorize state debt; specifying that compliance with article six and constitution only required; providing that said article six shall be liberally construed; providing a severability clause; continuing in effect a price increase of alcoholic liquors beyond the time the price increase would otherwise expire; providing for a further price increase of alcoholic liquors; requiring the receipts from such continued price increase and such further price increase to be paid into a special fund created in the office of the state treasurer for the purpose of the payment of said "State Building Revenue Bonds"; and providing that the West Virginia alcohol beverage control commissioner shall make quarterly payments in the amount of nine hundred thousand dollars into said special fund created in the office of the state treasurer for the purpose of retiring said "State Building Revenue Bonds".

Be it enacted by the Legislature of West Virginia:

That article six, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that sections nine-a and nineteen-a, article three, chapter sixty of said code be amended and reenacted, all to read as follows:

Chapter

5. General Powers and Duties of the Governor, Secretary of State and Attorney General; Board of Public Works; State Building Commission; Social Security Agency; Public Records Management and Preservation Act; Department of Commerce; West Virginia Public Employees Retirement Act; Human Rights Commission; West Virginia Antiquities Commission; Public Em-
CHAPTER 5. GENERAL POWERS AND DUTIES OF THE
GOVERNOR, SECRETARY OF STATE AND ATTORNEY
GENERAL; BOARD OF PUBLIC WORKS; STATE BUILDING COMMISSION; SOCIAL SECURITY AGENCY; PUBLIC RECORDS MANAGEMENT AND PRESERVATION ACT; DEPARTMENT OF COMMERCE; WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT; HUMAN RIGHTS COMMISSION; WEST VIRGINIA ANTIQUITIES COMMISSION; PUBLIC EMPLOYEES' AND TEACHERS' RECIPROCAL SERVICE CREDIT ACT; WHITE CANE LAW.

ARTICLE 6. STATE BUILDING COMMISSION.

§5-6-1. Name of state office building commission changed; composition; appointment, terms and qualifications of members; chairman and secretary; compensation and expenses; powers and duties generally.

§5-6-2. Legislative findings; purpose of revision of article.

§5-6-3. Definitions.

§5-6-4. Powers of commission.

§5-6-5. Deposit and disbursement of funds of commission; security for deposits; audits.

§5-6-6. City of Charleston may dedicate streets, property, etc., to commission.

§5-6-7. Contracts with commission to be secured by bond; competitive bids required for contracts exceeding two thousand dollars.

§5-6-8. Commission empowered to issue state building revenue bonds; form and requirements for bonds; procedure for issuance; temporary bonds; funds, grants and gifts.

§5-6-9. Trustee for holders of bonds; contents of trust agreement.

§5-6-10. Trust existing in favor of existing bondholders.

§5-6-11. Management and control of project.

§5-6-12. Article not authority to create state debt.

§5-6-13. Compliance with article and state constitution only restrictions on construction and management of project.

§5-6-14. Article to be liberally construed.

§5-6-15. Severability.

§5-6-1. Name of state office building commission changed; composition; appointment, terms and qualifications of members; chairman and secretary; compensation and expenses; powers and duties generally.

1 "The State Office Building Commission of West Vir-
2 ginia," heretofore created, shall continue in existence
3 but on and after February nine, one thousand nine hun-
4 dred sixty-six, shall be known and designated as "The
5 State Building Commission of West Virginia" and shall
The members of the commission shall continue as a body corporate and as an agency of the state of West Virginia. On and after the date aforesaid, the commission shall consist of the governor, and four additional members to be appointed by the governor by and with the advice and consent of the Senate. The terms of office for said members to be appointed by the governor shall be four years, except that the terms of office of the first four members so appointed by the governor shall be for one, two, three and four years respectively. No more than three of such members so appointed by the governor shall be members of the same political party, nor shall any of said members be members or employees of the executive, legislative or judicial branches of government of West Virginia or any political subdivision thereof. The governor shall be chairman of the commission. The secretary of state shall be a member of the commission and serve as its secretary, but shall not have the right to vote upon matters before the commission. All members of the commission shall be citizens and residents of this state. The members of the commission shall be paid or reimbursed for their necessary expenses incurred under this article, but shall receive no compensation for their services as members or officers of the commission. Provided, however, That each member of the commission appointed by the governor shall, in addition to such reimbursement for necessary expenses receive a per diem of thirty-five dollars for each day or substantial portion thereof that he is engaged in the work of the commission. Such expenses and per diem shall be paid solely from funds provided under the authority of this article, and the commission shall not proceed to exercise or carry out any authority or power herein given it to bind said commission beyond the extent to which money has been provided under the authority of this article. On or before the fifteenth day of each month, the commission shall prepare and transmit to the president and minority leader of the Senate and the speaker and the minority leader of the House of Delegates a report covering the activities of the said commission for the preceding calendar month.
§5-6-2. Legislative findings; purpose of revision of article.

(a) The Legislature hereby finds that, with the concurrence of the Legislature, the commission heretofore authorized pursuant to resolution adopted on the eleventh day of March, one thousand nine hundred sixty-eight, the issuance of "State Building Revenue Bonds, Series 1968," in the aggregate principal amount of twenty-four million two hundred thousand dollars; pursuant to resolution adopted the fourteenth day of October, one thousand nine hundred sixty-eight, the issuance of "State Building Revenue Bonds, Public Safety Series," in the aggregate principal amount of two million five hundred thousand dollars; and pursuant to resolution adopted on the thirteenth day of April, one thousand nine hundred seventy, the issuance of "State Building Revenue Bonds, Science and Cultural Center Series," in the aggregate principal amount of nine million dollars.

(b) The Legislature hereby further finds that the said "State Building Revenue Bonds, Series 1968" were all sold and are now outstanding in the principal amount of twenty-four million two hundred thousand dollars; that the said "State Building Revenue Bonds, Public Safety Series" were all sold and are now outstanding in the principal amount of two million five hundred thousand dollars; and that said "State Building Revenue Bonds, Science and Cultural Center Series," in the principal amount of one million five hundred thousand dollars were sold and are now outstanding.

(c) The Legislature hereby further finds that the proceeds from the issuance and sale of the aforesaid "State Building Revenue Bonds, Series 1968", the aforesaid "State Building Revenue Bonds, Public Safety Series" and the aforesaid "State Building Revenue Bonds, Science and Cultural Center Series" have been expended or obligated in and for construction of or in connection with projects undertaken pursuant to this article, which projects are owned and held in the name of the state or the commission.

(d) The Legislature hereby further finds that the acquisition and construction of the aforesaid projects
have been in the best interests of the state by providing additional essential office space and other related structures which are needed for the use of the state, and the officers, departments, agencies and public corporations of the state, and the fulfillment of other public uses and purposes.

(e) The Legislature further finds and declares that the supreme court of appeals of West Virginia has held that the former provisions of this article were unconstitutional to the extent that the same contemplated that the principal of and the interest on bonds issued by the commission would be paid solely from a fund to be created and maintained from general tax revenues of the state.

(f) The Legislature further finds and declares that the amendments made by this act to this article are intended (1) to modify the provisions of this article so as to cause the same to be in full compliance with the provisions of the constitution of the state of West Virginia, which said court held were violated by the former provisions of this article, and to be in full compliance with said decision of the supreme court of appeals of West Virginia, and (2) to accord statutory recognition to existing rights, legal and equitable, of the holders of bonds heretofore issued by the commission, afford security for the payment of the obligations evidenced thereby and provide a special fund for the payment of the obligations evidenced thereby.

§5-6-3. Definitions.

1 The following terms, wherever used or referred to in this article, shall have the following meanings, unless a different meaning clearly appears from the context:

(1) "Commission" means the state building commission of West Virginia or if said commission shall be abolished, any board or officer succeeding to the principal functions thereof, or to whom the powers given to said commission shall be given by law;

(2) "Bonds" means bonds issued by the commission pursuant to this article;
(3) "Project" means collectively the acquisition of land, the construction, equipping and furnishing of a building or buildings, together with incidental approaches, structures and facilities, herein authorized to be constructed;

(4) "Cost of project" includes the cost of construction, the cost of equipping and furnishing same, the cost of all land, property, material and labor which are deemed essential thereto, the cost of improvements, financing charges, interest during construction, and all other expenses, including legal fees, trustees', engineers' and architects' fees which are necessarily or properly incidental to the project;

(5) "General tax revenues of the state" means revenues of the state derived from the exercise of the power of taxation and available for appropriation by the Legislature for general public purposes and shall not include revenues of the state, or of any officer, department or agency thereof, derived from taxes levied, collected and dedicated for a special purpose or purposes or derived from sources other than taxes such as profits, fees or charges; and

(6) "Rent" or "rental" includes all moneys received for the use of any part of a project either from the state of West Virginia or any officer, department or public corporation thereof, or from any instrumentality or political subdivision of the state, or directly or indirectly, from the United States of America or any officer, department, agency, instrumentality or public corporation thereof: Provided, That nothing in this article shall be taken to authorize the payment to the commission by or on behalf of the state, of general tax revenues of the state: Provided, however, That nothing in this article shall be taken to authorize the payment by or on behalf of the state of any rent in excess of the fair rental value of property used by or for such state officer or department or public corporation in the exercise of his or its statutory duties.

§5-6-4. Powers of commission.

1 The commission shall have power:
(1) To sue and be sued, plead and be impleaded;
(2) To have a seal and alter the same at pleasure;
(3) To contract to acquire and to acquire, in the name
of the commission or of the state, by purchase or other-
wise, 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 regu-
lation 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 instru-
ments 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 interests 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, to-
gether with incidental approaches, structures and facili-
ties, subject to such consent and approval of the city of
Charleston in any case as may be necessary; and, in addi-
tion, 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 improve-
ment 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 ac-
commodate 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 prop-
erty or interests therein necessary or convenient to ac-
complish 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 buildings at any time financed, constructed,
acquired or improved in whole or in part with the pro-
ceeds 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 accept and expend any gift, grant or con-
tribution of money to, or for the benefit of, the com-
mission, from the state of West Virginia or any other
source for any or all of the purposes specified in this
article or for any one or more of such purposes as may
be specified in connection with such gift, grant or con-
tribution;
(15) To enter on any lands and premises for the purpose of making surveys, soundings and examinations;
(16) 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; and
(17) 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.

§5-6-5. Deposit and disbursement of funds of commission; security for deposits; audits.

All moneys of the commission from whatever source derived shall be paid to the treasurer of the state of West Virginia, who shall not commingle said moneys with any other moneys, but shall deposit them in a separate bank account or accounts. The moneys in said accounts shall be impressed with and subject to the lien or liens thereon in favor of the bondholders provided in the proceedings for issuance of bonds pursuant to this article. The moneys in said accounts shall be paid out on check of the treasurer on requisition of the chairman of the commission, or of such other person as the commission may authorize to make such requisition. All deposits of such moneys shall, if required by the treasurer or the commission, be secured by obligations of the United States, of the state of West Virginia, or of the commission, of a market value equal at all times to the amount of the deposit, and all banking institutions are authorized to give such security for such deposits. The state auditor and his legally authorized representatives are hereby authorized and empowered from time to time to examine the accounts and books of the commission, including its receipts, disbursements, contracts, leases, sinking funds, investments and any other matters relating to its financial standing.
§5-6-6. City of Charleston may dedicate streets, property, etc., to commission.

Notwithstanding the provisions of any other law, the council of the city of Charleston is hereby authorized to dedicate to the commission for a project any street, real property, easements or rights in land or any combination of the foregoing owned by such city.

§5-6-7. Contracts with commission to be secured by bond; competitive bids required for contracts exceeding two thousand dollars.

The commission shall construct a project pursuant to a contract or contracts. Every such contract shall be secured by a bond meeting the requirements of section thirty-nine, article two, chapter thirty-eight of this code.

No contract or contracts for the construction, remodeling, renovation or repair of any building or buildings or any approaches, structures or facilities incidental thereto, or for the equipping and furnishing of any building or buildings, when the anticipated expenditure therefor will exceed the sum of two thousand dollars, shall be entered into except upon the basis of competitive sealed bids. Such bids shall be obtained by public notice soliciting such bids published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county in which any such contract is to be performed. The publication shall be completed at least fourteen days prior to the final date for the submission of bids. The commission may in addition to such publication also solicit sealed bids by sending requests by mail to prospective bidders. The contract shall be awarded to the lowest responsible bidder, unless any and all bids are rejected, in which event new bids shall be sought by again publishing notice as aforesaid. Any bid, with the name of the bidder, shall be entered on a record and each record, with the successful bid indicated thereon, shall, after the award of any contract,
§5-6-8. 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, contribution or contributions 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, gifts and contributions 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 com-
mission 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 five of this article, and under such further restric-
tions, 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 pur-
chased shall forthwith be cancelled, and shall not again
be issued. Prior to the preparation of definitive bonds,
the commission may, under like restrictions, issue tem-
porary 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 Vir-
ginia 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 here-
under 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.

§5-6-9. Trustee for holders of bonds; contents of trust agree-
ment.

1 The commission may enter into an agreement or agree-
ments with any trust company, or with any bank hav-
ing the powers of a trust company, whether within or
outside of the state, as trustee for the holders of bonds
issued hereunder, setting forth therein such duties of
the state and of the commission in respect of the ac-
quision, construction, improvement, maintenance, opera-
tion, repair and insurance of the project, the conserva-
tion and application of all moneys, the insurance of
moneys on hand or on deposit, and the rights and reme-
dies of the trustee and the holders of the bonds, as may
be agreed upon with the original purchasers of such
bonds, and including therein provisions restricting the
individual right of action of bondholders as is customary
in trust agreements respecting bonds and debentures of
corporations, protecting and enforcing the rights and
remedies of the trustee and the bondholders, and provid-
ing for approval by the original purchasers of the bonds
of the appointment of consulting architects, and of the
security given by those who contract to construct the
building, and by any bank or trust company in which the
proceeds of bonds or rentals shall be deposited, and for
approval by the consulting architects of all contracts for
construction. All expenses incurred in carrying out such
agreement may be treated as a part of the cost of main-
tenance, operation and repairs of the project.

§5-6-10. Trust existing in favor of existing bondholders.

The properties and interests in properties, real, per-
sonal and mixed, tangible and intangible, standing or
held in the name of or for and in behalf of, or for the
benefit of, the commission, or the state of West Virginia
to the extent that the same were acquired or improved
by the expenditure of the proceeds of bonds heretofore
issued by the commission, and the moneys, deposits, se-
curities and choses in action and other rights held in
the name of or for and in behalf of, or for the benefit of,
the commission, other than moneys, deposits, securities,
chose in action and other rights which are, or which
are investments of, (1) proceeds of bonds heretofore
issued by the commission held for expenditure for com-
pletion of now existing projects of the commission, or
(2) revenues of the commission from existing projects
of the commission which, after provision for operation
and maintenance expenses and coverage requirements
not otherwise provided for, are in excess of sums re-
quired to pay the principal of and interest on the bonds
of the commission heretofore issued, as and when due
and payable, or (3) proceeds of bonds of the commission
issued hereafter, or (4) revenues of the commission from
projects hereafter acquired or constructed by the com-
mission, are declared to be subject to and shall be held
by the commission in trust for the satisfaction of the
obligations evidenced by the bonds heretofore issued by
the commission and the interest coupons thereon: Pro-
vided, That nothing in this article shall be taken to vali-
date or to attempt to validate rights under any existing
lease or other agreement entered into under the former
provisions of this article between the commission and
the state of West Virginia or any officer, department or
agency thereof to the extent that such lease or agree-
ment provides for payments from general tax revenues
of the state. Until the satisfaction in full of the obliga-
tions evidenced by bonds heretofore issued by the com-
mission, the commission shall hold, manage and operate
the aforesaid trust properties and interests in properties,
moneys, deposits, securities and choses in action and
other rights, separate from all other properties and in-
terests in properties, moneys, deposits, securities and
choses in action and other rights that may hereafter be
held and owned by the commission. Upon the satisfac-
tion of all of the aforesaid obligations of the commission,
all of the aforesaid trust properties and interests in prop-
terties, moneys, deposits, securities and choses in action
and other rights shall become and be free and clear of
the aforesaid trust.

§5-6-11. Management and control of project.

The commission shall properly maintain, repair, oper-
ate, manage and control the project, fix the rates of
rental, and establish bylaws and rules and regulations
for the use and operation of the project, and may make
and enter into all contracts or agreements necessary and
incidental to the performance of its duties and the exe-
cution of its powers under this article.
§5-6-12. Article not authority to create state debt.

1 Nothing in this article contained shall be so construed or interpreted as to authorize or permit the incurring of state debt of any kind or nature as contemplated by the provisions of the constitution of the state of West Virginia in relation to state debt.

§5-6-13. Compliance with article and state constitution only restrictions on construction and management of project.

1 It shall not be necessary to secure from any officer or board not named in this article any approval or consent, or any certificate or finding, or to hold an election, or to take any proceedings whatever, either for the construction of such project, or the improvement, maintenance, operation or repair thereof, or for the issuance of bonds hereunder, except such as are prescribed by this article or are required by the constitution of the state.

§5-6-14. Article to be liberally construed.

1 This article, being necessary for the health, welfare and convenience of the citizens of the state, should be liberally construed to effectuate the purposes thereof.

§5-6-15. Severability.

1 If any provision or any part or clause of 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 other parts or other clauses of any provision, or applications of this article, and to this end the provisions of this article are declared to be severable.

CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS.

ARTICLE 3. SALES BY COMMISSIONER.

§60-3-9a. Additional price increase for payment of Korean veterans' bonus bonds and payment of state building revenue bonds.

§60-3-19a. Payment into veterans' bonus sinking fund for retirement of Korean veterans' bonus bonds and payment into special fund for retirement of state building revenue bonds.
§60-3-9a. Additional price increase for payment of Korean veterans' bonus bonds and payment of state building revenue bonds.

For the purpose of providing revenue for the payment of bonds issued under and by virtue of said "Korean Veterans' Bonus Amendment" of one thousand nine hundred fifty-six, the commissioner in the exercise of his authority under section nine of this article is hereby directed to increase the price of alcoholic liquors in addition to the price increase provided in said section nine hereof, on or before the last day of June, one thousand nine hundred fifty-seven, in an amount sufficient to produce an additional revenue of one million eight hundred thousand dollars on an annual volume of business equal to the average for the last three years. Whenever in any fiscal year the amount of money accumulated in the veterans' bonus sinking fund for the retirement of Korean veterans' bonus bonds shall be sufficient to pay at maturity all outstanding bonus bonds issued under said "Korean Veterans' Bonus Amendment" of one thousand nine hundred fifty-six, together with the interest due or payable thereon, then the commissioner is hereby directed to continue in effect the aforesaid price increase of alcoholic liquors and further increase the same as necessary for such continued increase together with such further increase to equal an amount sufficient to provide revenue of three million six hundred thousand dollars on an annual volume of business equal to the average for the last three years for the purpose of providing revenue to be paid into a special fund hereby created in the office of the state treasurer for the purpose of the payment of principal and interest on bonds of the state known as the "State Building Revenue Bonds", and for which payment, to the extent that the state building commission of West Virginia has available space in buildings operated by it in excess of revenue-producing uses, said commission shall provide at its established rates and charges such available excess space for use by such officers, departments or agencies of the state as the commissioner of finance and administration, or such other
officer, agency or department as shall from time to time have the duty to arrange for office space for officers, departments or agencies of the state, shall specify. Whenever in any fiscal year the amount of money accumulated in the special fund for the retirement of said "State Building Revenue Bonds" shall be sufficient to pay at maturity all outstanding bonds together with the interest due or payable thereon, the provision herein made for continuing in effect the aforesaid price increase and the provision herein for a further price increase shall become ineffective at the end of such fiscal year.

§60-3-19a. Payment into veterans' bonus sinking fund for retirement of Korean veterans' bonus bonds and payment into special fund for retirement of state building revenue bonds.

On and after the first day of July, one thousand nine hundred fifty-seven, from receipts in excess of the requirements of the operating fund of the commissioner, the sum of four hundred fifty thousand dollars shall, upon requisition of the governor, be paid each quarter into the veterans' bonus sinking fund to be used for the purpose of retiring bonds issued under said "Korean Veterans' Bonus Amendment" of one thousand nine hundred fifty-six. Whenever, in any fiscal year, the amount of money accumulated in the veterans' bonus sinking fund for the retirement of said Korean veterans' bonus bonds shall be sufficient to pay at maturity all outstanding bonus bonds issued under the "Korean Veterans' Bonus Amendment" of one thousand nine hundred fifty-six, together with interest due or payable thereon, no further transfers to such sinking fund shall be made after the end of such fiscal year. Thereafter, from receipts in excess of the requirements of the operating fund of the commissioner, the sum of nine hundred thousand dollars shall be paid by the commissioner each quarter into the special fund created in section nine-a of this article for the purpose of retiring bonds of the state known as the "State Building Revenue Bonds." It shall be the duty and responsibility of the state treasurer to pay the principal and interest on said bonds as they become due and payable. Whenever, in
any fiscal year, the amount of money accumulated in the special fund for the retirement of said “State Building Revenue Bonds” is sufficient to pay at maturity all of the outstanding bonds, together with interest due or payable thereon, no further transfers to such special fund shall be made after the end of such fiscal year.

Nothing in section nine-a of this article or in this section nineteen-a contained shall be taken as limiting the power and authority of the Legislature to at any time appropriate the aforesaid receipts for some other purpose or make other direction or provision respecting such receipts.

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CHAPTER 168

(House Bill No. 835—By Mrs. Given and Mr. Ballouz)

[Passed March 8, 1971; in effect July 1, 1971. Approved by the Governor.]  

AN ACT to repeal section three, article thirteen, chapter eight; to amend and reenact section five-(fifty-six), article two, chapter eleven, section two, article five of said chapter eleven and section one, article seven of said chapter eleven; to amend and reenact section twelve, article one, chapter eleven-a; to amend and reenact section twenty-three, article ten, chapter seventeen; and to amend and reenact section six, article nine, chapter eighteen, all of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to taxes, collection, records, receipts and disposition thereof; and repealing or amending from the code reference to capitation taxes.

Be it enacted by the Legislature of West Virginia:

That section three, article thirteen, chapter eight be repealed; that section five-(fifty-six), article two, chapter eleven, section two, article five of said chapter eleven and section one, article seven of said chapter eleven be amended and reenacted; that section twelve, article one, chapter eleven-a be amended and reenacted; that section twenty-three, article ten, chapter seventeen be amended and reenacted; and that section six,
article nine, chapter eighteen, all of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

Chapter
11. Taxation.
11A. Collection and Enforcement of Property Taxes.
17. Roads and Highways.
18. Education.

CHAPTER 11. TAXATION.

Article
2. Assessors.
5. Assessment of Personal Property.
7. Capitation Taxes.

ARTICLE 2. ASSESSORS.


1 The salaries of assessors and their deputies, assistants and employees shall be paid out of the county fund at the time and in the manner now provided by law for paying other county officers.

ARTICLE 5. ASSESSMENT OF PERSONAL PROPERTY.


1 In his personal property books the assessor shall enter the names and post-office addresses of the owners of personal property alphabetically arranged by districts, showing separately the values of:

5 (1) All tangible personal property employed exclusively in agriculture including horticulture and grazing;
6 (2) All products of agriculture (including livestock) while owned by the producer;
7 (3) All notes, bonds, bills and accounts receivable, stocks and any other intangible personal property;
8 (4) The total of one, two and three;
9 (5) All other tangible personal property.

13 The tax commissioner may prescribe such itemization and further information as he deems necessary. The assessor shall make the same number of copies and
ARTICLE 7. CAPITATION TAXES.

§11-7-1. Collection of capitation taxes for tax year 1970; effective date; legislative intent.

1 It is hereby declared to be the intent of the Legislature
2 that the provisions of this act whereby the former pro-
3 visions for collection of capitation taxes are repealed,
4 shall become effective July one, one thousand nine hun-
5 dred seventy-one, but that such effective date shall in
6 no way impair the right of the sheriff or any other public
7 official in carrying out the law as existing prior to the
8 passage of this act with respect to capitation taxes due
9 and collectible for the tax year one thousand nine hundred
10 seventy or any other prior year, the collection of which
11 was formerly provided for under the provisions of this
12 section.

CHAPTER 11A. COLLECTION AND ENFORCEMENT OF PROPERTY TAXES.

ARTICLE 1. ACCRUAL AND COLLECTION OF TAXES.

§11A-1-12. Receipt for taxes.

1 The sheriff or his deputy shall deliver to the person
2 paying any taxes a written or printed receipt therefor,
3 and shall retain for his records the stub or duplicate of
4 such receipt. The receipt and the stub or duplicate shall
5 specify the total value of personal property; the num-
6 ber of acres of land, and the number of town lots, with
7 the valuation of each tract or lot separately charged;
8 and shall show the total amount of the aggregate tax
9 paid for state, school, county, municipal, district, and
10 any other purpose for which levied. The officer receiv-
11 ing payment shall sign each receipt in his own hand-
12 writing. The sheriff shall furnish to each taxpayer a
13 statement showing the levies laid for each class of tax-
14 able property in each taxing district of the county when
15 requested so to do by the taxpayer. The sheriff shall
16 cause a statement of the levies, as aforesaid, to be posted
17 at the front door of the courthouse and at two conspic-
18 uous places in his office, but failure to post such state-
ment shall in no wise affect the rights of the state, or any of its agencies, to collect such taxes. The tax commis-

CHAPTER 17. ROADS AND HIGHWAYS.

ARTICLE 10. COUNTY COURTS; MUNICIPALITIES; GENERAL AUTHORITY AND DUTIES AS TO ROADS, ETC.

§17-10-23. Levy tax on property outside municipalities.

The county court of each county may levy a tax on all property situated outside of municipalities as follows:

On class one property, as defined by law, not to exceed twelve and one-half cents on the one hundred dollars’ valuation, and on class two property, as defined by law, not to exceed twenty-five cents on the one hundred dollars’ valuation. The levy tax shall be collected by the sheriff and the proceeds thereof shall be paid into the state treasury and credited to the road fund for the benefit of and to be expended for the maintenance, repair, construction and reconstruction of the roads of the county, outside of municipalities, in which the tax was raised.

CHAPTER 18. EDUCATION.

ARTICLE 9. SCHOOL FINANCES.


A separate school fund, to be called the “general school fund,” shall be set apart for the support of the free schools of the state, and the revenue from the following sources and not otherwise appropriated shall be paid into it:

(1) The income of the school funds;

(2) The net proceeds of all fines and forfeitures which accrued to the state during the previous year, except fines referred to in section six, article eight of this chapter;

(3) All moneys arising from the sources named in section four, article twelve of the Constitution, heretofore going to the “school fund” but as now amended going to the “general school fund”;

...
(4) All interest on public moneys received from state depositories;
(5) State license tax on marriages;
(6) State tax on forfeitures;
(7) State tax on state licenses, except on motor vehicles and on owners, chauffeurs, operators and dealers in motor vehicles, hunting and fishing licenses and state licenses paid directly to the state auditor and secretary of state; and
(8) All funds from any source paid into the treasury for school purposes and not otherwise appropriated.

CHAPTER 169

(Com. Sub. for House Bill No. 1078—Originating in the House Committee on Finance)

[Passed March 13, 1971; in effect April 1, 1971. Approved by the Governor.]

AN ACT to amend and reenact sections two and three, article twelve-a, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to persons and rates therein; and to amend and reenact sections one, two, two-a, two-b, two-c, two-d, two-e, two-g, two-h, two-i, two-j, three, three-b and twenty-five, article thirteen of said chapter; and to further amend said article thirteen by adding thereto two new sections, designated sections two-k and twenty-six, all relating to definitions; clarifications of taxable status; providing for tax on the severance and production of natural resources; providing for dressing and processing of food not to be considered as manufacturing but taxable on wholesale basis; increasing rates of taxpayers; inclusion of banking business and other financial business as taxable; making legislative findings; providing for the deletion of former exemptions for banks, building and loan associations, federal savings and loan associations, and business of industrial loans; permitting taxation by municipalities of banking businesses and
financial organizations; and providing for the severability of any invalid provisions.

Be it enacted by the Legislature of West Virginia:

That sections two and three, article twelve-a, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that sections one, two, two-a, two-b, two-c, two-d, two-e, two-g, two-h, two-i, two-j, three, three-b and twenty-five, article thirteen of said chapter be amended and reenacted; and that said article thirteen be further amended by adding thereto two new sections, designated sections two-k and twenty-six, all to read as follows:

Article

12A. Annual Tax on Incomes of Certain Carriers.

ARTICLE 12A. ANNUAL TAX ON INCOMES OF CERTAIN CARRIERS.

§11-12A-2. Imposition of annual tax on gross income of certain carriers.
§11-12A-3. Imposition of annual tax on net income of certain carriers.

§11-12A-2. Imposition of annual tax on gross income of certain carriers.

Every motor vehicle carrier operating on the public highways of this state and every railroad car carrier, railroad carrier, express company, pipeline company, telephone and telegraph company, airline company and any person operating a steamboat or other watercraft, for the transportation of passengers or freight, doing business in the state shall pay to the state an annual tax for each calendar year. This tax shall be equal to the gross income from all business beginning and ending within the state multiplied by the respective rates as follows: Motor vehicle carriers, railroad car carrier, railroad carrier, express companies, pipeline companies, airline companies, any person operating a steamboat or other watercraft and telegraph companies, three and three-tenths percent, and telephone companies, three and seventy-four one-hundredths percent: Provided, That any motor vehicle carrier which is an urban or suburban bus line shall be taxed at the rate of one and sixty-five one-hundredths percent of such gross income and any
motor vehicle carrier which is a taxi or cab company or a company which hauls waste, refuse or garbage shall be taxed at the rate of two and five-tenths percent of such gross income.

§11-12A-3. Imposition of annual tax on net income of certain carriers.

In addition to the tax imposed in the preceding section, every motor vehicle carrier operating on the public highways of the state and every railroad carrier, railroad car carrier, express company, pipeline company, telephone and telegraph company, airline company and any person operating a steamboat or other watercraft for the transportation of passengers or freight, doing business in this state shall pay an annual tax for each calendar year on the net income earned within the state equal to three and seventy-four one-hundredths percent of such net income for telephone companies and six and six-tenths percent of such net income for all other carriers included in this section: Provided, That any motor vehicle carrier which is an urban or suburban bus line or a taxi or cab company or a company which hauls waste, refuse or garbage, five percent of such net income. Net income shall be determined as follows:

(a) The net income of motor vehicle carriers earned within the state shall be determined by ascertaining a sum bearing the proportion to the total net income of the motor vehicle carrier that its business done in West Virginia measured in motor vehicle miles of motor vehicle carrier operation, bears to all business done, measured in like fashion;

(b) The net income of railroad carriers earned within the state shall be determined by ascertaining a sum bearing the proportion to total net income of the carriers that its business done in West Virginia, measured in ton-miles, bears to all business done, measured in like fashion;

(c) The net income of railroad car carriers and express companies earned within the state shall be determined by ascertaining a sum bearing the proportion to the total net income of the carriers or company that
its business done in West Virginia, measured in car-miles
of car operation, bears to all business done, measured
in like fashion: Provided, however, That nothing in this
article shall be construed as applying to railroad freight
car carriers not owned by railroad carriers or their sub-
sidiaries;
(d) The net income of pipeline companies earned
within the state shall be determined by ascertaining a
sum bearing the proportion to the total net income of
the company that its business done in West Virginia,
measured in barrel-miles in the case of oil and liquid
coal or slurry and of thousand cubic feet-miles in the
case of gas, bears to all business done, measured in like
fashion;
(e) The net income of airline companies and any per-
son operating a steamboat or other watercraft for the
transportation of passengers or freight earned within the
state shall be determined by ascertaining a sum
bearing the proportion to the total net income of the
corporation that its business done in West Virginia,
measured in passenger-miles in the case of airline com-
panies and ton-miles in the case of any person operating
a steamboat or other watercraft, bears to all business
done, measured in like fashion;
(f) The net income of telephone and telegraph com-
panies shall be determined by ascertaining a sum bear-
ing the proportion to the total net income of the com-
panies that its business done in West Virginia, measured
in wire-miles, bears to all business done, measured in
like fashion;
(g) In computing the tax imposed by this section, the
total net income of a taxpayer who shall have been taxed
under the preceding section shall be reduced by an
amount bearing the proportion to such total net income
that the gross income of the taxpayer which is the
measure of the tax under the preceding section bears to
its total gross income from all business done wherever
conducted. No county, city, town, village or other political
subdivision of the state shall levy a license, net income
or any other kind of tax on the business taxed under
this article.
ARTICLE 13. BUSINESS AND OCCUPATION TAX.

§11-13-1. Definitions.

When used in this article, the term "person" or the term "company," herein used interchangeably, includes any individual, firm, copartnership, joint adventure, association, corporation, trust, or any other group or combination acting as a unit, and the plural as well as the singular number, unless the intention to give a more limited meaning is disclosed by the context.

"Tax year" or "taxable year" means either the calendar year, or the taxpayer's fiscal year when permission is obtained from the tax commissioner to use same as the tax period in lieu of the calendar year.

"Sale," "sales" or "selling" includes any transfer of the ownership of, or title to, property, whether for money or in exchange for other property.

"Taxpayer" means any person liable for any tax hereunder.

"Gross income" means the gross receipts of the taxpayer, other than a banking or financial business, received as compensation for personal services and the gross receipts of the taxpayer derived from trade, business, commerce or sales and the value proceeding or accruing from the sale of tangible property (real or personal), or service, or both, and all receipts by reason of the investment of the capital of the business engaged in, including rentals, royalties, fees, reimbursed costs or expenses or other emoluments however designated and including all interest, carrying charges, fees or other like income, however denominated, derived
by the taxpayer from repetitive carrying of accounts, in the
regular course and conduct of his business, and extension
of credit in connection with the sale of any tangible per-
sonal property or service, and without any deductions on
account of the cost of property sold, the cost of materials
used, labor costs, taxes, royalties paid in cash or in kind or
otherwise, interest or discount paid or any other expense
whatsoever. "Gross income" of a banking or financial
business is specified in section two-k of this article.

"Gross proceeds of sales" means the value, whether in
money or other property, actually proceeding from the
sale of tangible property without any deduction on ac-
count of the cost of property sold or expenses of any kind.

The terms "gross income" and "gross proceeds of sales"
shall not be construed to include (1) cash discounts al-
lowed and taken on sales; (2) the proceeds of sale of goods,
wares or merchandise returned by customers when the
sale price is refunded either in cash or by credit; (3) the
amount allowed as "trade-in value" for any article ac-
cepted as part payment for any article sold; (4) excise
taxes imposed by this state; or (5) money or other prop-
erty received or held by a professional person for the sole
use and benefit of a client or another person or money re-
ceived by the taxpayer on behalf of a bank or other
financial institution for the repayment of a debt of
another.

"Business" shall include all activities engaged in or
caused to be engaged in with the object of gain or
economic benefit, either direct or indirect. "Business"
shall not include a casual sale by a person who is not
engaged in the business of selling the type of prop-
erty involved in such casual sale. "Business" shall
include the production of natural resources or manu-
factured products which are used or consumed by
the producer or manufacturer and shall include the
activities of a banking business or financial organiza-
tion.

The term "banking business" or "financial organization"
shall mean any bank, banking association, trust company,
industrial loan company, small loan company or licensee,
building and loan association, savings and loan association, credit union, finance company, investment company, investment broker or dealer, and any other similar business organization at least ninety per centum of the assets of which consists of intangible personal property and at least ninety per centum of the gross receipts of which consists of dividends, interest and other charges derived from the use of money or credit.

"Service business or calling" shall include all activities engaged in by a person for other persons for a consideration, which involve the rendering of a service as distinguished from the sale of tangible property, but shall not include the services rendered by an employee to his employer. This term shall include, but not be limited to:

(a) Persons engaged in manufacturing, compounding or preparing for sale, profit, or commercial use, articles, substances, or commodities which are owned by another or others;

(b) Persons engaged as independent contractors in producing natural resource products which are owned by another or others, as personal property, immediately after the same are severed, extracted, reduced to possession and produced;

(c) The repetitive carrying of accounts, in the regular course and conduct of business, and extension of credit in connection with the sale of any tangible personal property or service, except as to persons taxed pursuant to the provisions of section two-k of this article.

"Selling at wholesale" or "wholesale sales" shall mean and include: (1) Sales of any tangible personal property for the purpose of resale in the form of tangible personal property; (2) sales of machinery, supplies or materials which are to be directly consumed or used by the purchaser in the conduct of any business or activity which is subject to the tax imposed by this article or by article twelve-a of this chapter; (3) sales of any tangible personal property to the United States of America, its agencies and instrumentalities or to the state of West Virginia, its institutions or political subdivisions.
“Contracting” shall include the furnishing of work, or both materials and work, in the fulfillment of a contract for the construction, alteration, repair, decoration or improvement of a new or existing building or structure, or any part thereof, or for the alteration, improvement or development of real property.

§11-13-2. Imposition of privilege tax.

There is hereby levied and shall be collected annual privilege taxes against the persons, on account of the business and other activities, and in the amounts to be determined by the application of rates against values or gross income as set forth in sections two-a to two-k, inclusive, of this article.

If any person liable for any tax under sections two-a or two-b shall ship or transport his products or any part thereof out of the state without making sale of such products, the value of the products in the condition or form in which they exist immediately before transportation out of the state shall be the basis for the assessment of the tax imposed in said sections, except in those instances in which another measure of the tax is expressly provided. The tax commissioner shall prescribe equitable and uniform rules for ascertaining such value.

In determining value, however, as regards sales from one to another of affiliated companies or persons, or under other circumstances where the relation between the buyer and seller is such that the gross proceeds from the sale are not indicative of the true value of the subject matter of the sale, the tax commissioner shall prescribe uniform and equitable rules for determining the value upon which such privilege tax shall be levied, corresponding as nearly as possible to the gross proceeds from the sale of similar products of like quality or character where no common interest exists between the buyer and seller but the circumstances and conditions are otherwise similar.

Gross income included in the measure of the tax under sections two-a and two-b of this article shall neither be added nor deducted in computing the tax levied under the other sections of this article.
A person exercising any privilege taxable under sections two-a or two-b of this article and engaging in the business of selling his natural resources or manufactured products at retail in this state shall be required to make returns of the gross proceeds of such retail sales and pay the tax imposed in section two-c of this article for the privilege of engaging in the business of selling such natural resources or manufactured products at retail in this state. But any person exercising any privilege taxable under sections two-a or two-b of this article and engaging in the business of selling his natural resources or manufactured products to producers of natural resources, manufacturers, wholesalers, jobbers, retailers or commercial consumers for use or consumption in the purchaser's business shall not be required to pay the tax imposed in section two-c of this article.

Manufacturers exercising any privilege taxable under section two-b of this article shall not be required to pay the tax imposed in section two-c of this article for the privilege of selling their manufactured products for delivery outside of this state, but the gross income derived from the sale of such manufactured products outside of this state shall be included in determining the measure of the tax imposed on such manufacturer in section two-b.

A person exercising privileges taxable under the other sections of this article, producing coal, oil, natural gas, minerals, timber or other natural resource products the production of which is taxable under section two-a, and using or consuming the same in his business or transferring or delivering the same as any royalty payment, in kind, or the like, shall be deemed to be engaged in the business of mining and producing coal, oil, natural gas, minerals, timber or other natural resource products for sale, profit or commercial use, and shall be required to make returns on account of the production of the business showing the gross proceeds or equivalent in accordance with uniform and equitable rules for determining the value upon which such privilege tax shall be levied, corresponding as nearly as possible to the gross proceeds from the sale of similar products of like quality or char-
§11-13-2a. Severance, extraction and production of coal and other natural resource products.

Upon every person exercising the privilege of engaging or continuing within this state in the business of severing, extracting, reducing to possession and producing for sale, profit or commercial use any natural resource products, the amount of such tax to be equal to the value of the articles produced as shown by the gross proceeds derived from the sale thereof by the producer, except as otherwise provided, multiplied by the respective rates as follows: Coal, three and five-tenths percent; limestone or sandstone, quarried or mined, two and two-tenths percent; oil, four and thirty-four one-hundredths percent; natural gas, in excess of the value of five thousand dollars, eight and sixty-three one-hundredths percent; blast furnace slag, four and thirty-four one-hundredths percent; sand, gravel or other mineral product not quarried or mined, four and thirty-four one-hundredths percent; timber, two and two-tenths percent; other natural resource products, two and eighty-six one-hundredths percent. The measure of this tax is the value of the entire production in this state, regardless of the place of sale or the fact that the delivery may be made to points outside the state: Provided, however, that for the purposes of the production of oil classification, and the production of natural gas classification, as set forth in this section, multiple coowners of oil or natural gas, in place, lessees thereof, or others being vested with title and ownership to part or all of the oil and gas, as personal property, immediately after severance, extraction, reduction to possession and production, except royalty recipients, in kind, shall be deemed to be a "group or combination acting as a unit" and one "person", as defined in section one of this article, if not otherwise defined therein, whenever engaged in the business of producing oil or natural gas through common use, by joint or separately executed contracts, of the same independent contractor driller or operator's
services; and notwithstanding provisions of private con-
tracts for separate deposit of gross receipts in separate
members’ accounts or for members of such group or
combination to take in kind any proportionate part of such
natural resources.

Lessees, sublessees or other denominated lessees are
considered to be producers of all of the oil or natural gas
produced, regardless of any payment, in kind, to lessors,
sublessors or other denominated lessors of a part of such
natural resources as rents or royalties. Recipients of
royalties or rents, in kind, in cash or otherwise are tax-
able on their gross income pursuant to the provisions of
section two-i of this article.

§11-13-2b. Manufacturing, compounding or preparing prod-
ucts; processing of food excepted.

1 Upon every person engaging or continuing within this
state in the business of manufacturing, compounding or
preparing for sale, profit, or commercial use, either di-
rectly or through the activity of others in whole or part,
any article or articles, substance or substances, com-
modity or commodities, or electric power produced by
public utilities or others and not taxed under other provi-
sions of this article, the amount of the tax to be equal to
the value of the article, substance, commodity or electric
power manufactured, compounded or prepared for sale, as
shown by the gross proceeds derived from the sale there-
of by the manufacturer or person compounding or pre-
paring the same, except as otherwise provided, multi-
plied by a rate of eighty-eight one-hundredths of one
percent. The measure of this tax is the value of the
entire product manufactured, compounded or prepared
in this state for sale, profit or commercial use, regard-
less of the place of sale or the fact that deliveries may
be made to points outside the state. However, the
dressing and processing of food by a person, firm or
corporation, which food is to be sold on a wholesale
basis by such person, firm or corporation shall not be
considered as manufacturing or compounding, but the
sale of these products on a wholesale basis shall be sub-
ject to the same tax as is imposed on the business of
serving at wholesale as provided in section two-c.

It is further provided, however, that in those instances in which the same person partially manufactures, compounds or prepares products within this state and partially manufactures, compounds or prepares such products outside of this state the measure of his tax under this section shall be that proportion of the sale price of the product that the payroll cost of manufacturing within this state bears to the entire payroll cost of manufacturing the product; or, at the option of the taxpayer, the measure of his tax under this section shall be the proportion of the sales value of the articles that the cost of operations in West Virginia bears to the full cost of manufacture of the articles.

§11-13-2c. Business of selling tangible property; sales exempt.

1 Upon every person engaging or continuing within this state in the business of selling any tangible property whatsoever, real or personal, including the sale of food, and the services incident to the sale of food in hotels, restaurants, cafeterias, confectioneries, and other public eating houses, except sales by any person engaging or continuing in the business of horticulture, agriculture or grazing, or of selling stocks, bonds or other evidences of indebtedness, there is likewise hereby levied, and shall be collected, a tax equivalent to fifty-five one-hundredths of one percent of the gross income of the business, except that in the business of selling at wholesale the tax shall be equal to twenty-seven one-hundredths of one percent of the gross income of the business.

§11-13-2d. Public service or utility business.

1 Upon any person engaging or continuing within this state in any public service or utility business, except railroad, railroad car, express, pipeline, telephone and telegraph companies, water carriers by steamboat or steamship and motor carriers, there is likewise hereby levied and shall be collected taxes on account of the business engaged in equal to the gross income of the business multiplied by the respective rates as follows: Street and interurban and electric railways, one and four-
tenths percent; water companies, four and four-tenths percent except as to income received by municipally owned water plants; electric light and power companies, five and seventy-two hundredths percent on sales and demand charges for domestic purposes and commercial lighting and four and twenty-nine hundredths percent on sales and demand charges for all other purposes, except as to income received by municipally owned plants producing or purchasing electricity and distributing same; natural gas companies, four and twenty-nine hundredths percent on the gross income; toll bridge companies, four and twenty-nine hundredths percent; and upon all other public service or utility business, two and eighty-six hundredths percent. The measure of this tax shall not include gross income derived from commerce between this state and other states of the United States or between this state and foreign countries. The measure of the tax under this section shall include only gross income received from the supplying of public services. The gross income of the taxpayer from any other activity shall be included in the measure of the tax imposed upon the appropriate section or sections of this article.


1 Upon every person engaging or continuing within this state in the business of contracting, the tax shall be equal to: (a) Two and six-tenths percent of the gross income of the business derived from contracts entered into prior to the first day of July, one thousand nine hundred sixty-five; (b) two percent of the gross income of the business derived from contracts entered into on or after the first day of July, one thousand nine hundred sixty-five and prior to the first day of April, one thousand nine hundred seventy-one; and (c) two and two-tenths percent of the gross income of the business derived from contracts entered into on or after the first day of April, one thousand nine hundred seventy-one.

§11-13-2g. Business of operating amusements.

1 Upon every person engaging or continuing within this state in the business of operating a theatre, opera house,
moving picture show, vaudeville, amusement park, dance hall, skating rink, racetrack, radio broadcasting station or any other place at which amusements are offered to the public, the tax shall be equal to seventy-one one-hundredths of one percent of the gross income of the business.

§11-13-2h. Service business or calling not otherwise specifically taxed.

Upon every person engaging or continuing within this state in any service business or calling not otherwise specifically taxed under this law, there is likewise hereby levied and shall be collected a tax equal to one and fifteen one-hundredths percent of the gross income of any such business.


Upon every person engaging or continuing within this state in the business of furnishing any real or tangible personal property, which has a tax situs in this state, or any interest therein for hire, loan, lease or otherwise, whether the return be in the form of rentals, royalties, fees or otherwise, the tax shall be one and fifteen one-hundredths percent of the gross income of any such activity.

The term "tangible personal property," as used herein, shall not include money or public securities.

§11-13-2j. Small loan and industrial loan businesses.

Upon every person engaging or continuing within this state in the business of making loans of money, credit goods, or things in action, who because of such activity is required under the provisions of article seven-a, chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, to obtain a license from the commissioner of banking of the state of West Virginia, and upon each and every industrial loan company, the tax shall be one and five one-hundredths percent of the gross income of any activity, notwithstanding any other provisions of this article: Provided, That such tax shall apply only to gross income
received prior to the first day of April, one thousand nine
hundred seventy-one. Persons subject to the provisions
of this section shall, on and after the first day of April,
one thousand nine hundred seventy-one, be subject to
the provisions of section two-k of this article.

§11-13-2k. Banking and other financial business; legislative
findings.

Upon every person engaging or continuing within
this state in the business of banking or financial busi-
ness, from and after the first day of April, one thousand
nine hundred seventy-one, the tax shall be equal to one
and fifteen one-hundredths percent of the gross income
received from interest, premiums, discounts, dividends,
service fees or charges, commissions, fines, rents from
real or tangible personal property, however denominated,
royalties, charges for bookkeeping or data processing,
receipts from check sales, charges or fees, and receipts
from the sale of tangible personal property: Provided,
however, That gross income shall not include (a) inter-
est received on the obligations of the United States, its
agencies and instrumentalities, (b) interest received on
the obligations of this or any other state, territory or
possession of the United States, or any political sub-
division of any of the foregoing or of the District of
Columbia, or (c) interest received on investments or
loans primarily secured by first mortgages or deeds
of trust on residential property occupied by nontrans-
sients; Provided, however, That all interest derived on
activities exempt under (c) above, shall be reported, as to
amounts, on the return of a person taxable under the
provisions of this section.

Persons taxed pursuant to the provisions of this sec-
tion shall not be taxed under sections two-a to two-j,
inclusive, of this article.

The Legislature hereby finds and declares that it is
the intent of the Legislature to subject national bank-
ing associations and other financial organizations to the
tax imposed by this article, in accordance with the
authorization contained in section five thousand two hun-
dred nineteen of the Revised Statutes of the United States as amended by Public Law 91-156 enacted the twenty-fourth day of December, one thousand nine hundred sixty-nine.


1 There shall be an exemption in every case of fifty dollars in amount of tax computed under the provisions of this article. A person exercising a privilege taxable hereunder for a fractional part of a tax year shall be entitled to an exemption of the sum bearing the proportion to fifty dollars that the period of time the privilege is exercised bears to a whole year. Only one exemption shall be allowed to any one person, whether he exercises one or more privileges taxable hereunder.

11 The provisions of the article shall not apply to: (a) Insurance companies which pay the state of West Virginia a tax upon premiums: Provided, That said exemption shall not extend to that part of the gross income of insurance companies which is received for the use of real property, other than property in which any such company maintains its office or offices, in this state, whether such income be in the form of rentals or royalties; (b) nonprofit cemetery companies organized and operated for the exclusive benefit of their members; (c) fraternal societies, organizations and associations organized and operated for the exclusive benefit of their members and not for profit: Provided, however, That said exemption shall not extend to that part of the gross income arising from the sale of alcoholic liquor, food and related services, of such fraternal societies, organizations and associations which are licensed as private clubs under the provisions of article seven, chapter sixty of this code; (d) corporations, associations and societies organized and operated exclusively for religious or charitable purposes; (e) production credit association, organized under the provisions of the federal “Farm Credit Act of one thousand nine hundred thirty-three”: Provided, however, That the exemptions of this section shall
§11-13-3b. Definitions; reduction allowed in tax due; how computed.

1 When used in this section, the phrase "normal tax" shall mean the tax computed by the application of rates against values or gross income as set forth in sections two-a to two-k, inclusive, of this article, less exemption at the rate of fifty dollars annually or at the rate of four dollars and sixteen cents per month for the period actually engaged in business.

2 The normal tax shall be computed by the application of rates against values or gross income as set forth in sections two-a to two-k, inclusive, of this article.

§11-13-25. Cities, towns or villages restricted from imposing additional tax.

1 Notwithstanding the provisions of section five, article thirteen, chapter eight of this code, no city, town, or village shall impose a business and occupation tax or privilege tax upon occupations or privileges taxed under sections two-a, two-b, two-c, two-d, two-e, two-g, two-h, two-i and two-j of this article, in excess of rates in effect under this article on January one, one thousand nine hundred fifty-nine, or in excess of one percent of gross income under section two-k of this article.


1 If any provision of this article or the application thereof shall for any reason be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of said article, but shall be confined in its operation to the provision thereof directly involved in the controversy in which such judgment shall have been rendered, and the applicability of such provision to other persons or circumstances shall not be affected thereby.
AN ACT to amend and reenact section nine, article twenty-one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section three, article twenty-four of said chapter, all relating to the determination of the meaning of terms used in the West Virginia personal income tax and the West Virginia corporation net income tax act.

Be it enacted by the Legislature of West Virginia:

That section nine, article twenty-one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section three, article twenty-four of said chapter be amended and reenacted, all to read as follows:

Article

ARTICLE 21. PERSONAL INCOME TAX.


1 Any term used in this article shall have the same meaning as when used in a comparable context in the laws of the United States relating to income taxes, unless a different meaning is clearly required. Any reference in this article to the laws of the United States shall mean the provisions of the Internal Revenue Code of 1954, as amended, and such other provisions of the laws of the United States as relate to the determination of income for federal income tax purposes. All amendments made to the laws of the United States prior to the first day of January, one thousand nine hundred seventy-one, shall be given effect in determining the taxes imposed by this article for the tax period beginning the first day of January, one thousand nine hundred seventy-one,
and thereafter, but no amendment to laws of the United States made on or after the first day of January, one thousand nine hundred seventy-one, shall be given effect.

ARTICLE 24. CORPORATION NET INCOME TAX.


(a) General.—Any term used in this article shall have the same meaning as when used in a comparable context in the laws of the United States relating to federal income taxes, unless a different meaning is clearly required by the context or by definition in this article. Any reference in this article to the laws of the United States or to the Internal Revenue Code or to the federal income tax law shall mean the provisions of the laws of the United States as relate to the determination of income for federal income tax purposes. All amendments made to the laws of the United States prior to the first day of January, one thousand nine hundred seventy-one, shall be given effect in determining the taxes imposed by this article for the tax period beginning the first day of July, one thousand nine hundred seventy-one, and thereafter, but no amendment to laws of the United States made on or after the first day of January, one thousand nine hundred seventy-one, shall be given effect.

(b) Certain terms defined.—For purposes of this article:

(1) The term “tax commissioner” means the tax commissioner of the state of West Virginia or his delegate.

(2) The term “corporation” means and includes a joint-stock company or any association which is taxable as a corporation under the federal income tax law.

(3) The term “domestic corporation” means any corporation organized under the laws of West Virginia.

(4) The term “foreign corporation” means any corporation other than a domestic corporation.

(5) The term “state” means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof.
(6) The term "taxable year" means the taxable year for which the taxable income of the taxpayer is computed under the federal income tax law.

(7) The term "taxpayer" means a corporation subject to the tax imposed by this article.

(8) The term "tax" includes, within its meaning, interest and penalties unless the intention to give it a more limited meaning is disclosed by the context.

(9) The term "commercial domicile" means the principal place from which the trade or business of the taxpayer is directed or managed.

(10) The term "compensation" means wages, salaries, commissions and any form of remuneration paid to employees for personal services.

(11) The term "West Virginia taxable income" means the taxable income of a corporation as defined by the laws of the United States for federal income tax purposes, adjusted as provided in section six: Provided, That in the case of a corporation having income from business activity which is taxable without this state, its "West Virginia taxable income" shall be such portion of its taxable income as so defined and adjusted as is allocated or apportioned to this state under the provisions of section seven.

(12) The term "business income" means income arising from transactions and activity in the regular course of the taxpayer's trade or business and includes income from tangible and intangible property if the acquisition and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations.

(13) "Nonbusiness income" means all income other than business income.

(14) The term "public utility" means any business activity to which the jurisdiction of the public service commission of West Virginia extends under section one, article two, chapter twenty-four of the code of West Virginia, as amended.

(15) The term "this code" means the code of West Virginia.
AN ACT to amend and reenact section seventy-four, article twenty-one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to employer’s returns and payment of withheld taxes under the West Virginia personal income tax act.

Be it enacted by the Legislature of West Virginia:

That section 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 to read as follows:

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-74. Employer’s return and payment of withheld taxes.

1 (a) General.—Every employer required to deduct and withhold tax under this article shall, for each calendar quarter, on or before the last day of the month following the close of such calendar quarter, file a withholding return as prescribed by the tax commissioner and pay over to the tax commissioner the taxes so required to be deducted and withheld. Where the aggregate amount so deducted and withheld by any employer is less than twenty-five dollars in a calendar quarter and the aggregate for the calendar year can reasonably be expected to be less than one hundred dollars, the tax commissioner may by regulation permit an employer to file an annual return and pay over to the tax commissioner the taxes deducted and withheld on or before the last day of the month following the close of such calendar year. The tax commissioner
may, if he believes such action necessary for the protection
of the revenues, require any employer to make such re-
turn and pay to him the tax deducted and withheld at any
time, or from time to time.

(b) Monthly returns and payments of withheld tax for
April and May 1971.—Notwithstanding the provisions of
subsection (a), in the case of each of the months of April
and May, one thousand nine hundred seventy-one, every
employer required to deduct and withhold tax under
this article, except any employer with respect to whom
the tax commissioner may have by regulation provided
otherwise in accordance with the provisions of subsec-
tion (a), shall, for the months of April and May, one thou-
sand nine hundred seventy-one, file a withholding return for
each of such months as prescribed by the tax commissioner
and pay over to the tax commissioner the taxes so required
to be deducted and withheld for each of such months by
the twentieth day of June, one thousand nine hundred sev-
enty-one.

(c) Monthly returns and payments of withheld tax on
and after June 1, 1971.—Notwithstanding the provisions
of subsection (a), on and after June 1, 1971, every em-
ployer required to deduct and withhold tax under this ar-
ticle shall, for each month, on or before the twentieth day
of the succeeding month, file a withholding return as pre-
scribed by the tax commissioner and pay over to the tax
commissioner the taxes so required to be deducted and
withheld, if such withheld taxes aggregate one hundred
dollars or more for such month; except any employer with
respect to whom the tax commissioner may have by regu-
lation provided otherwise in accordance with the pro-
visions of subsection (a).

(d) Deposit in trust for tax commissioner.—Whenever
any employer fails to collect, truthfully account for, pay
over the tax, or make returns of the tax as required in this
section, the tax commissioner may serve a notice requiring
such employer to collect the taxes which become col-
lectible after service of such notice, to deposit such taxes
in a bank approved by the tax commissioner, in a separate
account, in trust for and payable to the tax commissioner,
and to keep the amount of such tax in such account until payment over to the tax commissioner. Such notice shall remain in effect until a notice of cancellation is served by the tax commissioner.

CHAPTER 172
(House Bill No. 989—By Mr. Myles)

[Passed March 11, 1971; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections seventeen, eighteen and thirty-two, article four, chapter eleven-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to compensation of deputy commissioners of forfeited and delinquent lands.

Be it enacted by the Legislature of West Virginia:

That sections seventeen, eighteen and thirty-two, article four, chapter eleven-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and re-enacted to read as follows:

ARTICLE 4. SALE OF LANDS FOR SCHOOL FUND.

§11A-4-17. Compensation of deputy commissioners; court costs.

§11A-4-18. Application for permission to redeem.

§11A-4-32. Deed to purchaser; record.

§11A-4-17. Compensation of deputy commissioners; court costs.

1 As compensation for his services, the deputy commissioner shall be entitled to an attorney's fee of ten dollars for each item included in the suit. In addition thereto he shall receive a commission of fifteen percent on each sale or redemption. Such commission on sales shall be based on the sale price and in the case of redemption on the total taxes and interest due. Such compensation shall be collected from the redemptor as provided for in section eighteen of this article. Such compensation, together with a charge of one dollar
payable to the clerk of the circuit court for each item in the suit, shall be taxed to the state as part of its cost in the suit and shall be paid as hereinafter provided. Except as otherwise provided in this article, no other costs shall be taxed.

§11A-4-18. Application for permission to redeem.

The former owner of any forfeited or delinquent land, or any other person who was entitled to redeem such land under the provisions of section eight, article three of this chapter, may file his petition in such suit with the circuit court or the judge thereof in vacation, at any time before confirmation of sale thereof requesting permission to redeem such land to the extent that title thereto remains in the state. The court or the judge thereof in vacation may by proper decree, permit the petitioner to redeem the land upon payment to the sheriff of the total amount of taxes, interest and charges properly due or chargeable thereon on the date of redemption, and all court costs taxable in respect thereto under the provisions of this article, which amount shall be fixed by the court or the judge thereof in vacation, in the order.

Upon payment being made, the court or the judge thereof in vacation, shall enter a decree declaring the redemption of such land by the petitioner, so far only as the title thereto remains in the state, and dismissing the suit in respect thereto. If redemption was allowed after sale, the decree shall also direct the sheriff to return the purchase money to the purchaser. Such decree shall operate as a release of all the right, title and interest of the state in and to such land, but shall in no wise affect or impair any right, title or interest which any other person may have therein.

Any redemption, which may have been heretofore had by a former owner of real estate, pursuant to permission, granted such former owner by a vacation order, in any such suit, is hereby declared valid.

§11A-4-32. Deed to purchaser; record.

Whenever ordered to do so as provided in the preceding section, the deputy commissioner shall make and
deliver to the person entitled thereto a deed in form or
effect as follows:

This deed made this ___ day of ________________, 19___,
by and between ________________, deputy com-
missioner of forfeited and delinquent lands for_________
County, West Virginia, acting for and on behalf of the
State of West Virginia, grantor, and ________________
purchaser, (or _______________________, heir, devisee
or assignee of ______________________, purchaser,)
grantee, witnesseth that

WHEREAS, In pursuance of and in accordance with the
statutes in such case made and provided, the above named
deputy commissioner did, by order of the Circuit Court
of ______________ County, in the month of__________,
in the year 19_______, sell the real estate, hereinafter men-
tioned and described, for the benefit of the school fund,
and ____________________ (here insert name of pur-
chaser) for the sum of $______________ , that being the
amount of purchase money paid, did become the pur-
chaser of such real estate (or of an undivided__________
interest in such real estate) which was sold to the State
for nonpayment of taxes in the name of______________;
(or which was forfeited to the State for nonentry in the
name of ______________________; or which escheated
to the State in the name of ______________________; or
which was waste and unappropriated land belonging to
the State;) and

WHEREAS, By an order entered on the _____ day of
__________________, 19____, in the case of State of West
Virginia v. (A. B., et al.), the Circuit Court of__________
County has confirmed the sale and has ordered that this
deed be executed.

Now, therefore, the grantor, for and in consideration
of the premises and in pursuance of the statute, doth grant
and convey unto ____________, grantee, his heirs and assigns
forever, the real estate so purchased, situate in the County
of ____________, bounded and described as follows:__________

Witness the following signature:

_______________________________________________________
Deputy Commissioner of Forfeited and
Delinquent Lands for__________County
After execution and acknowledgment of the deed, the deputy commissioner shall ascertain from the clerk of the county court the total amount of the transfer fee, the fee for recording the deed, and if the grantee was an assignee of the purchaser, the fee for recording the assignment, and shall notify the grantee to pay such amount to the clerk of the county court. Upon such payment and upon payment by the grantee to the deputy commissioner of a fee of twenty dollars as his compensation for preparing and executing the deed, the deputy commissioner shall have the deed and the assignment, if any, recorded by the clerk of the county court before delivery of the deed to the grantee. The purchaser shall have the right to examine the deed before it is recorded. The clerk of the county court shall index the deed in the grantor's index under the name of the former owner mentioned in the deed as well as under the name "State of West Virginia."

CHAPTER 173
(Senate Bill No. 404—By Mr. Palumbo)

[Passed March 6, 1971; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article two, chapter thirty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section nine, relating to the distribution of income by a trust which is deemed a private foundation; prohibitions as to trusts which are private foundations or split-interest trusts; and providing a definition of terms.

Be it enacted by the Legislature of West Virginia:

That article two, chapter thirty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section nine, all to read as follows:
ARTICLE 2. EDUCATIONAL, FRATERNAL AND CHARITABLE ORGANIZATIONS.

§35-2-9. Distribution of income by trust which is deemed a private foundation; prohibitions as to trusts which are private foundations or split-interest trusts; and definition of terms.

1. (a) *Distribution of income by trust which is deemed a private foundation; prohibitions as to such private foundation.*—Every trust, receiving a gift, grant, devise or bequest, which is deemed to be a private foundation as defined in section 509 of the Internal Revenue Code of 1954, unless its governing instrument expressly includes specific provisions to the contrary, shall distribute its income for each taxable year at such time and in such manner as not to subject such trust to tax under section 4942 of the Internal Revenue Code, and such trust shall not engage in any act of self-dealing as defined in section 4941(d) of the Internal Revenue Code, retain any excess business holdings as defined in section 4943(c) of the Internal Revenue Code, make any investments in such manner as to subject the trust to tax under section 4944 of the Internal Revenue Code, or make any taxable expenditures as defined in section 4945(d) of the Internal Revenue Code. This subsection shall apply to any charitable trust established after December thirty-one, one thousand nine hundred sixty-nine, and to any charitable trust established before January one, one thousand nine hundred seventy, only for its taxable years beginning on and after January one, one thousand nine hundred seventy-two.

2. (b) *Prohibitions as to trust which is deemed a split-interest trust.*—Every trust, receiving a gift, grant, devise or bequest, to the extent that such trust is deemed to be a split-interest trust subject to the provisions of section 4947(a) (2) of the Internal Revenue Code of 1954, unless its governing instrument expressly includes specific provisions to the contrary, shall not:

3. (1) Engage in any act of self-dealing, as defined in section 4941(d) of the Internal Revenue Code;
(2) Retain any excess business holdings, as defined in section 4943(c) of the Internal Revenue Code;

(3) Make any investments in such manner as to subject the foundation to tax under section 4944 of the Internal Revenue Code; or

(4) Make any taxable expenditures as defined in section 4945(d) of the Internal Revenue Code.

Subparagraphs (2) and (3) of this subsection shall not apply to a split-interest trust if:

(1) All the income interest (and none of the remainder interest) of such trust is devoted solely to one or more of the purposes described in section 170(c)(2)(B) of the Internal Revenue Code, and all amounts in such trust for which a deduction was allowed under section 170, 545(b)(2), 556(b)(2), 642(c), 2055, 2106(a)(2), or section 2522 of the Internal Revenue Code have an aggregate fair market value not more than sixty percent of the aggregate fair market value of all amounts in such trust, or

(2) A deduction was allowed under section 170, 545(b)(2), 556(b)(2), 642(c), 2055, 2106(a)(2), or section 2522 of the Internal Revenue Code for amounts payable under the terms of such trust to every remainder beneficiary but not to any income beneficiary.

(c) Definitions; meaning of terms.—Any term used in this section nine shall have the same meaning as when used in a comparable context in the laws of the United States relating to federal income taxes and any reference in this section to the Internal Revenue Code or to the Internal Revenue Code of 1954 or to any section or provision thereof shall mean the provisions of the laws of the United States as relate to the determination of income for federal income tax purposes, including all amendments made to the laws of the United States prior to the first day of January, one thousand nine hundred seventy-one, but no amendment to the laws of the United States made on or after the first day of January, one thousand nine hundred seventy-one, shall be given effect.
AN ACT to amend and reenact section three, article one; section sixteen, article two; sections two, three, five, seven and ten, article five; and sections three and ten, article six, all of chapter twenty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article five by adding thereto a new section, designated section three-a; to further amend said article six by adding thereto a new section, designated section fifteen; and to further amend said chapter by adding thereto a new article, designated article six-a, all relating to the department of employment security, the commissioner of employment security and unemployment compensation.

Be it enacted by the Legislature of West Virginia:

That section three, article one; section sixteen, article two; sections two, three, five, seven and ten, article five; and sections three and ten, article six, all of chapter twenty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that said article five be further amended by adding thereto a new section, designated section three-a; that said article six be further amended by adding thereto a new section, designated section fifteen; and that said chapter be further amended by adding thereto a new article, designated article six-a, all to read as follows:

Article
5. Employer Coverage and Responsibility.
6. Employee Eligibility; Benefits.
6A. Extended Benefits Program.

ARTICLE 1. DEPARTMENT OF EMPLOYMENT SECURITY.


1 As used in this chapter, unless the context clearly requires otherwise:
“Administration fund” means the employment security administration fund, from which the administrative expenses under this chapter shall be paid.

“Annual payroll” means the total amount of wages for employment paid by an employer during a twelve-month period ending with June thirty of any calendar year.

“Average annual payroll” means the average of the last three annual payrolls of an employer.

“Base period” means the first four out of the last five completed calendar quarters immediately preceding the first day of the individual’s benefit year.

“Base period employer” means any employer who in the base period for any benefit year paid wages to an individual who filed claim for unemployment compensation within such benefit year.

“Base period wages” means wages paid to an individual during the base period by all his base period employers.

“Benefit year” with respect to an individual means the one-year period beginning with the first day of the calendar week in which he filed a valid claim for benefits, and thereafter the one-year period beginning with the first day of the calendar week in which such individual next files a valid claim for benefits after the termination of his last preceding benefit year. An initial claim for benefits filed in accordance with the provisions of this chapter shall be deemed to be a valid claim within the purposes of this definition if the individual has been paid wages in his base period sufficient to make him eligible for benefits under the provisions of this chapter.

“Benefits” means the money payable to an individual with respect to his unemployment.

“Board” means board of review.

“Calendar quarter” means the period of three consecutive calendar months ending on March thirty-one, June thirty, September thirty, or December thirty-one, or the equivalent thereof as the commissioner may by regulation prescribe.

“Commissioner” means the employment security commissioner.
“Computation date” means June thirty of the year immediately preceding the January one on which an employer’s contribution rate becomes effective.

“Employing unit” means an individual, or type of organization, including any partnership, association, trust, estate, joint-stock company, insurance company, corporation (domestic or foreign), institution of higher education, or the receiver, trustee in bankruptcy, trustee or successor thereof, or the legal representative of a deceased person, which has on January first, one thousand nine hundred thirty-five, or subsequent thereto, had in its employ one or more individuals performing service within this state.

“Employer” means:

(1) Until January one, one thousand nine hundred seventy-two, any employing unit which for some portion of a day, not necessarily simultaneously, in each of twenty different calendar weeks, which weeks need not be consecutive, within either the current calendar year, or the preceding calendar year, has had in employment four or more individuals irrespective of whether the same individuals were or were not employed on each of such days;

(2) Any employing unit which is or becomes a liable employer under any federal unemployment tax act;

(3) Any employing unit which has acquired or acquires the organization, trade or business, or substantially all the assets thereof, of any employing unit which at the time of such acquisition was an employer subject to this chapter;

(4) Any employing unit which, after December thirty-one, one thousand nine hundred sixty-three, and until January one, one thousand nine hundred seventy-two, in any one calendar quarter, in any calendar year, has in employment four or more individuals and has paid wages for employment in the total sum of five thousand dollars or more, or which, after such date, has paid wages for employment in any calendar year in the sum total of twenty thousand dollars or more;

(5) Any employing unit which, after December thirty-one, one thousand nine hundred sixty-three, and until January one, one thousand nine hundred seventy-two, in
any three weeks' period, in any calendar year, has in employment ten or more individuals;

(6) For the effective period of its election pursuant to section three, article five of this chapter, any employing unit which has elected to become subject to this chapter;

(7) Any employing unit which, after December thirty-one, one thousand nine hundred seventy-one, (i) in any calendar quarter in either the current or preceding calendar year paid for service in employment wages of one thousand five hundred dollars or more, or (ii) for some portion of a day in each of twenty different calendar weeks, whether or not such weeks were consecutive, in either the current or the preceding calendar year had in employment at least one individual (irrespective of whether the same individual was in employment in each such day);

(8) Any employing unit for which service in employment, as defined in subdivision nine of the definition of "employment" in this section, is performed after December thirty-one, one thousand nine hundred seventy-one;

(9) Any employing unit for which service in employment, as defined in subdivision ten of the definition of "employment" in this section, is performed after December thirty-one, one thousand nine hundred seventy-one.

"Employment," subject to the other provisions of this section, means:

(1) Service, including service in interstate commerce, performed for wages or under any contract of hire, written or oral, express or implied;

(2) Any service performed prior to January one, one thousand nine hundred seventy-two, which was employment as defined in this section prior to such date and, subject to the other provisions of this section, service performed after December thirty-one, one thousand nine hundred seventy-one, by an employee, as defined in section 3306(i) of the "Federal Unemployment Tax Act," including service in interstate commerce;

(3) Any service performed prior to January one, one thousand nine hundred seventy-two, which was employ-
ment as defined in this section prior to such date and, subject to the other provisions of this section, service performed after December thirty-one, one thousand nine hundred seventy-one, including service in interstate commerce, by any officer of a corporation;

(4) An individual’s entire service, performed within or both within and without this state if: (a) The service is localized in this state; or (b) the service is not localized in any state but some of the service is performed in this state and (i) the base of operations, or, if there is no base of operations, then the place from which such service is directed or controlled, is in this state; or (ii) the base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed but the individual’s residence is in this state;

(5) Service not covered under paragraph four of this subdivision and performed entirely without this state with respect to no part of which contributions are required and paid under an unemployment compensation law of any other state or of the federal government, shall be deemed to be employment subject to this chapter if the individual performing such services is a resident of this state and the commissioner approves the election of the employing unit for whom such services are performed that the entire service of such individual shall be deemed to be employment subject to this chapter;

(6) Service shall be deemed to be localized within a state, if: (a) The service is performed entirely within such state; or (b) the service is performed both within and without such state, but the service performed without such state is incidental to the individual’s service within this state, as, for example, is temporary or transitory in nature or consists of isolated transactions;

(7) Services performed by an individual for wages shall be deemed to be employment subject to this chapter unless and until it is shown to the satisfaction of the commissioner that: (a) Such individual has been and will continue to be free from control or direction over the performance of such services, both under his
contract of service and in fact; and (b) such service
is either outside the usual course of the business for
which such service is performed or that such service
is performed outside of all the places of business of
the enterprise for which such service is performed; and
(c) such individual is customarily engaged in an in-
dependently established trade, occupation, profession or
business;

(8) All service performed by an officer or member
of the crew of an American vessel (as defined in section
three hundred five of an act of Congress entitled “Social
Security Act Amendment of 1946,” approved August tenth,
one thousand nine hundred forty-six) on or in connection
with such vessel, provided that the operating office,
from which the operations of such vessel operating on
navigable waters within or within and without the United
States is ordinarily and regularly supervised, managed,
directed and controlled, is within this state;

(9) Service performed after December thirty-one, one
thousand nine hundred seventy-one, by an individual
in the employ of this state or any of its instrumental-
ties (or in the employ of this state and one or more
other states or their instrumentalities), when such ser-
vice is performed for a hospital or institution of higher
education located in this state provided that such service
is excluded from “employment” as defined in the “Federal
Unemployment Tax Act” solely by reason of section
3306(c)(7) of that act, and is not excluded from “em-
ployment” under subdivision eleven of the exclusions
from the term “employment”;

(10) Service performed after December thirty-one, one
thousand nine hundred seventy-one, by an individual in
the employ of a religious, charitable, educational or other
organization but only if the following conditions are
met:

(a) the service is excluded from “employment” as de-
defined in the “Federal Unemployment Tax Act” solely
by reason of section 3306(c)(8) of that act; and

(b) the organization had four or more individuals in
employment for some portion of a day in each of twenty
Ch. 174] UNEMPLOYMENT COMPENSATION 923

201 different weeks, whether or not such weeks were con-
202 secutive, within either the current or preceding calendar
203 year, regardless of whether they were employed at the
204 same moment of time;
205
206 (11) Service of an individual who is a citizen of the
207 United States, performed outside the United States (ex-
208 cept in Canada or the Virgin Islands), after December
209 thirty-one, one thousand nine hundred seventy-one, in
210 the employ of an American employer (other than ser-
211 vice which is deemed “employment” under the provisions
212 of subdivisions four, five or six of this definition of “em-
213 ployment” or the parallel provisions of another state’s
214 law), if:
215
216 (a) the employer’s principal place of business in the
217 United States is located in this state; or
218
219 (b) the employer has no place of business in the
220 United States, but (i) the employer is an individual
221 who is a resident of this state; or (ii) the employer is
222 a corporation which is organized under the laws of
223 this state; or (iii) the employer is a partnership or a
224 trust and the number of the partners or trustees who
225 are residents of this state is greater than the number
226 who are residents of any one other state; or
227
228 (c) none of the criteria of subparagraphs (a) and (b)
229 of this subdivision (11) is met but the employer has
230 elected coverage in this state or, the employer having
231 failed to elect coverage in any state, the individual
232 has filed a claim for benefits, based on such service,
233 under the law of this state.
234
235 An “American employer,” for purposes of this subdivi-
236 sion (11) means a person who is (i) an individual who
237 is a resident of the United States; or (ii) a partnership
238 if two thirds or more of the partners are residents of
239 the United States; or (iii) a trust, if all of the trustees
240 are residents of the United States; or (iv) a corpora-
241 tion organized under the laws of the United States or
242 of any state.
243
244 Notwithstanding the foregoing definition of “employ-
245 ment,” if the services performed during one half or
more of any pay period by an employee for the person employing him constitute employment, all the services of such employee for such period shall be deemed to be employment; but if the services performed during more than one half of any such pay period by an employee for the person employing him do not constitute employment, then none of the services of such employee for such period shall be deemed to be employment.

The term "employment" shall not include:

1. Services performed in the employ of this state or any political subdivision thereof, or any instrumentality of this state or its subdivisions, except as otherwise provided herein;

2. Service performed directly in the employ of another state, or its political subdivisions;

3. Service performed in the employ of the United States or an instrumentality of the United States exempt under the constitution of the United States from the payments imposed by this law, except that to the extent that the Congress of the United States shall permit states to require any instrumentalities of the United States to make payments into an unemployment fund under a state unemployment compensation law, all of the provisions of this law shall be applicable to such instrumentalities, and to service performed for such instrumentalities, in the same manner, to the same extent and on the same terms as to all other employers, employing units, individuals, and services: Provided, That if this state shall not be certified for any year by the secretary of labor under section 1603(c) of the "Federal Internal Revenue Code," the payments required of such instrumentalities with respect to such year shall be refunded by the commissioner from the fund in the same manner and within the same period as is provided in section nineteen, article five of this chapter, with respect to payments erroneously collected;

4. Service performed after June thirty, one thousand nine hundred thirty-nine, with respect to which unemployment compensation is payable under the "Railroad Unemployment Insurance Act" (52 Stat. 1094), and
service with respect to which unemployment benefits are payable under an unemployment compensation system for maritime employees established by an act of Congress. The commissioner may enter into agreements with the proper agency established under such an act of Congress to provide reciprocal treatment to individuals who, after acquiring potential rights to unemployment compensation under an act of Congress, or who have, after acquiring potential rights to unemployment compensation under an act of Congress, acquired rights to benefit under this chapter. Such agreements shall become effective ten days after such publications as comply with the general rules of the department;

(5) Agricultural labor, and for the purposes of this chapter, the term "agricultural labor" includes all services performed:

(a) On a farm, in the employ of any person, in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife;

(b) In the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of such service is performed on a farm;

(c) In connection with the production or harvesting of any commodity defined as an agricultural commodity in section 15(g) of the "Agricultural Marketing Act," as amended (46 Stat. 1550, sec. 3; 12 U.S.C. §1141j) or in connection with the ginning of cotton, or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways, not owned or operated for profit, used exclusively for supplying and storing water for farming purposes;

(d) (i) In the employ of the operator of a farm in handling, planting, drying, packing, packaging, proces-
sing, freezing, grading, storing or delivering to storage
or to market or to a carrier for transportation to market,
in its unmanufactured state, any agricultural or horti-
cultural commodity; but only if such operator produced
more than one half of the commodity with respect to
which such service is performed; or (ii) in the employ
of a group of operators of farms (or a cooperative organ-
ization of which such operators are members) in the per-
formance of service described in subparagraph (i), but
only if such operators produced more than one half of
the commodity with respect to which such service is
performed; but the provisions of subparagraphs (i) and
(ii) shall not be deemed to be applicable with respect
to service performed in connection with commercial can-
ing or commercial freezing or in connection with any
agricultural or horticultural commodity after its delivery
to a terminal market for distribution for consumption;
(e) On a farm operated for profit if such service is
not in the course of the employer's trade or business
or is domestic service in a private home of the employer.
As used in this subdivision (5), the term "farm" includes
stock, dairy, poultry, fruit, fur-bearing animal, and truck
farms, plantations, ranches, greenhouses and nurseries,
or other similar land areas or structures used primarily
for the raising of any agricultural or horticultural com-
modity, and orchards, and the term "greenhouses and
nurseries" shall not include greenhouses and nurseries
employing more than fifteen full-time employees;
(6) Domestic service in a private home;
(7) Service performed by an individual in the employ
of his son, daughter, or spouse;
(8) Service performed by a child under the age of
twenty-one years in the employ of his father or mother;
(9) Service as an officer or member of a crew of an
American vessel, performed on or in connection with
such vessel, if the operating office, from which the oper-
ations of the vessel operating on navigable water with-
in or without the United States are ordinarily and regu-
larly supervised, managed, directed and controlled, is
without this state;
(10) Services performed by agents of mutual fund broker-dealers or insurance companies, exclusive of industrial insurance agents, or by agents of investment companies, who are compensated wholly on a commission basis;

(11) Service performed (i) in the employ of a church or convention or association of churches, or an organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or convention or association of churches; or (ii) by a duly ordained, commissioned or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order; or (iii) the employ of a school which is not an institution of higher education; or (iv) in a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury or providing remunerative work for individuals who because of their impaired physical or mental capacity cannot be readily absorbed in the competitive labor market by an individual receiving such rehabilitation or remunerative work; or (v) as part of an unemployment work-relief or work-training program assisted or financed in whole or in part by any federal agency or an agency of a state or political subdivision thereof, by an individual receiving such work relief or work training; or (vi) for a hospital in a state prison or other state correctional institution by an inmate of the prison or correctional institution;

(12) Service performed, in the employ of a school, college or university, if such service is performed (i) by a student who is enrolled and is regularly attending classes at such school, college or university, or (ii) by the spouse of such a student, if such spouse is advised, at the time such spouse commences to perform such service, that (I) the employment of such spouse to perform such service is provided under a program to provide financial assistance to such student by such school,
college or university, and (II) such employment will not be covered by any program of unemployment insurance;
(13) Service performed by an individual under the age of twenty-two who is enrolled at a nonprofit or public educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on as a student in a full-time program, taken for credit at such institution, which combines academic instruction with work experience, if such service is an integral part of such program, and such institution has so certified to the employer, except that this subdivision shall not apply to service performed in a program established for or on behalf of an employer or group of employers;
(14) Service performed in the employ of a hospital, if such service is performed by a patient of the hospital, as defined in this section.

Notwithstanding the foregoing exclusions from the definition of "employment," services, except agricultural labor and domestic service in a private home, shall be deemed to be in employment if with respect to such services a tax is required to be paid under any federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment compensation fund.

"Employment office" means a free employment office or branch thereof, operated by this state, or any free public employment office maintained as a part of a state-controlled system of public employment offices in any other state.

"Fund" means the unemployment compensation fund established by this chapter.

"Hospital" means an institution which has been licensed, certified or approved by the state department of health as a hospital.

"Institution of higher education" means an educational institution which:
(1) Admits as regular students only individuals having a certificate of graduating from a high school, or the recognized equivalent of such a certificate;

(2) Is legally authorized in this state to provide a program of education beyond high school;

(3) Provides an educational program for which it awards a bachelor's or higher degree, or provides a program which is acceptable for full credit toward such a degree, or provides a program of post-graduate or post-doctoral studies, or provides a program of training to prepare students for gainful employment in a recognized occupation; and

(4) Is a public or other nonprofit institution.

Notwithstanding any of the foregoing provisions of this definition, all colleges and universities in this state are institutions of higher education for purposes of this section.

"Payments" means the money required to be paid or that may be voluntarily paid into the state unemployment compensation fund as provided in article five of this chapter.

"Separated from employment" means, for the purposes of this chapter, the total severance whether by quitting, discharge, or otherwise, of the employer-employee relationship.

"State" includes, in addition to the states of the United States, Puerto Rico, District of Columbia and the Virgin Islands.

"Total and partial unemployment" means:

(1) An individual shall be deemed totally unemployed in any week in which such individual is separated from employment for an employing unit and during which he performs no services and with respect to which no wages are payable to him.

(2) An individual who has not been separated from employment shall be deemed to be partially unemployed in any week in which due to lack of work he performs no services and with respect to which no wages are payable to him, or in any week in which due to lack of full-
time work wages payable to him are less than his weekly benefit amount plus ten dollars.

"Wages" means all remuneration for personal service, including commissions and bonuses and the cash value of all remuneration in any medium other than cash: Provided, That the term "wages" shall not include:

(1) That part of the remuneration which, after remuneration equal to three thousand dollars has been paid to an individual by an employer with respect to employment during any calendar year, is paid after December thirty-one, one thousand nine hundred thirty-nine, and prior to January one, one thousand nine hundred forty-seven, to such individual by such employer with respect to employment during such calendar year; or that part of the remuneration which, after remuneration equal to three thousand dollars with respect to employment after one thousand nine hundred thirty-eight has been paid to an individual by an employer during any calendar year after one thousand nine hundred forty-six, is paid to such individual by such employer during such calendar year, except that for the purposes of sections one, ten, eleven and thirteen, article six of this chapter, all remuneration earned by an individual in employment shall be credited to the individual and included in his computation of base period wages: Provided, That notwithstanding the foregoing provisions, on and after January one, one thousand nine hundred sixty-two, the term "wages" shall not include:

That part of the remuneration which, after remuneration equal to three thousand six hundred dollars has been paid to an individual by an employer with respect to employment during any calendar year, is paid during any calendar year after one thousand nine hundred sixty-one; and shall not include that part of remuneration which, after remuneration equal to four thousand two hundred dollars is paid during a calendar year after one thousand nine hundred seventy-one to an individual by an employer or his predecessor with respect to employment during any calendar year, is paid to such individual by such employer during such calendar year unless that
part of the remuneration is subject to a tax under a federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund. For the purposes of this subdivision (1), the term employment shall include service constituting employment under any unemployment compensation law of another state; or which as a condition for full tax credit against the tax imposed by the "Federal Unemployment Tax Act" is required to be covered under this chapter; and, except, that for the purposes of sections one, ten, eleven and thirteen of article six of this chapter, all remuneration earned by an individual in employment shall be credited to the individual and included in his computation of base period wages:

And provided further, That the remuneration paid to an individual by an employer with respect to employment in another state or other states upon which contributions were required of and paid by such employer under an unemployment compensation law of such other state or states shall be included as a part of the remuneration equal to the amounts of three thousand six hundred dollars or four thousand two hundred dollars herein referred to. In applying such limitation on the amount of remuneration that is taxable an employer shall be accorded the benefit of all or any portion of such amount which may have been paid by its predecessor or predecessors: Provided, however, That if the definition of the term "wages" as contained in section 3306(b) of the "Internal Revenue Code of 1954" is amended (a) effective prior to January one, one thousand nine hundred sixty-two, to include remuneration in excess of three thousand dollars, or (b) effective on or after January one, one thousand nine hundred sixty-two, to include remuneration in excess of three thousand six hundred dollars, or effective on or after January one, one thousand nine hundred seventy-two, to include remuneration in excess of four thousand two hundred dollars, paid to an individual by an employer under the "Federal Unemployment Tax Act" during any calendar year, wages for the purposes of this definition shall include remuneration paid in a calendar year to an individual by an em-
(2) The amount of any payment made after December thirty-one, one thousand nine hundred fifty-two (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment), to, or on behalf of, an individual in its employ or any of his dependents, under a plan or system established by an employer which makes provision for individuals in its employ generally (or for such individuals and their dependents), or for a class or classes of such individuals (or for a class or classes of such individuals and their dependents), on account of (A) retirement, or (B) sickness or accident disability, or (C) medical or hospitalization expenses in connection with sickness or accident disability, or (D) death;

(3) Any payment made after December thirty-one, one thousand nine hundred fifty-two, by an employer to an individual in its employ (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) on account of retirement;

(4) Any payment made after December thirty-one, one thousand nine hundred fifty-two, by an employer on account of sickness or accident disability, or medical or hospitalization expenses in connection with sickness or accident disability, to, or on behalf of, an individual in its employ after the expiration of six calendar months following the last calendar month in which such individual worked for such employer;

(5) Any payment made after December thirty-one, one thousand nine hundred fifty-two, by an employer to, or on behalf of, an individual in its employ or his beneficiary (A) from or to a trust described in section 401(a) which is exempt from tax under section 501(a) of the “Federal Internal Revenue Code” at the time of such payment unless such payment is made to such individual as an employee of the trust as remuneration for services rendered by such individual and not as a beneficiary of the trust, or (B) under or to an annuity plan which, at the
time of such payment, is a plan described in section 403(a) of the "Federal Internal Revenue Code";

(6) The payment by an employer (without deduction from the remuneration of the individual in its employ) of the tax imposed upon an individual in its employ under section 3101 of the "Federal Internal Revenue Code";

(7) Remuneration paid by an employer after December thirty-one, one thousand nine hundred fifty-two, in any medium other than cash to an individual in its employ for service not in the course of the employer's trade or business;

(8) Any payment (other than vacation or sick pay) made by an employer after December thirty-one, one thousand nine hundred fifty-two, to an individual in its employ after the month in which he attains the age of sixty-five, if he did not work for the employer in the period for which such payment is made;

(9) Payments, not required under any contract of hire, made to an individual with respect to his period of training or service in the armed forces of the United States by an employer by which such individual was formerly employed.

Gratuities customarily received by an individual in the course of his employment from persons other than his employing unit shall be treated as wages paid by his employing unit, if accounted for and reported to such employing unit.

The reasonable cash value of remuneration in any medium other than cash shall be estimated and determined in accordance with rules prescribed by the commissioner.

"Week" means a calendar week, ending at midnight Saturday, or the equivalent thereof, as determined in accordance with the regulations prescribed by the commissioner.

"Weekly benefit rate" means the maximum amount of benefit an eligible individual will receive for one week of total unemployment.
"Year" means a calendar year or the equivalent thereof, as determined by the commissioner.

ARTICLE 2. THE COMMISSIONER OF EMPLOYMENT SECURITY.


The commissioner shall have all powers and duties necessary to secure to the state the benefits of congressional action for the promotion and maintenance of a system of public employment offices. To this end the provisions of the act referred to in the preceding section and such additional congressional action consistent with the above act are accepted by the state and the state pledges its observance and compliance therewith.

The department of employment security, by its commissioner, is designated the agent of this state for the purpose of compliance with the act of Congress entitled "An act to provide for the establishment of a national employment system and for cooperation with states in the promotion of such systems, and for other purposes," approved June six, one thousand nine hundred thirty-three, as amended.

The department of employment security, by its commissioner, is designated the agent of this state for the purpose of complying with and administering sections sixteen and seventeen of an act of Congress entitled "An act to extend and improve the unemployment compensation program," approved September one, one thousand nine hundred fifty-four.

The department of employment security, by its commissioner, is designated the agent of this state for the purpose of complying with and administering an act of Congress entitled "An act to amend title XV of the Social Security Act to extend the unemployment insurance system to exservicemen, and for other purposes," approved August twenty-eight, one thousand nine hundred fifty-eight.

The department of employment security, by its commissioner, is designated the agent of this state for the purpose of complying with and administering an act
of Congress entitled "An act relating to manpower re-
quirements, resources, development, and utilization, and
for other purposes," approved March fifteen, one thou-
sand nine hundred sixty-two.

The department of employment security, by its com-
missioner, is designated the agent of this state for the
purpose of complying with and administering an act of
Congress entitled "An act to establish an effective pro-
gram to alleviate conditions of substantial and persistent
unemployment and under employment in certain eco-
nomically distressed areas," approved May one, one thou-
sand nine hundred sixty-one.

The department of employment security, by its com-
missioner, is designated the agent of this state for the
purpose of complying with and administering chapter
three of title III of an act of Congress entitled "An act
to promote the general welfare, foreign policy, and
security of the United States through international trade
agreements and through adjustment assistance to do-
mestic industry, agriculture, and labor, and for other
purposes," approved October eleven, one thousand nine
hundred sixty-two.

The department of employment security, by its com-
missioner, is designated the agent of this state for the
purpose of complying with and administering an act of
Congress entitled "An act to provide for the establish-
ment of a temporary program of extended unemployment
compensation, to provide for a temporary increase in
the rate of the federal unemployment tax, and for other
purposes," approved January three, one thousand nine
hundred sixty-one.

The department of employment security, by its com-
missioner, is also designated the agent of this state for
the purpose of complying with and administering other
programs of the United States government such as the
foregoing.

The commissioner of employment security is desig-
nated as the officer of this state for the purpose of com-
plying with and administering the tasks assigned to the
West Virginia department of employment security pur-
The commissioner is also authorized with the approval of the advisory council, to apply for an advance to the unemployment compensation fund in accordance with the conditions specified in title XII of the "Social Security Act," as amended, in order to secure to this state and its citizens the advantages available under the provisions of that title.

In the administration of this chapter the commissioner shall cooperate with the United States department of labor to the fullest extent consistent with the provisions of this chapter, and shall take such action through the adoption of appropriate rules, regulations, administrative methods and standards, as may be necessary to secure to this state and its citizens all advantages available under the provisions of the "Social Security Act" which relate to unemployment compensation, the "Federal Unemployment Tax Act," the "Wagner-Peyser Act," and the "Federal-State Extended Unemployment Compensation Act of 1970."

In the administration of the provisions in article six-a of this chapter, which are enacted to conform with the requirements of the "Federal-State Extended Unemployment Compensation Act of 1970," the commissioner shall take such action as may be necessary (i) to ensure that the provisions are so interpreted and applied as to meet the requirements of such federal act, and (ii) to secure this state the full reimbursement of the federal share of extended and regular benefits paid under this chapter which are reimbursable under said federal act.

ARTICLE 5. EMPLOYER COVERAGE AND RESPONSIBILITY.

§21A-5-3. Voluntary coverage; elective coverage by political subdivisions.
§21A-5-3a. Financing benefits paid to employees of nonprofit organizations.
§21A-5-5. Rate of contribution.
§21A-5-10. Same—Decreased rates; adjustment of accounts and rates; debit balance account rates.

1 Except as otherwise provided in section three of this article, an employing unit, with the exception of any employing unit for which service in employment is defined in subdivision ten of the definition of "employment" as set forth in section three, article one of this chapter, shall cease to be an employer subject to this chapter only as of the first day of any calendar year and only if it files with the commissioner not later than January thirty-first of such year, a written application for termination of coverage, as of such first day of January, and the commissioner finds that within the preceding calendar year the employing unit did not pay wages of one thousand five hundred dollars or more in any calendar quarter for employment subject to this chapter and during that calendar year no service was performed for it with respect to which it was liable for any tax against which credit may be taken for contributions required to be paid into the unemployment compensation fund of this state; and any employing unit for which service in employment is defined in subdivision ten of the definition of "employment" as set forth in section three, article one of this chapter, shall cease to be an employer subject to this chapter only as of the first day of any calendar year and only if it files with the commissioner not later than January thirty-first of such year, a written application for termination of coverage, as of such first day of January, and the commissioner finds that there were no twenty different days, each day being in a different calendar week within the preceding calendar year, within which such employing unit had four or more individuals in employment subject to this chapter: Provided, That the commissioner may for good cause extend the time for filing application for termination of coverage, effective as of the first day of the next succeeding quarter after the application is approved.

§21A-5-3. Voluntary coverage; elective coverage by political subdivisions.

1 (1) An employing unit, not otherwise subject to the provisions of this chapter, which files with the com-
missioner its written election to become an employer
subject hereto for not less than two calendar years,
shall, with the written approval of such election by the
commissioner, become an employer subject hereto to
the same extent as all other employers, as of the date
stated in such approval, and shall cease to be subject
hereto as of January one of any calendar year subse-
quently to such two calendar years, only if during January
of such year it has filed with the commissioner a written
notice to that effect.

(2) Any employing unit for which services that do
not constitute employment as defined in this chapter are
performed, may file with the commissioner a written
election that all such services performed by individuals
in its employ in one or more distinct establishments or
places of business shall be deemed to constitute employ-
ment for all the purposes of this chapter for not less than
two calendar years. Upon the written approval of such
election by the commissioner, such services shall be
deemed to constitute employment subject to this chap-
ter from and after the date stated in such approval. Such
services shall cease to be deemed employment subject
hereto as of January first of any calendar year subsequent
to such two calendar years, only if during January of such
year such employing unit has filed with the commissioner
a written notice to that effect.

(3) An employing unit which is or becomes an em-
ployer subject to this chapter within any calendar year
shall be subject to this chapter during the whole of such
calendar year.

(4) Any political subdivision of this state may elect
to cover under this chapter service performed by em-
ployees in all of the hospitals and institutions of higher
education, as defined in section three, article one of this
chapter, operated by such political subdivision. Any such
election of coverage is to be made by filing with the com-
missioner a notice of such election at least thirty days
prior to the effective date of such election. Any political
subdivision electing coverage under this subsection shall
make payments in lieu of contributions with respect to
benefits attributable to such employment as provided with respect to nonprofit organizations in section three-a of this article. The provisions of section fifteen, article six of this chapter with respect to benefit rights based on service for state and nonprofit institutions of higher education shall be applicable also to service covered by an election under this subsection. The amounts required to be paid in lieu of contributions by any political subdivision under this subsection shall be billed and payment made as provided in section thirteen of this article with respect to similar payments by nonprofit organizations. An election under this subsection may be terminated, by filing with the commissioner written notice not later than thirty days preceding the last day of the calendar year in which the termination is to be effective. Such termination becomes effective as of the first day of the next ensuing calendar year with respect to services performed after that date.

§21A-5-3a. Financing benefits paid to employees of nonprofit organizations.

1 Benefits paid to employees of nonprofit organizations shall be financed in accordance with the provisions of this section. For the purpose of this section, a nonprofit organization is an organization (or group of organizations) described in section 501(c)(3) of the "U. S. Internal Revenue Code" which is exempt from income tax under section 501(a) of such code.

1 (1) Liability for contribution payments and election of reimbursement—Any nonprofit organization which, pursuant to the provisions of this chapter, is, or becomes, subject to this chapter on or after January one, one thousand nine hundred seventy-two, shall be liable for payments and shall pay contributions in accordance with the provisions of this article and of this chapter, unless it elects, in accordance with this subdivision (1), to pay to the commissioner for the unemployment fund an amount equal to the amount of regular benefits and of one half of the extended benefits paid, that is attributable to service in the employ of such nonprofit organization,
to individuals for weeks of unemployment which begin during the effective period of such election.

(a) Any nonprofit organization which is, or becomes, subject to this chapter on January one, one thousand nine hundred seventy-two, may elect to become liable for payments in lieu of contributions for a period of not less than one taxable year beginning with January one, one thousand nine hundred seventy-two, provided it files with the commissioner a written notice of its election within the thirty-day period immediately following such date or within a like period immediately following the date of enactment of this section, whichever occurs later.

(b) Any nonprofit organization which becomes subject to this chapter after January one, one thousand nine hundred seventy-two, may elect to become liable for payments in lieu of contributions for a period of not less than twelve months beginning with the date on which such subjectivity begins by filing a written notice of its election with the commissioner not later than thirty days immediately following the date of the determination of such subjectivity.

(c) Any nonprofit organization which makes an election in accordance with subparagraph (a) or subparagraph (b) of this subdivision (1) will continue to be liable for payments in lieu of contributions until it files with the commissioner a written notice terminating its election not later than thirty days prior to the beginning of the taxable year for which such termination shall first be effective.

(d) Any nonprofit organization which has been paying contributions under this chapter for a period subsequent to January one, one thousand nine hundred seventy-two, may change to a reimbursable basis by filing with the commissioner not later than thirty days prior to the beginning of any taxable year a written notice of election to become liable for payments in lieu of contributions. Such election shall not be terminable by the organization for that and the next year.

(e) The commissioner may for good cause extend the period within which a notice of election, or a notice of
termination, must be filed and may permit an election to be retroactive but not any earlier than with respect to benefits paid after December thirty-one, one thousand nine hundred sixty-nine.

(f) The commissioner, in accordance with such regulations as he may prescribe, shall notify each nonprofit organization of any determination which he may make of its status as an employer and of the effective date of any election which it makes and of any termination of such election.

(2) Reimbursement payments—Payments in lieu of contributions shall be made in accordance with the provisions of this subdivision (2) including either subparagraph (a) or subparagraph (b) of this subdivision (2).

(a) At the end of each calendar quarter, or at the end of any other period as determined by the commissioner, the commissioner shall bill each nonprofit organization (or group of such organizations) which has elected to make payments in lieu of contributions for an amount equal to the full amount of regular benefits plus one half of the amount of extended benefits paid during such quarter or other prescribed period which is attributable to service in the employ of such organization.

(b) Each nonprofit organization which has elected payments in lieu of contributions may request permission to make such payments as provided herein. Such method of payment shall become effective upon approval by the commissioner.

At the end of each calendar quarter, or at the end of such other period as determined by the commissioner, the commissioner shall bill each nonprofit organization for an amount representing one of the following: (i) For one thousand nine hundred seventy-two, one percent of its total payroll for one thousand nine hundred seventy-one; or (ii) for years after one thousand nine hundred seventy-two, such percentage of its total payroll for the immediately preceding calendar year as the commissioner shall determine. Such determination shall be based each year on the average benefit costs attributable to service.
in the employ of nonprofit organizations during the preceding calendar year; or (iii) for any organization which did not pay wages throughout the four calendar quarters of the preceding calendar year, such percentage of its payroll during such year as the commissioner shall determine.

At the end of each taxable year, the commissioner may modify the quarterly percentage of payroll thereafter payable by the nonprofit organization in order to minimize excess or insufficient payments.

At the end of each taxable year, the commissioner shall determine whether the total of payments for such year made by a nonprofit organization is less than, or in excess of, the total amount of regular benefits plus one half of the amount of extended benefits paid to individuals during such taxable year based on wages attributable to service in the employ of such organization. Each nonprofit organization whose total payments for such year are less than the amount so determined shall be liable for payment of the unpaid balance to the fund in accordance with subparagraph (c) of this subdivision (2). If the total payments exceed the amount so determined for the taxable year, all or a part of the excess may, at the discretion of the commissioner, be refunded from the fund or retained in the fund as part of the payments which may be required for the next taxable year.

(c) Payment of any bill rendered under subparagraph (a) or subparagraph (b) of this subdivision (2) shall be made not later than thirty days after such bill was mailed to the last known address of the nonprofit organization or was otherwise delivered to it, unless there has been an application for review and redetermination in accordance with subparagraph (e) of this subdivision (2).

(d) Payments made by any nonprofit organization under the provisions of this subdivision (2) shall not be deducted or deductible, in whole or in part, from the remuneration of individuals in the employ of the organization.

(e) The amount due specified in any bill from the commissioner shall be conclusive on the organization
unless, not later than fifteen days after the bill was mailed
to its last known address or otherwise delivered to it, the
organization files an application for redetermination by
the commissioner, setting forth the grounds for such ap-
plication. The commissioner shall promptly review and
reconsider the amount due specified in the bill and shall
thereafter issue a redetermination in any case in which
such application for redetermination has been filed. Any
such redetermination shall be conclusive on the organiza-
tion unless, not later than fifteen days after the redeter-
mination was mailed to its last known address or other-
wise delivered to it, the organization files an appeal to
the board of review, setting forth the grounds for the
appeal.

(f) Past-due payments of amounts in lieu of contribu-
tions shall be subject to the same interest and penalties
that, pursuant to section seventeen of this article and the
provisions of article ten of this chapter, apply to past-due
contributions. Also, unpaid amounts in lieu of contribu-
tions are subject to the same assessment and civil action
provisions of this chapter as apply to unpaid contribu-
tions. Further, the provisions of this chapter which pro-
vide for the adjustment or refund of contributions shall
apply to the adjustment or refund of payments in lieu of
contributions.

(3) Allocation of benefit costs—Each employer which
is liable for payments in lieu of contributions shall pay
to the commissioner for the fund the amount of regular
benefits plus the amount of one half of extended benefits
paid which are attributable to service in the employ of
such employer. If benefits paid to an individual are based
on wages paid by more than one employer and one or
more of such employers are liable for payments in lieu
of contributions, the amount payable to the fund by each
employer which is liable for such payments shall be
determined in accordance with the provisions of sub-
paragraph (a) or subparagraph (b) of this subdivision (3).

(a) Proportionate allocation (when fewer than all
base period employers are liable for reimbursement)—
If benefits paid to an individual are based on wages paid
by one or more employers which are liable for payments in lieu of contributions and on wages paid by one or more employers which are liable for contributions, the amount of benefits payable by each employer which is liable for payments in lieu of contributions shall be an amount which bears the same ratio to the total benefits paid to the individual as the total base period wages paid to the individual by such employer bear to the total base period wages paid to the individual by all of his base period employers.

(b) Proportionate allocation (when all base period employers are liable for reimbursement)—If benefits paid to an individual are based on wages paid by two or more employers which are liable for payments in lieu of contributions, the amount of benefits payable by each such employer shall be an amount which bears the same ratio to the total benefits paid to the individual as the total base period wages paid to the individual by such employer bear to the total base period wages paid to the individual by all of his base period employers.

(4) Group accounts—Two or more employers which have become liable for payments in lieu of contributions, in accordance with the provisions of this section, may file a joint application with the commissioner for the establishment of a group account for the purpose of sharing the cost of benefits paid which are attributable to service in the employ of such employers. Each such application shall identify and authorize a group representative to act as the group's agent for the purposes of this subdivision (4). Upon his approval of the application, the commissioner shall establish a group account for such employers effective as of the beginning of the calendar quarter in which he receives the application and shall notify the group's representative of the effective date of the account. Such account shall remain in effect for not less than three years and thereafter until terminated at the discretion of the commissioner or upon application by the group. Upon establishment of the account, each member of the group shall be liable for payments in lieu of contributions with respect to each calendar quarter in the amount which bears the same ratio to the total
benefits paid in such quarter which are attributable to
service performed in the employ of all members of the
group as the total wages paid for service in employment
by such member in such quarter bear to the total wages
paid during such quarter for service performed in the
employ of all members of the group. The commissioner
shall prescribe such regulation as he deems necessary
with respect to applications for establishment, mainte-
nance and termination of group accounts which are
authorized by this subdivision (4), for addition of new
members to, and withdrawal of active members from,
such accounts, and for the determination of the amounts
which are payable under this subdivision (4) by members
of the group and the time and manner of such payments.

§21A-5-5. Rate of contribution.

On and after January first, one thousand nine hun-
dred forty-one, an employer shall make payments to the
unemployment compensation fund equal to two and
seven-tenths percent of wages paid by him with respect
to employment during each calendar year beginning with
the calendar year one thousand nine hundred forty-one,
subject, however, to other provisions of this article; ex-
cept that on and after January first, one thousand nine
hundred seventy-two, each employer subject to this chap-
ter shall pay contributions at the rate of one and five-
tenths percent of wages paid by him with respect to em-
ployment during each calendar year until he has been
an employer for not less than thirty-six consecutive
months ending on the computation date; thereafter, his
contribution rate shall be determined in accordance with
the provisions of section ten of this article.


(1) The commissioner shall maintain a separate ac-
count for each employer, and shall credit his account
with all contributions paid by him prior to July first, one
thousand nine hundred sixty-one. On and after July first,
one thousand nine hundred sixty-one, the commissioner
shall maintain a separate account for each employer, and
shall credit said employer's account with all contribu-
tions of such employer in excess of seven tenths of one
percent of taxable wages; and on and after July first, one
d thousand nine hundred seventy-one, the commissioner
shall maintain a separate account for each employer, and
shall credit said employer's account with all contributions
of such employer in excess of four tenths of one percent
of taxable wages: Provided, That any adjustment made
in an employer's account after the computation date shall
not be used in the computation of the balance of an em-
ployer until the next following computation date: Pro-
vided, however, That nothing in this chapter shall be con-
strued to grant an employer or individual in his service
prior claims or rights to the amounts paid by him into
the fund, either on his behalf or on behalf of such in-
dividuals. The account of any employer which has been
inactive for a period of four consecutive calendar years
shall be terminated for all purposes.

(2) Benefits paid to an eligible individual for regular
and extended total unemployment beginning after the
effective date of this act shall be charged to the account
of the last employer with whom he has been employed
as much as thirty working days, whether or not such
days are consecutive: Provided further, That no em-
ployer's account shall be charged with benefits paid to
any individual who has been separated from a non-
covered employing unit in which he was employed as
much as thirty days, whether or not such days are con-
secutive: And provided further, That benefits paid to
an eligible individual for regular and extended partial
unemployment beginning after the effective date of this
act shall be charged to the account of the claimant's cur-
rent employer: Provided, That no employer's account
shall be charged with more than fifty percent of the
benefits paid to an eligible individual as extended bene-
fits under the provisions of article six-a of this chapter.

(3) The commissioner shall, for each calendar year
hereafter, classify employers in accordance with their
actual experience in the payment of contributions on
their own behalf and with respect to benefits charged
against their accounts, with a view of fixing such contribu-
tion rates as will reflect such experiences. For the pur-
pose of fixing such contribution rates for each calendar
year, the books of the department shall be closed on July thirty-one of the preceding calendar year, and any contributions thereafter paid, as well as benefits thereafter paid with respect to compensable weeks ending on or before June thirty of the preceding calendar year, shall not be taken into account until the next annual date for fixing contribution rates: Provided, however, That if an employer has failed to furnish to the commissioner on or before July thirty-one of such preceding calendar year the wage information for all past periods necessary for the computation of the contribution rate, such employer's rate shall be, if it is immediately prior to such July thirty-one, less than three and three-tenths percent, increased to three and three-tenths percent: Provided further, That any payment made or any information necessary for the computation of a reduced rate furnished on or before the termination of an extension of time for such payment or reporting of such information granted pursuant to a regulation of the commissioner authorizing such extension, shall be taken into account for the purposes of fixing contribution rates: And provided further, That when the time for filing any report or making any payment required hereunder falls on Saturday, Sunday, or a legal holiday, the due date shall be deemed to be the next succeeding business day: Provided, That whenever through mistake or inadvertence erroneous credits or charges are found to have been made to or against the reserved account of any employer, the rate shall be adjusted as of January one of the calendar year in which such mistake or inadvertence is discovered, but payments made under any rate assigned prior to January one of such year shall not be deemed to be erroneously collected.

(4) The commissioner may prescribe regulations for the establishment, maintenance, and dissolution of joint accounts by two or more employers, and shall, in accordance with such regulations and upon application by two or more employers to establish such an account, or to merge their several individual accounts in a joint account, maintain such joint account as if it constituted a single employer's account.
§21A-5-10. Same—Decreased rates; adjustment of accounts and rates; debit balance account rates.

After the requirements of section nine of this article have been complied with, on and after January one, one thousand nine hundred fifty-four, an employer's payment shall remain two and seven-tenths percent; and on and after January one, one thousand nine hundred seventy-two, an employer's payment shall remain one and five-tenths percent; until:

1. There have elapsed thirty-six consecutive months immediately preceding the computation date throughout which an employer's account was chargeable with benefits.

2. His payments credited to his account for all past years exceed the benefits charged to his account by an amount equal to at least the percent of his average annual payroll as shown in Column B of Table II. His rate shall be the amount appearing in Column C of Table II on line with the percentage in Column B.

When the total assets of the fund as of January one of a calendar year equal or exceed one hundred million dollars, an employer's rate shall be the amount appearing in Column D of Table II on line with the percentage in Column B.

When the total assets of the fund as of January one of a calendar year equal or exceed one hundred ten million dollars, an employer's rate shall be the amount appearing in Column E of Table II on line with the percentage in Column B.

If the commissioner, in accordance with the provisions of section ten-a of this article, determines the fund to be below the sum of seventy-five million dollars, then, by the express provisions of this paragraph, the employer's rate shall immediately be the amount appearing in Column C of Table II on line with the percentage in Column B; and the provisions of section ten-a of this article shall be fully applied by the commissioner. It is the express intent of this paragraph that the increases of the aforesaid section ten-a be applied to and added
to the employers' rates set forth in the aforesaid Column C of Table II.

The commission shall determine an employer's compliance with these requirements.

TABLE II

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<tr>
<td>Percent of Average Annual Payroll</td>
<td>Rate by Which Credits Exceed Charges</td>
<td>Employer's Rate</td>
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<td></td>
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<td>2.2</td>
<td>1.7</td>
<td></td>
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<tr>
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<td>2.5</td>
<td>2.0</td>
<td>1.5</td>
<td></td>
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<tr>
<td>(3) 7.0</td>
<td>2.3</td>
<td>1.8</td>
<td>1.3</td>
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<tr>
<td>(4) 8.0</td>
<td>2.1</td>
<td>1.6</td>
<td>1.1</td>
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<tr>
<td>(5) 9.0</td>
<td>1.9</td>
<td>1.4</td>
<td>0.9</td>
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<td>1.2</td>
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<td>1.5</td>
<td>1.0</td>
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<td>1.3</td>
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<tr>
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<td>(13) 14.0</td>
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</table>

All employer accounts in which charges for all past years exceed credits for such past years shall be adjusted effective June thirty, one thousand nine hundred sixty-seven, so that as of said date, for the purpose of determining such employer's rate of contribution, the credits for all past years shall be deemed to equal the charges to such accounts.

Effective on and after the computation date of June thirty, one thousand nine hundred sixty-eight, and notwithstanding the provisions of subsection (1), section seven of this article relating to the noncrediting of employers' accounts with the first seven tenths or with the first four tenths of one percent of contributions paid; for
the purpose of determining whether or not an employer shall pay contributions at a rate in excess of two and seven-tenths percent as hereinafter set forth, but not for the purpose of determining such rate, the department shall, only for the purpose set forth herein and not as a credit to such account, add to the accounts of all employers having a debit balance, contribution payments made by such employers on and after July one, one thousand nine hundred sixty-seven, which payments are not credited to employers' accounts by reason of the provisions contained in subsection (1), section seven of this article. If, after such contribution payments have been added to such employers' accounts, such accounts continue to show a debit balance, such employers shall make payments at a rate in excess of two and seven-tenths percent. If, after such contribution payments have been added to such employers' accounts, such accounts show a credit balance, such employers shall make payments at the rate of two and seven-tenths percent. If, under the conditions set forth in this paragraph, it is determined that an employer shall pay contributions at a rate in excess of two and seven-tenths percent, the rate in excess of two and seven-tenths percent at which an employer shall pay contributions shall then be determined solely under the conditions set forth in the following paragraphs of this section. The provisions contained in this paragraph shall in no way be considered as providing for the crediting to an employer's account, of amounts of employer contribution payments which are expressly not credited to employers' accounts in subsection (1), section seven of this article.

Effective on and after the computation date of June thirty, one thousand nine hundred sixty-seven, all employers with a debit balance account in which the benefits charged to their account for all past years exceed the payments credited to their account for such past years by an amount up to and including ten percent of their average annual payroll, shall make payments to the unemployment compensation fund at the rate of three percent of wages paid by them with respect to employment.
Effective on and after the computation date of June thirty, one thousand nine hundred sixty-seven, all employers with a debit balance account in which the benefits charged to their account for all past years exceed the payments credited to their account for such past years by an amount in excess of ten percent of their average annual payroll, shall make payments to the unemployment compensation fund at the rate of three and three-tenths percent of wages paid by them with respect to employment.

"Debit balance account" for the purposes of this section means an account in which the benefits charged for all past years exceed the payments credited for such past years.

"Credit balance account" for the purposes of this section means an account in which the payments credited for all past years exceed the benefits charged for such past years.

Once a debit balance account rate is established for an employer's account for a year, it shall apply for the entire year notwithstanding the provisions of section ten-a of this article.

ARTICLE 6. EMPLOYEE ELIGIBILITY; BENEFITS.

§21A-6-3. Disqualification for benefits.

Upon the determination of the facts by the commissioner, an individual shall be disqualified for benefits:

1 (1) For the week in which he left his most recent work voluntarily without good cause involving fault on the part of the employer and the six weeks immediately following such week. Such disqualification shall carry a reduction in the maximum benefit amount equal to six times the individual's weekly benefit rate. However, if the claimant returns to work in covered employment during his benefit year, the maximum benefit amount shall be increased by the amount of decrease imposed under the disqualification. For the purpose of this sub-
division, the term “work” means employment with the last employing unit with whom such individual was employed as much as thirty days, whether or not such days are consecutive.

For purposes of this subdivision (1), an individual shall not be deemed to have left his most recent work voluntarily without good cause involving fault on the part of the employer, if such individual leaves his work with an employer with whom he has been employed at least thirty working days or more for the purpose of returning to, and if he in fact, within a fourteen-day calendar period, does return to, employment with the last preceding employer with whom he was previously employed within the past year prior to his return to work day, and which last preceding employer, after having previously employed such individual for thirty working days or more, laid off such individual because of lack of work, which layoff occasioned the payment of benefits under this chapter or could have occasioned the payment of benefits under this chapter had such individual applied for such benefits. It is the intent of this paragraph to cause no disqualification for benefits for such an individual who complies with the foregoing set of requirements and conditions. Benefits paid to such individual under the provisions of this chapter shall, notwithstanding the provisions of subsection (2), section seven, article five of this chapter, and of subdivision (12) of this section three, be charged to the account of such last preceding employer with whom such individual was previously employed for thirty working days.

(2) For the week in which he was discharged from his most recent work for misconduct and the six weeks immediately following such week; or for the week in which he was discharged from his last thirty day employing unit for misconduct and the six weeks immediately following such week. Such disqualification shall carry a reduction in the maximum benefit amount equal to six times the individual’s weekly benefit. However, if the claimant returns to work in covered employment for thirty days during his benefit year, whether or not
such days are consecutive, the maximum benefit amount shall be increased by the amount of the decrease imposed under the disqualification; except that:

If he were discharged from his most recent work for one of the following reasons; or if he were discharged from his last thirty day employing unit for one of the following reasons: Misconduct consisting of willful destruction of his employer's property, assault upon the person of his employer or any employee of his employer, if such assault is committed at such individual's place of employment or in the course of employment; reporting to work in an intoxicated condition, or being intoxicated while at work; arson, theft, larceny, fraud or embezzlement in connection with his work; or any other gross misconduct; he shall be and remain disqualified for benefits until he has thereafter worked for at least thirty days in covered employment.

(3) For the week in which he failed without good cause to apply for available suitable work, accept suitable work when offered, or return to his customary self-employment when directed to do so by the commissioner, and for the four weeks which immediately follow and for such an additional period as any offer of suitable work shall continue open for his acceptance.

(4) For a week in which his total or partial unemployment is due to a stoppage of work which exists because of a labor dispute at the factory, establishment, or other premises at which he was last employed, unless the commissioner is satisfied that he was not (one) participating, financing, or directly interested in such dispute, and (two) did not belong to a grade or class of workers who were participating, financing, or directly interested in the labor dispute which resulted in the stoppage of work. No disqualification under this subdivision shall be imposed if the employees are required to accept wages, hours or conditions of employment substantially less favorable than those prevailing for similar work in the locality, or if employees are denied the right of collective bargaining under generally prevailing conditions, or if an employer shuts down his plant or opera-
tion or dismisses his employees in order to force wage re-
duction, changes in hours or working conditions.

For the purpose of this subdivision, if any stoppage of work continues longer than four weeks after the termination of the labor dispute which caused stoppage of work, there shall be a rebuttable presumption that that part of the stoppage of work which exists after said period of four weeks after the determination of said labor dispute, did not exist because of said labor dispute; and in such event the burden shall be upon the employer or other interested party to show otherwise.

(5) For a week with respect to which he is receiving or has received:

(a) Wages in lieu of notice or payments under any form of a separation wage plan;

(b) Compensation for temporary total disability under the workmen's compensation law of any state or under a similar law of the United States;

(c) Unemployment compensation benefits under the laws of the United States or any other state.

(6) For the week in which an individual has voluntarily quit employment to marry or to perform any marital, parental or family duty, or to attend to his or her personal business or affairs, and until the individual returns to covered employment and has been employed in covered employment at last thirty working days.

(7) For the week in which an individual:

(a) Voluntarily quit her employment because of pregnancy, whether or not upon a physician's advice, and until she returns to covered employment and has been employed therein at least thirty working days; except that such disqualification shall last no longer than six weeks subsequent to the birth of her child, provided such individual furnishes to the department a certificate from a physician that she is physically able to work;

(b) Was discharged or laid off from her employment because of pregnancy and until she returns to covered employment and has been employed therein at least thirty working days; except that such disqualification
shall last no longer than six weeks prior to and six weeks subsequent to the date of birth of the child, provided such individual furnishes to the department certificates from a physician that she is physically able to work.

(8) For each week in which an individual is unemployed because, having voluntarily left employment to attend a school, college, university, or other educational institution, he is attending such school, college, university, or other educational institution, or is awaiting entrance thereto or is awaiting the starting of a new term or session thereof, and until the individual returns to covered employment.

(9) For each week in which he is unemployed because of his request, or that of his duly authorized agent, for a vacation period at a specified time that would leave the employer no other alternative but to suspend operations.

(10) For each week in which he is receiving or has received remuneration in the form of an annuity, pension, or other retirement pay, from an employer or from any trust or fund contributed to by an employer. But if such remuneration for any week is less than the benefits which would otherwise be due him for such week under this chapter, he shall be entitled to receive for such week, if otherwise eligible, benefits reduced by the amount of such remuneration: Provided, That if such amount of benefits is not a multiple of one dollar, it shall be computed to the next higher multiple of one dollar: Provided, however, That there shall be no disqualification if in the individual's base period there are no wages which were paid by the employer paying such remuneration, or by a fund into which the employer has paid during said base period. Claimant may be required to certify as to whether or not he is receiving or has received remuneration in the form of an annuity, pension, or other retirement pay from an employer or from a trust fund contributed to by an employer.

(11) For each week with respect to which he knowingly made a false statement or representation knowing it to be false or knowingly failed to disclose a material fact in order to obtain or increase a benefit under this
For each week of disqualification he shall be disqualified an additional five weeks and his maximum benefit amount shall be reduced by an amount equal to fives times his weekly benefit rate. Such five weeks’ disqualification periods are to run consecutively beginning with the first week in which it is determined a fraudulent claim was filed: Provided further, That an individual shall not be disqualified under this subdivision for a period of more than fifty-two consecutive weeks: And provided further, That disqualification under this subdivision shall not preclude prosecution under section seven, article ten of this chapter.

(12) For the purposes of this section an employer’s account shall not be charged under any of the following conditions: When benefits are paid for unemployment immediately after the expiration of a period of disqualification for (a) leaving work voluntarily without good cause involving fault on the part of the employer, (b) discharge for any of the causes set forth in subdivision (2) of this section, (c) failing without good cause to apply for available suitable work, accept suitable work, when offered, or to return to his customary self-employment when directed to do so by the commissioner.

§21A-6-10. Benefit rate—Total unemployment; annual computation and publication of rates.

Each eligible individual who is totally unemployed in any week shall be paid benefits with respect to that week at the weekly rate appearing in column (C) in Table A in this paragraph, on the line on which in column (A) there is indicated the employee’s wage class, except as otherwise provided under the term “total and partial unemployment” in section three, article one of this chapter. The employee’s wage class shall be determined by his base period wages as shown in column (B) in Table A. The right of an employee to receive benefits shall not be prejudiced nor the amount thereof be diminished by reason of failure by an employer to pay either the wages earned by the employee or the contribution due on such wages. An individual who is totally unemployed but
Ch. 174] UNEMPLOYMENT COMPENSATION 957

15 earns in excess of fifteen dollars as a result of odd-job or
16 subsidiary work in any benefit week shall be paid benefits
17 for such week in accordance with the provisions of this
18 chapter pertaining to benefits for partial unemployment.

19

TABLE A

20

21 Wage Class

22 (Column A)

23 Wages in Base Period

24 (Column B)

25 Weekly Benefit Rate

26 (Column C)

27 Total and/or Partial Unemployment

28 (Column D)

29 Maximum Benefit in Benefit Year for

30 Ineligible

31 $700.00

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49 Notwithstanding any of the foregoing provisions of
50 this section, on and after July one, one thousand nine
51 hundred sixty-seven, the maximum weekly benefit rate
52 shall be forty percent of the average weekly wage in West
53 Virginia.
Notwithstanding any of the foregoing provisions of this section, on and after July one, one thousand nine hundred seventy, the maximum weekly benefit rate shall be forty-five percent of the average weekly wage in West Virginia.

Notwithstanding any of the foregoing provisions of this section, on and after July one, one thousand nine hundred seventy-one, the maximum weekly benefit rate shall be fifty percent of the average weekly wage in West Virginia.

The commissioner, after he has determined the maximum weekly benefit rate upon the basis of the above formula, shall establish as many additional wage classes as are required, increasing the amount of base period wages required for each class by one hundred fifty dollars, the weekly benefit rate for each class by one dollar, and the maximum benefit by twenty-six dollars. The maximum weekly benefit rate, when computed by the commissioner, in accordance with the foregoing provisions, shall be rounded to the next higher dollar amount, if the computation exceeds forty-nine percent of a dollar amount. Such rounding off to the next higher dollar amount shall result in one additional wage class, with commensurate base period wage requirement of one hundred fifty dollars over the preceding wage class, and with a maximum benefit increase over the preceding wage class of twenty-six dollars. Such an additional wage class shall be published by the commissioner with the table required to be published by the foregoing provisions of this section.

After he has established such additional wage classes, the commissioner shall prepare and publish a table setting forth such information.

Average weekly wage shall be computed by dividing the number of employees in West Virginia earning wages in covered employment into the total wages paid to employees in West Virginia in covered employment, and by further dividing said result by fifty-two, and shall be determined from employer wage and contribution reports for the previous calendar year which are furnished to the department on or before June one following such calendar
year. The average weekly wage, as determined by the commissioner, shall be rounded to the next higher dollar.

The computation and determination of rates as afore-said shall be completed annually before July one, and any such new wage class, with its corresponding wages in base period, weekly benefit rate, and maximum benefit in a benefit year established by the commissioner in the foregoing manner effective on a July one, shall apply only to a new claim established by a claimant on and after said July one, and shall not apply to continued claims of a claimant based on his new claim established before said July one.

§21A-6-15. Benefit payments for service with nonprofit organizations, state hospitals and institutions of higher education.

Benefits based on service in employment as defined in subdivisions nine and ten of the definition of "employment" in section three, article one of this chapter, shall be payable in the same amount, on the same terms and subject to the same conditions as compensation payable on the basis of other service subject to this chapter; except that benefits based on service in an instructional, research, or principal administrative capacity in an institution of higher education shall not be paid to an individual for any week of unemployment which begins during the period between two successive academic years, or during a similar period between two regular terms, whether or not successive, or during a period of paid sabbatical leave provided for in the individual's contract, if the individual has a contract or contracts to perform services in any such capacity for any institution or institutions of higher education for both such academic years or both such terms.

ARTICLE 6A. EXTENDED BENEFITS PROGRAM.

§21A-6A-2. Effect of state law provisions relating to regular benefits on claims for, and the payment of, extended benefits.
§21A-6A-5. Total extended benefit amount.
§21A-6A-7. Effective date of article.

As used in this article, unless the context clearly requires otherwise:

(1) "Extended benefit period" means a period which begins with the third week after whichever of the following weeks occurs first:

(i) A week for which there is a national "on" indicator; or

(ii) a week for which there is a state "on" indicator; and

(b) ends with either of the following weeks, whichever occurs later:

(i) the third week after the first week for which there is both a national "off" indicator and a state "off" indicator; or

(ii) the thirteenth consecutive week of such period.

Notwithstanding the foregoing provisions of this section, no extended benefit period may begin by reason of a state "on" indicator before the fourteenth week following the end of a prior extended benefit period which was in effect with respect to this state, and no extended benefit period may become effective in this state prior to the sixty-first day following the date of enactment of the "Federal-State Extended Unemployment Compensation Act of 1970" and, within the period beginning on such sixty-first day and ending on December thirty-one, one thousand nine hundred seventy-one, an extended benefit period may become effective and be terminated in this state solely by reason of a state "on" and a state "off" indicator, respectively.

(2) There is a "national 'on' indicator" for a week if the United States secretary of labor determines that for each of the three most recent completed calendar months ending before such week, the rate of insured unemployment (seasonally adjusted) for all states equaled or exceeded four and five-tenths percent.

(3) There is a "national 'off' indicator" for a week if the United States secretary of labor determines that for each of the three most recent completed calendar months...
ending before such week, the rate of insured unemploy-
ment (seasonally adjusted) for all states was less than
four and five-tenths percent.

(4) There is a “state ‘on’ indicator” for this state for
a week if the commissioner determines, in accordance
with the regulations of the United States secretary of
labor, that for the period consisting of such week and the
immediately preceding twelve weeks, the rate of insured
unemployment (not seasonally adjusted) under this
article:

(a) equaled or exceeded one hundred twenty percent
of the average of such rates for the corresponding thir-
ten-week period ending in each of the preceding two
calendar years, and

(b) equaled or exceeded four percent.

(5) There is a “state ‘off’ indicator” for this state for
a week if the commissioner determines, in accordance
with the regulations of the United States secretary of
labor, that for the period consisting of such week and the
immediately preceding twelve weeks, the rate of insured
unemployment (not seasonally adjusted) under this
article:

(a) was less than one hundred twenty percent of the
average of such rates for the corresponding thirteen-week
period ending in each of the preceding two calendar
years, or

(b) was less than four percent.

(6) “Rate of insured unemployment,” for purposes of
subdivisions (4) and (5) of this section, means the per-
centage derived by dividing

(a) the average weekly number of individuals filing
claims in this state for weeks of unemployment with
respect to the most recent thirteen-consecutive-week
period, as determined by the commissioner on the basis
of his reports to the United States secretary of labor, by

(b) the average monthly employment covered under
this chapter for the first four of the most recent six com-
pleted calendar quarters ending before the end of such
thirteen-week period.
(7) "Regular benefits" means benefits payable to an individual under this chapter or under any other state law (including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 U.S.C., chapter 85) other than extended benefits.

(8) "Extended benefits" means benefits (including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 U.S.C., chapter 85) payable to an individual under the provisions of this article for weeks of unemployment in his eligibility period.

(9) "Eligibility period" of an individual means the period consisting of the weeks in his benefit year which begin in an extended benefit period and, if his benefit year ends within such extended benefit period, any weeks thereafter which begin in such period.

(10) "Exhaustee" means an individual who, with respect to any week of unemployment in his eligibility period:

(a) has received, prior to such week, all of the regular benefits which were available to him under this chapter or any other state law (including dependents' allowances and benefits payable to federal civilian employees and ex-servicemen under 5 U.S.C., chapter 85) in his current benefit year that includes such week: Provided, That for the purposes of this subdivision, an individual shall be deemed to have received all of the regular benefits which were available to him although (i) as a result of a pending appeal with respect to wages and/or employment which were not considered in the original monetary determination in his benefit year, he may subsequently be determined to be entitled to added regular benefits, or (ii) he may be entitled to regular benefits with respect to future weeks of unemployment, but such benefits are not payable with respect to such week of unemployment by reason of the provisions of section one-a, article six of this chapter; or

(b) his benefit year having expired prior to such week, has no, or insufficient, wages and/or employment on the basis of which he could establish a new benefit year which would include such week; and
(c) has no right to unemployment benefits or allowances, as the case may be, under the "Railroad Unemployment Insurance Act," the "Trade Expansion Act of 1962," the "Automotive Products Trade Act of 1965" and such other federal laws as are specified in regulations issued by the United States secretary of labor; and has not received and is not seeking unemployment benefits under the unemployment compensation law of the Virgin Islands or of Canada; but if he is seeking such benefits and the appropriate agency finally determines that he is not entitled to benefits under such law he is considered an exhaustee.

(11) "State law" means the unemployment insurance law of any state, approved by the United States secretary of labor under section 3304 of the "Internal Revenue Code of 1954."

§21A-6A-2. Effect of state law provisions relating to regular benefits on claims for, and the payment of, extended benefits.

Except when the result would be inconsistent with the other provisions of this article, as provided in the regulations of the commissioner, the provisions of this chapter which apply to claims for, or the payment of, regular benefits shall apply to claims for, and the payment of, extended benefits.


An individual shall be eligible to receive extended benefits with respect to any week of unemployment in his eligibility period only if the commissioner finds that with respect to such week:

(1) he is an "exhaustee" as defined in subdivision ten, section one of this article,

(2) he has satisfied the eligibility requirements of this chapter for the receipt of regular benefits which are applicable to individuals claiming extended benefits, including not being subject to a disqualification for the receipt of benefits.

1 The weekly extended benefit amount payable to an individual for a week of total unemployment in his eligibility period shall be an amount equal to the weekly benefit amount payable to him during his applicable benefit year.

§21A-6A-5. Total extended benefit amount.

1 The total extended benefit amount payable to any eligible individual with respect to his applicable benefit year shall be the least of the following amounts:

(1) fifty percent of the total amount of regular benefits which were payable to him under this chapter in his applicable benefit year;

(2) thirteen times his weekly benefit amount which was payable to him under this chapter for a week of total unemployment in the applicable benefit year.


1 (1) Whenever an extended benefit period is to become effective in this state (or in all states) as a result of a state or a national “on” indicator, or an extended benefit period is to be terminated in this state as a result of a state “off” indicator or state and national “off” indicators, the commissioner shall make an appropriate public announcement.

(2) Computations required by the provisions of subdivision (6), section one of this article shall be made by the commissioner, in accordance with regulations prescribed by the United States secretary of labor.

§21A-6A-7. Effective date of article.

1 The provisions of this article shall be applicable to compensable weeks beginning on or after February seven, one thousand nine hundred seventy-one, determined in accordance with the provisions of this article on the basis of a state “on” indicator which occurred prior to said February seven, as determined by the commissioner.
AN ACT to amend and reenact section four hundred three, article nine, chapter forty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the uniform commercial code, secured transactions and the effective period of financing statements.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 9. SECURED TRANSACTIONS; SALES OF ACCOUNTS, CONTRACT RIGHTS AND CHATEL PAPER.

§46-9-403. What constitutes filing; duration of filing; effect of lapsed filing; duties of filing officer.

1. (1) Presentation for filing of a financing statement and tender of the filing fee or acceptance of the statement by the filing officer constitutes filing under this article.

2. (2) A filed financing statement which states a maturity date of the obligation secured of five years or less is effective until such maturity date and thereafter for a period of sixty days. Any other filed financing statement is effective for a period of five years from the date of filing. The effectiveness of a filed financing statement lapses on the expiration of such sixty-day period after a stated maturity date or on the expiration of such five-year period, as the case may be, unless a continuation statement is filed prior to the lapse. Upon such lapse the security interest becomes unperfected. A filed financing statement which states that the obligation secured is payable on demand is effective for five years from the date of filing.

3. (3) A continuation statement may be filed by the secured party (i) within six months before and sixty
20 days after a stated maturity date of five years or less, 
21 and (ii) otherwise within six months prior to the expira-
22 tion of the five-year period specified in subsection (2). 
23 Any such continuation statement must be signed by the 
24 secured party, identify the original statement by file 
25 number and state that the original statement is still 
26 effective. Upon timely filing of the continuation state-
27 ment, the effectiveness of the original statement is con-
28 tinued for five years after the last date to which the 
29 filing was effective whereupon it lapses in the same man-
30 ner as provided in subsection (2) unless another contin-
31 uation statement is filed prior to such lapse. Succeed-
32 ing continuation statements may be filed in the same 
33 manner to continue the effectiveness of the original state-
34 ment. Unless a statute on disposition of public records 
35 provides otherwise, the filing officer may remove a lapsed 
36 statement from the files and destroy it. 
37 (4) A filing officer shall mark each statement with a 
38 consecutive file number and with the date and hour of 
39 filing and shall hold the statement for public inspection. 
40 In addition the filing officer shall index the statements 
41 according to the name of the debtor and shall note in 
42 the index the file number and the address of the debtor 
43 given in the statement. 
44 (5) The uniform fee for filing, indexing and furnish-
45 ing filing data for an original or a continuation state-
46 ment shall be $1.00. 
47 (6) Notwithstanding any provision of this code to the 
48 contrary, a filed financing statement on public bond issues 
49 of counties, municipalities or public service districts of 
50 this state shall be effective for the life of such bond issues 
51 without the need for filing continuation statements. 

CHAPTER 176

(House Bill No. 1147—By Mr. Potter and Mr. Huffman)

[Passed March 13, 1971; in effect July 1, 1971. Approved by the Governor.] 

AN ACT to amend and reenact sections one and three, article 
one, chapter twenty-three of the code of West Virginia,
one thousand nine hundred thirty-one, as amended, relating to the workmen's compensation commissioner and the payment of salaries and expenses of the workmen's compensation fund.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. GENERAL ADMINISTRATIVE PROVISIONS.

§23-1-1. Workmen's compensation commissioner; appointment; term; oath; bond; conflict of interest; compensation; official seal; legal services; references to director deemed to mean commissioner.

§23-1-3. Payment of salaries and expenses—Manner; limitation.

§23-1-1. Workmen's compensation commissioner; appointment; term; oath; bond; conflict of interest; compensation; official seal; legal services; references to director deemed to mean commissioner.

1 There shall be a state workmen's compensation commissioner who shall be appointed by the governor by and with the advice and consent of the Senate and who shall serve at the will and pleasure of the governor during the term for which the governor was elected and until the commissioner's successor has been appointed and qualified. An appointment may be made to fill a vacancy or otherwise when the Senate is not in session, but shall be acted upon at the next session thereof. The person so appointed shall take the oath or affirmation prescribed by section five of article four of the constitution, and such oath shall be certified by the person who administers the same and shall be filed in the office of the secretary of state. He shall give bond in the penalty of twenty-five thousand dollars conditioned for the faithful performance of the duties of his office, which bond shall be approved by the attorney general as to form, and by the governor as to sufficiency. The surety of such bond may be a bonding or surety
company, in which case the premiums shall be paid out of the appropriation made for the administration of this chapter. The commissioner shall hold no position of trust or profit, or engage in any occupation or business, interfering or inconsistent with his duties as such commissioner. Notwithstanding the provisions of section two-a, article seven, chapter six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, the commissioner shall receive an annual salary of twenty thousand dollars, payable out of the workmen's compensation fund. The commissioner shall have an official seal for the authentication of his orders and proceedings, upon which seal shall be engraved the words, "West Virginia Compensation Commissioner," and such other design as the commissioner may prescribe. The courts in this state shall take judicial notice of the seal of the commissioner and in all cases copies of orders, proceedings or records in the office of the West Virginia compensation commissioner shall be equal to the original in evidence.

The attorney general shall perform all legal services required by the commissioner under the provisions of this chapter: Provided, That in any case in which an application for review is prosecuted from any final decision of the workmen's compensation appeal board to the supreme court of appeals, as provided by section four, article five of this chapter, or in any court proceeding before the workmen's compensation appeal board, in which such representation shall appear to the commissioner to be desirable, he may designate a regular employee of his office, qualified to practice before such court, to represent him upon such appeal or proceeding, and in no case shall the person so appearing for the commissioner before the court receive remuneration therefor other than his regular salary.

Whenever in this chapter or elsewhere in law reference is made to "State Director of Workmen's Compensation" or "Compensation Commissioner" such reference shall henceforth be construed and understood to mean "State Workmen's Compensation Commissioner."
§23-1-3. Payment of salaries and expenses—Manner; limitation.

1 All payments of salaries and expenses in the administration of this chapter shall be made by the state treasurer upon requisitions signed by the commissioner, directed to the auditor of the state, who shall draw his warrant therefor, and any such payment shall be charged to the workmen's compensation fund: Provided, That the total charges against such fund under this section for any one fiscal year shall not exceed the amount appropriated therefor.

CHAPTER 177
(Com. Sub. for House Bill No. 790—Originating in the House Committee on the Judiciary)

[Passed March 13, 1971; in effect July 1, 1971. Approved by the Governor.]

AN ACT to repeal sections eight-d, eight-e, eight-f and fifteen-c, article four, chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections one, four, five, six, seven, eight, eight-b, eight-c, nine-b, ten, fourteen, fifteen, fifteen-b and sixteen of said article four; to further amend said article four, by adding thereto a new section, designated section sixteen-a; to further amend said chapter by adding thereto a new article, designated article four-a; to amend and reenact sections one, two and five, article five of said chapter; to further amend said article five by adding thereto a new section, designated section three-a; and to further amend said chapter by adding thereto a new article, designated article six, relating generally to workmen's compensation; relating to the contraction or aggravation of occupational pneumoconiosis or other occupational disease; abolishing the occupational diseases medical board, except as to any claim in which the claimant is examined by such board before July one, one thousand nine hundred seventy-one; relating to funeral expenses in workmen's compensation claims; relating to the payment of temporary total disability benefits; relating to the classification of disability benefits; relating to the maximum and minimum work-
men's compensation benefits; relating to the average weekly wage in West Virginia; relating to payment following death of claimant of statutory award for severance of a member of the body and providing limitations and qualifications with respect thereto; relating to the evaluation of disability where there is an injury to a member of the body as opposed to the severance thereof; providing that temporary total disability benefits shall not be subtracted from permanent partial disability awards; relating to hernias; relating to physical examinations of claimants; relating to examinations for the occupational pneumoconiosis board; relating to the time during which protests may be filed to the findings of the occupational pneumoconiosis board; providing that preexisting physical impairments shall not be considered in fixing amount of compensation; relating to the classification and amounts of death benefits; relating to the computation of benefits and providing that in any claim for injuries, including occupational pneumoconiosis or other occupational diseases, occurring on or after July one, one thousand nine hundred seventy-one, any award for disability benefits or for dependent benefits shall be paid at the weekly rates or the monthly amount in effect on the date of such injury and further providing that if during the life of any such award, the weekly rates or the monthly amount are increased or decreased, the claimant shall receive such increased or decreased benefits as of the effective date of said increase or decrease; relating to the time periods within which applications for various types of workmen's compensation benefits must be filed; relating to the time within which an employer must report an injury; relating to certain nonmedical findings to be made by the commissioner in claims for occupational pneumoconiosis; relating to the time within which such nonmedical findings may be protested; relating to the reopening of claims; providing for interest on certain benefits under certain circumstances; creating the disabled workmen's relief fund and providing for the payment of benefits from such fund; relating to the computation of benefits to be paid from such fund; relating to the mode of payment of benefits from such fund; providing for the payment of bene-
fits from such fund to employees of self-insurers; relating to the powers of the commissioner over such fund; prohibiting the charging of any fee, compensation or gratuity for representing or assisting or pretending to represent or assist any person to receive benefits from such workmen's relief fund; relating to the employees to administer such workmen's relief fund and their salaries and expenses; providing that such workmen's relief fund shall be funded out of interest earned on the workmen's compensation fund; providing that the purpose of such workmen's relief fund is to increase the benefits being paid under life awards or in fatal claims to the minimum amount payable in such claims under the laws in effect on July one, one thousand nine hundred sixty-one; relating to the time within which the commissioner is to order supplemental hearings and render his decision; relating to the payment of expenses and loss of wages when the claimant attends a hearing under certain circumstances; relating to the salary of the members of the workmen's compensation appeal board; relating to continuances; placing a limitation upon the fees which may be charged by an attorney for a claimant or dependent; and providing a severability clause for said chapter twenty-three.

Be it enacted by the Legislature of West Virginia:

That sections eight-d, eight-e, eight-f and fifteen-c, article four, chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that sections one, four, five, six, seven, eight, eight-b, eight-c, nine-b, ten, fourteen, fifteen, fifteen-b and sixteen of said article four be amended and reenacted; that said article four be further amended by adding thereto a new section, designated section sixteen-a; that said chapter be further amended by adding thereto a new article, designated article four-a; that sections one, two and five, article five of said chapter be amended and reenacted; that said article five be further amended by adding thereto a new section, designated section three-a; and that said chapter be further amended by adding thereto a new article, designated article six, all to read as follows:
Article
4. Disability and Death Benefits.
4A. Disabled Workmen’s Relief Fund.
5. Review.

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 occupa-
tional pneumoconiosis and other occupational diseases.

§23-4-2. Funeral expenses.
§23-4-3. Benefits for first three days after injury.
§23-4-4. Classification of disability benefits.
§23-4-5. Hernia.
§23-4-6. Physical examination of claimant.
§23-4-7. Occupational pneumoconiosis board; procedure; autopsy.
§23-4-8. Same—Reports and distribution thereof; presumption; find-
lings required of board; objection to findings; procedure
thereon.

§23-4-9. Preexisting physical impairments not considered in fixing
amount of compensation.
§23-4-10. Classification of death benefits; “dependent” defined.
§23-4-12. Application for benefits; report of injuries by employer.
§23-4-13. Determination of nonmedical questions by commissioner;
claims for occupational pneumoconiosis; hearing.
§23-4-14. Commissioner’s jurisdiction over case continuous; modifi-
cation of finding or order; time limitation on awards;
reimbursement of claimant for expenses.

§23-4-15. Subject to the provisions and limitations elsewhere
in this chapter set forth, the commissioner shall disburse
the workmen’s compensation fund to the employees of
such employers as are not delinquent in the payment of
the premiums for the quarter in which the injury occurs,
and in case of catastrophe, in addition to the employees
next above described, to the employees of employers who
have elected, under section nine, article two of this
chapter, to make payments into the surplus fund as pro-
vided in that section, and which employees shall have
received personal injuries in the course of and resulting
from their employment in this state, or in temporary
employment without the state as provided in section
one, article two of this chapter, or to the dependents, if
any, of such employees in case death has ensued, ac-
For the purposes of this chapter the terms "injury" and "personal injury" shall include occupational pneumoconiosis and any other occupational disease, as hereinafter defined, and the commissioner shall likewise disburse the workmen's compensation fund to the employees of such employers as are not delinquent in the payment of premiums for the last quarter in which such employees have been exposed to the hazards of occupational pneumoconiosis or other occupational disease and in this state have contracted occupational pneumoconiosis or other occupational disease, or have suffered a perceptible aggravation of an existing pneumoconiosis or other occupational disease, or to the dependents, if any, of such employees, in case death has ensued, according to the provisions hereinafter made: Provided, That compensation shall not be payable for the disease of occupational pneumoconiosis, or death resulting therefrom, unless the employee has been exposed to the hazards of occupational pneumoconiosis in the state of West Virginia over a continuous period of not less than two years during the ten years immediately preceding the date of his last exposure to such hazards. An application for benefits on account of occupational pneumoconiosis shall set forth the name of the employer or employers and the time worked for each, and the commissioner may allocate to and divide any charges resulting from such claim among the employers by whom the claimant was employed for as much as sixty days during the period of three years immediately preceding the date of last exposure to the hazards of occupational pneumoconiosis. The allocation shall be based upon the time and degree of exposure with each employer.

For the purposes of this chapter disability or death resulting from occupational pneumoconiosis, as defined in the immediately preceding sentence, shall be treated and compensated as an injury by accident.

Occupational pneumoconiosis is a disease of the lungs caused by the inhalation of minute particles of dust
over a period of time due to causes and conditions arising out of and in the course of the employment. The term “occupational pneumoconiosis” shall include, but shall not be limited to, such diseases as silicosis, anthracosilicosis, coal worker's pneumoconiosis, commonly known as black lung or miner's asthma, silico-tuberculosis (silicosis accompanied by active tuberculosis of the lungs), coal worker's pneumoconiosis accompanied by active tuberculosis of the lungs, asbestosis, siderosis, anthrax and any and all other dust diseases of the lungs and conditions and diseases caused by occupational pneumoconiosis which are not specifically designated herein meeting the definition of occupational pneumoconiosis set forth in the immediately preceding sentence.

X-ray evidence shall not necessarily be held conclusive insofar as it bears upon the absence of occupational pneumoconiosis.

For the purposes of this chapter, occupational disease means a disease incurred in the course of and resulting from employment. No ordinary disease of life to which the general public is exposed outside of the employment shall be compensable except when it follows as an incident of occupational disease as defined in this chapter. Except in the case of occupational pneumoconiosis, a disease shall be deemed to have been incurred in the course of or to have resulted from the employment only if it is apparent to the rational mind, upon consideration of all the circumstances (1) that there is a direct causal connection between the conditions under which work is performed and the occupational disease, (2) that it can be seen to have followed as a natural incident of the work as a result of the exposure occasioned by the nature of the employment, (3) that it can be fairly traced to the employment as the proximate cause, (4) that it does not come from a hazard to which workmen would have been equally exposed outside of the employment, (5) that it is incidental to the character of the business and not independent of the relation of employer and employee, and (6) that it must appear to have had its origin in a risk
Ch. 177] WORKMEN'S COMPENSATION 975

98 connected with the employment and to have flowed
99 from that source as a natural consequence, though it
100 need not have been foreseen or expected before its
101 contraction.

102 Except in the case of silicosis, no award shall be
103 made under the provisions of this chapter for any oc-
104 cupational disease contracted prior to the first day of
105 July, one thousand nine hundred forty-nine. An em-
106 ployee shall be deemed to have contracted an occu-
107 pational disease within the meaning of this paragraph
108 if the disease or condition has developed to such an
109 extent that it can be diagnosed as an occupational dis-
110 ease.

111 Claims for occupational disease as hereinbefore de-
112 fined, except occupational pneumoconiosis, shall be pro-
113 cessed in like manner as claims for all other personal
114 injuries: Provided, That in any claim in which the oc-
115 cupational diseases medical board has examined the claim-
116 ant prior to July one, one thousand nine hundred seventy-
117 one, such claim shall be processed and final disposition
118 made with respect thereto without regard to the fore-
119 going provisions of this paragraph and with like effect as
120 if (i) sections eight-d, eight-e, eight-f and fifteen-c of
121 this article had not been repealed by this act, and (ii)
122 section eight of this article had not been amended and
123 reenacted by this act.

§23-4-4. Funeral expenses.

1 In case the personal injury causes death, and dis-
2 ability is continuous from the date of such injury to
3 date of death, reasonable funeral expenses, not to exceed
4 twelve hundred dollars, shall be paid from the fund,
5 payment to be made to the persons who have fur-
6 nished the services and supplies, or to the persons who
7 have advanced payment for same, as the commissioner
8 may deem proper, in addition to such award as may
9 be made to the employee's dependents.

§23-4-5. Benefits for first three days after injury.

1 If the period of disability does not last longer than
2 three days from the day the employee leaves work as
the result of the injury, no award shall be allowed, except the disbursements provided for in the two next preceding sections, but if the period of disability lasts longer than fourteen days from the day the employee leaves work as a result of the injury, an award shall be allowed for the first three days of such disability.

§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: 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 the percentage of the average weekly wage in West Virginia, as follows: On or after July one, one thousand nine hundred sixty-nine, forty-five percent; on or after July one, one thousand nine hundred seventy, fifty percent; on or after July one, one thousand nine hundred seventy-one, fifty-five percent.

The minimum weekly benefits paid hereunder shall not be less than twenty-six dollars per week for injuries occurring on or after July one, one thousand nine hundred sixty-nine, forty-five percent; on or after July one, one thousand nine hundred seventy, fifty percent; on or after July one, one thousand nine hundred seventy-one, fifty-five percent.

(c) Subdivision (b) shall be limited as follows: Aggregate award for a single injury causing temporary disability shall be for a period not exceeding two hundred eight weeks.
(d) If the injury causes permanent disability, the percentage of disability to total disability shall be determined and the award computed on the basis of four weeks compensation for each percent of disability determined and the maximum and minimum weekly benefits as provided in subdivision (b) of this section for temporary total disability benefits shall be payable.

For a disability of eighty-five percent or more, benefits shall be payable during the remainder of life at the maximum or minimum weekly benefits as provided in subdivision (b) of this section for temporary total disability.

(e) If the injury results in the total loss by severance of any of the members named in this subdivision, the percentage of disability shall be determined in accordance with the following table, and award made as provided in subdivision (d) of this section:

The loss of a great toe shall be considered a ten percent disability.

The loss of a great toe (one phalanx) shall be considered a five percent disability.

The loss of other toes shall be considered a four percent disability.

The loss of other toes (one phalanx) shall be considered a two percent disability.

The loss of all toes shall be considered a twenty-five percent disability.

The loss of forepart of foot shall be considered a thirty percent disability.

The loss of foot shall be considered a thirty-five percent disability.

The loss of a leg shall be considered a forty-five percent disability.

The loss of thigh shall be considered a fifty percent disability.

The loss of thigh at hip joint shall be considered a sixty percent disability.
The loss of a little or fourth finger (one phalanx) shall be considered a three percent disability.
The loss of little or fourth finger shall be considered a five percent disability.
The loss of ring or third finger (one phalanx) shall be considered a three percent disability.
The loss of ring or third finger shall be considered a five percent disability.
The loss of middle or second finger (one phalanx) shall be considered a seven percent disability.
The loss of index or first finger (one phalanx) shall be considered a six percent disability.
The loss of index or first finger shall be considered a ten percent disability.
The loss of thumb (one phalanx) shall be considered a twelve percent disability.
The loss of thumb shall be considered a twenty percent disability.
The loss of thumb and index finger shall be considered a thirty-two percent disability.
The loss of index and middle finger shall be considered a twenty percent disability.
The loss of middle and ring finger shall be considered a fifteen percent disability.
The loss of ring and little finger shall be considered a ten percent disability.
The loss of thumb, index and middle finger shall be considered a forty percent disability.
The loss of index, middle and ring finger shall be considered a thirty percent disability.
The loss of middle, ring and little finger shall be considered a twenty percent disability.
The loss of four fingers shall be considered a thirty-two percent disability.
The loss of hand shall be considered a fifty percent disability.
The loss of forearm shall be considered a fifty-five percent disability.

The loss of arm shall be considered a sixty percent disability.

The total and irrecoverable loss of the sight of one eye shall be considered a thirty-three percent disability.

For the partial loss of vision in one, or both eyes, the percentage of disability shall be determined by the commissioner, using as a basis the total loss of one eye.

The total and irrecoverable loss of the hearing of one ear shall be considered a fifteen percent disability, and the injured employee shall be entitled to compensation for a period of sixty weeks. The total and irrecoverable loss of hearing of both ears shall be considered a forty-five percent disability, and the injured employee shall be entitled to compensation for a period of one hundred eighty weeks.

For the partial loss of hearing in one, or both ears, the percentage of disability shall be determined by the commissioner, using as a basis the total loss of hearing in both ears.

Should a claimant sustain a compensable injury which results in the total loss by severance of any of the bodily members named in this subdivision, die from sickness or noncompensable injury before the commissioner makes the proper award for such injury, the commissioner shall make such award to claimant's dependents as defined in this chapter, if any; such payment to be made in the same installments that would have been paid to claimant if living: Provided, That no payment shall be made to any widow of such claimant after her remarriage, and that this liability shall not accrue to the estate of such claimant and shall not be subject to any debts of, or charges against, such estate.

(f) Should a claimant to whom has been made a permanent partial award of from one percent to eighty-four percent, both inclusive, die from sickness or noncompensable injury, the unpaid balance of such award
The loss of a little or fourth finger (one phalanx) shall be considered a three percent disability.

The loss of little or fourth finger shall be considered a five percent disability.

The loss of ring or third finger (one phalanx) shall be considered a three percent disability.

The loss of ring or third finger shall be considered a five percent disability.

The loss of middle or second finger (one phalanx) shall be considered a three percent disability.

The loss of middle or second finger shall be considered a seven percent disability.

The loss of index or first finger (one phalanx) shall be considered a six percent disability.

The loss of index or first finger shall be considered a ten percent disability.

The loss of thumb (one phalanx) shall be considered a twelve percent disability.

The loss of thumb shall be considered a twenty percent disability.

The loss of thumb and index finger shall be considered a thirty-two percent disability.

The loss of index and middle finger shall be considered a twenty percent disability.

The loss of middle and ring finger shall be considered a fifteen percent disability.

The loss of ring and little finger shall be considered a ten percent disability.

The loss of thumb, index and middle finger shall be considered a forty percent disability.

The loss of index, middle and ring finger shall be considered a thirty percent disability.

The loss of middle, ring and little finger shall be considered a twenty percent disability.

The loss of four fingers shall be considered a thirty-two percent disability.

The loss of hand shall be considered a fifty percent disability.
The loss of forearm shall be considered a fifty-five percent disability.

The loss of arm shall be considered a sixty percent disability.

The total and irrecoverable loss of the sight of one eye shall be considered a thirty-three percent disability.

For the partial loss of vision in one, or both eyes, the percentage of disability shall be determined by the commissioner, using as a basis the total loss of one eye.

The total and irrecoverable loss of the hearing of one ear shall be considered a fifteen percent disability, and the injured employee shall be entitled to compensation for a period of sixty weeks. The total and irrecoverable loss of hearing of both ears shall be considered a forty-five percent disability, and the injured employee shall be entitled to compensation for a period of one hundred eighty weeks.

For the partial loss of hearing in one, or both ears, the percentage of disability shall be determined by the commissioner, using as a basis the total loss of hearing in both ears.

Should a claimant sustain a compensable injury which results in the total loss by severance of any of the bodily members named in this subdivision, die from sickness or noncompensable injury before the commissioner makes the proper award for such injury, the commissioner shall make such award to claimant's dependents as defined in this chapter, if any; such payment to be made in the same installments that would have been paid to claimant if living: Provided, That no payment shall be made to any widow of such claimant after her remarriage, and that this liability shall not accrue to the estate of such claimant and shall not be subject to any debts of, or charges against, such estate.

(f) Should a claimant to whom has been made a permanent partial award of from one percent to eighty-four percent, both inclusive, die from sickness or noncompensable injury, the unpaid balance of such award
shall be paid to claimant's dependents as defined in this chapter, if any; such payment to be made in the same installments that would have been paid to claimant if living: *Provided, however, That no payment shall be made to any widow of such claimant after her remarriage, and that this liability shall not accrue to the estate of such claimant and shall not be subject to any debts of, or charges against, such estate.*

(g) The award for permanent disabilities intermediate to those fixed by the foregoing schedule and permanent disability of from one percent to eighty-four percent shall be in the same proportion and shall be computed and allowed by the commissioner.

(h) The percentage of all permanent disabilities other than those enumerated in subdivision (e) of this section shall be determined by the commissioner, and awards made in accordance with the provisions of subdivision (d) of this section. Where there has been an injury to a member as distinguished from total loss by severance of that member, the commissioner in determining the percentage of disability may be guided by but shall not be limited to the disabilities enumerated in subdivision (e) of this section.

(i) Compensation payable under any subdivision of this section shall be limited as follows: Not to exceed the maximum nor to be less than the minimum weekly benefits specified in subdivision (b) of this section.

(j) Temporary total disability benefits payable under subdivision (b) of this section shall not be deductible from permanent partial disability awards payable under subdivisions (d) and (e) of this section. Compensation, either total temporary or permanent partial, under this section shall be payable only to the injured employee and the right thereto shall not vest in his or her estate, except that any unpaid compensation which would have been paid or payable to the employee up to the time of his death, if he had lived, shall be paid to the dependents of such injured employee if there be such dependents at the time of death.

(k) The following permanent disabilities shall be conclusively presumed to be total in character:
191 Loss of both eyes or the sight thereof.
192 Loss of both hands or the use thereof.
193 Loss of both feet or the use thereof.
194 Loss of one hand and one foot or the use thereof.
195 In all other cases permanent disability shall be de-
196 termined by the commissioner in accordance with the
197 facts in the case, and award made in accordance with
198 the provisions of subdivision (d).
199 (1) A disability which renders the injured employee
200 unable to engage in substantial gainful activity requir-
201 ing skills or abilities comparable to those of any gainful
202 activity in which he has previously engaged with some
203 regularity and over a substantial period of time shall
204 be considered in determining the issue of total dis-
205 ability.

1 In all claims for compensation for hernia resulting
2 from personal injury received in the course of and re-
3 sulting from the employee’s employment, it must be
4 proven by a preponderance of the evidence: First, that
5 there was an injury resulting in hernia; second, that it
6 was accompanied by pain; third, that the hernia fol-
7 lowed an injury; and fourth, that the hernia did not exist
8 prior to the injury for which compensation is claimed.
9 All hernia, inguinal, femoral or otherwise, so proven
10 to be the result of an injury received in the course of
11 and resulting from the employment, shall be treated
12 in a surgical manner by radical operation. If death
13 results from such operation, the death shall be con-
14 sidered as a result of the injury, and compensation paid
15 in accordance with the provisions of section ten of this
16 article. In nonfatal cases, time loss only shall be paid,
17 unless it is shown by special examination that the in-
18 jured employee has a permanent partial disability re-
19 sulting after the operation. If so, compensation shall be
20 paid in accordance with the provisions in section six of
21 this article with reference to permanent partial disabil-
22 ity. In case the injured employee refuses to undergo
23 the radical operation for the cure of said hernia, no
24 compensation will be allowed during the time such re-
If, however, it is shown that the employee has some chronic disease, or is otherwise in such physical condition that it is considered unsafe for him to undergo such operation, he shall be paid as provided in section six.

§23-4-8. Physical examination of claimant.

The commissioner shall have authority, after due notice to the employer and claimant, whenever in his opinion it shall be necessary, to order a claimant of compensation for a personal injury other than occupational pneumoconiosis to appear for examination before a medical examiner or examiners selected by the commissioner; and the claimant and employer, respectively, shall each have the right to select a physician of his or its own choosing and at his or its own expense to participate in such examination. The claimant and employer shall, respectively, be furnished with a copy of the report of examination made by the medical examiner or examiners selected by the commissioner. The respective physicians selected by the claimant and employer shall have the right to concur in any report made by the medical examiner or examiners selected by the commissioner, or each may file with the commissioner a separate report, which separate report shall be considered by the commissioner in passing upon the claim. If the compensation claimed is for occupational pneumoconiosis, the commissioner shall have the power, after due notice to the employer, and whenever in his opinion it shall be necessary, to order a claimant to appear for examination before the occupational pneumoconiosis board hereinafter provided. In any case the claimant shall be entitled to reasonable traveling and other expenses necessarily incurred by him in obeying such order, which shall be paid out of the amount allowed under this chapter for medical, surgical, dental and hospital treatment.

Where the claimant is required to undergo a medical examination or examinations by a physician or physicians selected by the employer, as aforesaid or in connection with any claim which is in litigation, in addition to the
reasonable traveling and other expenses, not to exceed the expenses paid when a claimant is examined by a physician or physicians selected by the commissioner, such claimant shall be reimbursed by the employer for loss of wages necessarily incurred by him in connection with such examination or examinations.

§23-4-8b. Occupational pneumoconiosis board; procedure; autopsy.

1. The occupational pneumoconiosis board, upon reference to it by the commissioner of a case of occupational pneumoconiosis, shall notify the employee, or in case he is dead, the claimant, and the employer, to appear before such board at a time and place stated in the notice. If the employee be living, he shall appear before the board at the time and place specified and submit to such examination, including clinical and X-ray examinations, as the board may require. If a physician licensed to practice medicine in the state shall make affidavit that the employee is physically unable to appear at the time and place designated by the board, such board shall, on notice to the proper parties, change the place and time as may reasonably facilitate the hearing or examination of the employee, or may appoint a qualified specialist in the field of respiratory disease to examine the claimant on behalf of the board. The employee, or in case he is dead, the claimant, and the employer shall also produce as evidence to the board all reports of medical and X-ray examinations which may be in their respective possession or control, showing the past or present condition of the employee. If the employee be dead, the notice of the board shall further require that the claimant produce necessary consents and permits so that an autopsy may be performed, if the board shall so direct. When in the opinion of the board an autopsy is deemed necessary accurately and scientifically to ascertain and determine the cause of death, such autopsy examination shall be ordered by the board, which shall designate a duly licensed physician, a pathologist, or such other specialists as may be deemed necessary by the board, to make such examination and tests to determine the cause of death and
certify his or their written findings, in triplicate, to the board, which findings shall be public records. In the event that a claimant for compensation for such death refuses to consent and permit such autopsy to be made, all rights for compensation shall thereupon be forfeited.

The employee, or if he be dead, the claimant, and the employer, shall be entitled to be present at all examinations conducted by the board, and to be represented by attorneys and physicians.

§23-4-8c. Same—Reports and distribution thereof; presumption; findings required of board; objection to findings; procedure thereon.

(a) The occupational pneumoconiosis board, as soon as practicable, after it has completed its investigation, shall make its written report, to the commissioner, of its findings and conclusions on every medical question in controversy, and the commissioner shall send one copy thereof to the employee or claimant and one copy to the employer, and the board shall also return to and file with the commissioner all the evidence as well as all statements under oath, if any, of the persons who appeared before it on behalf of the employee or claimant, or employer and also all medical reports and X-ray examinations produced by or on behalf of the employee or claimant, or employer.

(b) If it can be shown that the claimant or deceased employee has been exposed to the hazard of inhaling minute particles of dust in the course of and resulting from his employment for a period of ten years during the fifteen years immediately preceding the date of his last exposure to such hazard and that such claimant or deceased employee has sustained a chronic respiratory disability, then it shall be presumed that such claimant is suffering or such deceased employee was suffering at the time of his death from occupational pneumoconiosis which arose out of and in the course of his employment. This presumption shall not be conclusive.

(c) The findings and conclusions of the board shall set forth, among other things, the following:
(1) Whether or not the claimant or the deceased employee has contracted occupational pneumonconiosis, and, if so, the percentage of permanent disability resulting therefrom.

(2) Whether or not the exposure in the employment was sufficient to have caused the claimant's or deceased employee's occupational pneumonconiosis or to have perceptibly aggravated an existing occupational pneumonconiosis, or other occupational disease.

(3) What, if any, physician appeared before the board on behalf of the claimant or employer, and what, if any, medical evidence was produced by or on behalf of the claimant or employer.

If either party objects to the whole or any part of such findings and conclusions of the board, he shall file with the commissioner, within fifteen days of the mailing of such copy to him, unless for good cause shown, the commissioner extends such time, his objections thereto in writing, specifying the particular statements of the board's findings and conclusions to which he objects. After the time has expired for the filing of objections to the findings and conclusions of the board, the commissioner shall proceed to act as provided in this chapter. If after the time has expired for the filing of objections to the findings and conclusions of the board no objections have been filed, the report of a majority of the board of its findings and conclusions on any medical question shall be taken to be plenary and conclusive evidence of the findings and conclusions therein stated. If objection has been filed to the findings and conclusions of the board, notice thereof shall be given to the board, and the members thereof joining in such findings and conclusions shall appear at the time fixed by the commissioner for the hearing to submit to examination and cross-examination in respect to such findings and conclusions. At such hearing evidence to support or controvert the findings and conclusions of the board shall be limited to examination and cross-examination of the members of the board, and to the taking of testimony of other qualified physicians and roentgenologists.
§23-4-9b. Preexisting physical impairments not considered in fixing amount of compensation.

1 Where an employee has a definitely ascertainable physical impairment and such employee shall there-
2 after receive an injury in the course of and resulting from his employment, unless such injury results in
3 total permanent disability within the meaning of section one, article three of this chapter, such physical
4 impairment, and the effect thereof, and an aggravation thereof, shall not be taken into consideration in fixing
5 the amount of compensation allowed by reason of such injury, and such compensation shall be awarded only
6 in the amount that would have been allowable had such employee not had such preexisting physical im-
7 pairment.

§23-4-10. Classification of death benefits; "dependent" defined.

1 In case a personal injury other than occupational pneumoconiosis or other occupational disease, suffered
2 by an employee in the course of and resulting from his employment, causes death within the period of ten
3 years and disability is continuous from date of such injury until date of death, or if death results from
4 occupational pneumoconiosis or from any other occu-
5 pational disease within ten years from the date of the
6 last exposure to the hazards of occupational pneumo-
7 coniosis or to the other particular occupational hazard
8 involved, as the case may be, the benefits shall be
9 in the amounts and to the persons as follows:
10
11 (a) If there be no dependents, the disbursements
12 shall be limited to the expense provided for in sections
13 three and four of this article.
14
15 (b) If the deceased employee leaves a dependent widow
16 or invalid widower, the payment shall be one hun-
17 dred sixty dollars a month until death or remarriage
18 of such widow or widower, and in addition fifty dol-
19 lars a month for each child under eighteen years of
20 age, to be paid until such child reaches such age, or
21 where such child after reaching eighteen years of age
22 continues as a full-time student in an accredited high
23 school, college, university, business or trade school,
to be paid until such child reaches the age of twenty-
two years, or if an invalid child, fifty dollars a month,
to continue as long as such child remains an invalid
to be increased to one hundred sixty dollars per month
upon the death of the surviving dependent parent:
Provided, That if such widow or invalid widower shall
remarry within ten years from the date of the death
of such employee, such widow or widower shall be
paid at the time of remarriage twenty percent of the
amount that would be due for the period remaining
between the date of such remarriage and the end of
ten years from the date of death of such employee,
and such widow or widower shall be advised in writing
by the commissioner of his or her rights under this
proviso at the time of making the original award:
Provided, however, That if upon investigation and hear-
ing, as provided in article five of this chapter, it shall
be ascertained that such widow or widower is living
with a man or woman, as the case may be, as man
and wife and not married, or that the widow is living
a life of prostitution, the commissioner shall stop pay-
ment of the benefits herein provided to such widow or
widower.

If the deceased employee be a widow or widower and
leaves a child or children under the age of eighteen
years, the payments shall be one hundred dollars a
month to each child until he or she reaches the age
of eighteen years, or where such child after reaching
eighteen years of age continues as a full-time student
in an accredited high school, college, university, busi-
ness or trade school to be paid until such child reaches
the age of twenty-two years.

In all awards of compensation to children, unless
otherwise provided herein, the award shall be until
they reach the age of eighteen years or until their death
prior thereto.

(c) If the deceased employee leaves no dependent
widow or widower and leaves a wholly dependent father
or mother, he or she shall be paid the sum of eighty
dollars a month, payments to continue until death, and
if there be no widow or widower and both the father
and mother are wholly dependent, then a joint award
shall be made to the father and mother in the sum of
eighty dollars a month until death.

Upon the death of either the father or mother in
any case in which a joint award has been made to them,
the full award of eighty dollars a month shall be paid
to the survivor until his or her death.

(d) If the deceased employee leaves no dependent
widow or widower or wholly dependent father or mother
but there are other wholly dependent persons, as de-
defined in subdivision (f) of this section, the payment shall
be sixty-five dollars a month, to continue for six years
after the death of the deceased, except as otherwise
provided herein.

(e) If the deceased employee leaves no dependent
widow or widower, child under eighteen years of age,
or wholly dependent person, but there are partially
dependent persons at the time of death, the payment
shall be thirty-five dollars a month, to continue for
such portion of the period of six years after the death,
as the commissioner may determine, but no such par-
tially dependent person shall receive compensation pay-
ments as a result of the death of more than one em-
ployee.

Compensation under subdivisions (b), (c), (d) and
(e) hereof shall, except as may be specifically provided
to the contrary therein, cease upon the death of the
dependent, and the right thereto shall not vest in his
or her estate.

(f) Dependent, as used in this chapter, shall mean
a widow, invalid widower, child under eighteen years
of age, or under twenty-two years of age when a full-
time student as provided herein, invalid child or post-
humous child, who, at the time of the injury causing
death, is dependent in whole or in part for his or her
support upon the earnings of the employee; also the
following persons who are and continue to be resi-
dents of the United States or its territorial possessions:
Stepchild under eighteen years of age, or under twenty-
two years of age when a full-time student as provided
herein, child under eighteen years of age legally adopted
prior to the injury causing death, or under twenty-
two years of age when a full-time student as provided
herein, father, mother, grandfather or grandmother, who
at the time of the injury causing death, is dependent
in whole or in part for his or her support upon the earn-
ings of the employee; and invalid brother or sister
wholly dependent for his or her support upon the earn-
ings of the employee at the time of the injury causing
death.


1 The average weekly wage earnings, wherever earned,
of the injured person at the date of injury, and the
average weekly wage in West Virginia as determined
by the commissioner of employment security, in effect
at the date of injury, shall be taken as the basis upon
which to compute the benefits.

7 In cases involving occupational pneumoconiosis or
other occupational diseases, the “date of injury” shall
be the date of the last exposure to the hazards of oc-
cupational pneumoconiosis or other occupational diseases.

11 In computing benefits payable on account of occupa-
tional pneumoconiosis, the commissioner shall deduct
the amount of all prior workmen’s compensation bene-
fits paid to the same claimant on account of silicosis,
but a prior silicosis award shall not, in any event, pre-
clude an award for occupational pneumoconiosis other-
wise payable under this article.

18 The expression “average weekly wage earnings, wher-
ever earned, of the injured person, at the date of injury,”
within the meaning of this chapter, shall be two months,
six or twelve months immediately preceding the date of
the injury.

22 The expression “average weekly wage in West Vir-
ginia,” within the meaning of this chapter, shall be the
average weekly wage in West Virginia as determined
by the commissioner of employment security in ac-
cordance with the provisions of sections ten and eleven,
article six, chapter twenty-one-a of the code of West
Virginia, one thousand nine hundred thirty-one, as
amended, and other applicable provisions of said chapter twenty-one-a.

In any claim for injuries, including occupational pneumoconiosis and other occupational diseases, occurring on or after July one, one thousand nine hundred seventy-one, any award for temporary total, permanent partial or permanent total disability benefits or for dependent benefits, shall be paid at the weekly rates or in the monthly amount in the case of dependent benefits applicable to the claimant therein in effect on the date of such injury. If during the life of such award for temporary total, permanent partial or permanent total disability benefits or for dependent benefits, the weekly rates or the monthly amount in the case of dependent benefits are increased or decreased, the claimant shall receive such increased or decreased benefits beginning as of the effective date of said increase or decrease.


To entitle any employee or dependent of a deceased employee to compensation under this chapter, other than for occupational pneumoconiosis or other occupational disease, the application therefor must be made on the form or forms prescribed by the commissioner and filed in the office of the commissioner within two years from and after the injury or death, as the case may be, and all proofs of dependency in fatal cases must likewise be filed with the commissioner within two years from and after the death. In case the employee is mentally or physically incapable of filing such application, it may be filed by his attorney or by a member of his family. It shall be the duty of every employer to report to the commissioner every injury sustained by any person in his employ. Such report shall be on forms prescribed by the commissioner and shall be made within thirty days from the date the employer first receives knowledge of such injury.

To entitle any employee to compensation for occupational pneumoconiosis under the provisions hereof, the application therefor must be made on the form or forms
prescribed by the commissioner and filed in the office of
the commissioner within three years from and after the
last day of the last continuous period of sixty days or
more during which the employee was exposed to the
hazards of occupational pneumoconiosis or within three
years from and after the employee's occupational
pneumoconiosis was made known to him by a physician
or which he should reasonably have known, whichever
shall last occur, or, in the case of death, the applica-
tion shall be filed as aforesaid by the dependent of such
employee within two years from and after such em-
ployee's death.

To entitle any employee to compensation for occupa-
tional disease other than occupational pneumoconiosis
under the provisions hereof, the application therefor
must be made on the form or forms prescribed by the
commissioner and filed in the office of the commissioner
within three years from and after the day on which
the employee was last exposed to the particular occupa-
tional hazard involved or within three years from and
after the employee's occupational disease was made
known to him by a physician or which he should reason-
ably have known, whichever shall last occur, or, in case
of death, the application shall be filed as aforesaid by
the dependent of such employee within two years from
and after such employee's death.

§23-4-15b. Determination of nonmedical questions by commis-
sioner; claims for occupational pneumoconiosis;
hearing.

If a claim for occupational pneumoconiosis benefits
be filed by an employee within three years from and
after the last day of the last continuous period of sixty
days exposure to the hazards of occupational pneumoco-
niosis, the commissioner shall determine whether the
claimant was exposed to the hazards of occupational
pneumoconiosis for a continuous period of not less than
sixty days while in the employ of the employer within
three years prior to the filing of his claim, whether in
the state of West Virginia the claimant was exposed to
such hazard over a continuous period of not less than
two years during the ten years immediately preceding
the date of his last exposure thereto and whether the
claimant was exposed to such hazard over a period of
not less than ten years during the fifteen years im-
mediately preceding the date of his last exposure thereto.
If a claim for occupational pneumoconiosis benefits be
filed by an employee within three years from and after
the employee's occupational pneumoconiosis was made
known to him by a physician or otherwise should have
reasonably been known to him, the commissioner shall
determine whether the claimant filed his application
within said period and whether in the state of West
Virginia the claimant was exposed to such hazard over
a continuous period of not less than two years during
the ten years immediately preceding the date of last
exposure thereto and whether the claimant was exposed
to such hazard over a period of not less than ten years
during the fifteen years immediately preceding the date
of last exposure thereto. If a claim for occupational
pneumoconiosis benefits be filed by a dependent of a
deceased employee, the commissioner shall determine
whether the deceased employee was exposed to the
hazards of occupational pneumoconiosis for a continuous
period of not less than sixty days while in the employ
of the employer within ten years prior to the filing of the
claim, whether in the state of West Virginia the deceased
employee was exposed to such hazard over a continuous
period of not less than two years during the ten years
immediately preceding the date of his last exposure
thereto and whether the claimant was exposed to such
hazard over a period of not less than ten years during
the fifteen years immediately preceding the date of his
last exposure thereto. The commissioner shall also de-
termine such other nonmedical facts as may in his
opinion be pertinent to a decision on the validity of the
claim.

The commissioner shall give each interested party no-
tice in writing of his findings with respect to all such
nonmedical facts and such findings and such action of
the commissioner shall be final unless the employer, em-
ployee, claimant or dependent shall, within fifteen days
after receipt of such notice, object to such findings. Upon receipt of such objection the commissioner shall set a hearing as provided in section one, article 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.

The power and jurisdiction of the commissioner over each case shall be continuing and he may from time to time, after due notice to the employer, make such modifications or changes with respect to former findings or orders as may be justified: Provided, That no further award may be made in fatal cases arising after March seventh, one thousand nine hundred twenty-nine, except within two years after the death of the employee, or in case of nonfatal injuries, on and after March seventh, one thousand nine hundred twenty-nine, except within three years after payments for temporary disability shall have ceased or not more than two times within five years after the commissioner shall have made the last payment in the original award or any subsequent increase thereto in any permanent disability case: Provided, however, That no such modification or change may be made in any case in which no award has been made, except within three years after the date of injury. In any case in which an injured employee shall make application for a further adjustment of his claim, if such application be in writing and filed within the applicable time limit as prescribed herein, the commissioner shall pass upon and determine the merits of such application within thirty days after the filing thereof.

If such application is based on a report of any medical examination made of the claimant and submitted by the claimant to the commissioner in support of his application, and the claim is opened for further consideration and additional award is later made, the claimant shall be reimbursed for the expenses of such examination. Such reimbursement shall be made by the com-
missioner to the claimant, in addition to all other benefits awarded, upon due proof of the amount thereof being furnished the commissioner by the claimant, but shall in no case exceed the sum of one hundred dollars.

§23-4-16a. Interest on benefits.

Whenever any award of temporary total, permanent partial or permanent total disability benefits or dependent benefits is made on or after July one, one thousand nine hundred seventy-one, and a protest is filed thereto or an appeal is taken therefrom by an employer only and not by the claimant or dependent and the award is not ultimately denied or reduced following such protest or appeal, the commissioner shall add thereto interest at the simple rate of six percent per annum from the date the award would have been payable had such protest or appeal not been filed or taken, exclusive of any period for which a continuance was granted upon motion of any party other than the protesting or appealing employer. Any interest payable shall be charged to the account of the protesting or appealing employer to the extent that the benefits upon which such interest is computed are charged to the account of such employer.

ARTICLE 4A. DISABLED WORKMEN'S RELIEF FUND.

§23-4A-1. Disabled workmen's relief fund created.
§23-4A-2. To whom benefits paid.
§23-4A-5. Employers providing own system of compensation.
§23-4A-7. Employees to administer disabled workmen's relief fund; payment of salaries.
§23-4A-8. Disabled workmen's relief fund; how funded.

§23-4A-1. Disabled workmen's relief fund created.

For the relief of persons who are receiving workmen's compensation benefits by virtue of and under the laws of this state in amounts less than the minimum amount payable under the laws in effect on July one, one thousand nine hundred sixty-one, there is hereby created a separate fund to be known as the "Disabled Workmen's Relief Fund," which fund shall consist of such sums as are from time to time made available to carry out the objects and purposes of this article. Said fund shall be in the custody
of the state treasurer and disbursements therefrom shall be made upon requisition signed by the commissioner to those persons entitled to participate therein and in such amounts to each participant as is provided in section three of this article.

§23-4A-2. To whom benefits paid.

1 In order to participate in the disabled workmen's relief fund, an individual must be receiving workmen's compensation benefits by virtue of and under the laws of this state in amounts less than the minimum amount payable under the laws in effect on July one, one thousand nine hundred sixty-one, and be receiving such benefits under a permanent total disability award or be receiving such benefits because of the death of an employee.


1 Each individual entitled to participate in the disabled workmen's relief fund shall be entitled to receive payments without application (except that an application shall be required under section five of this article) from said fund of an amount equal to the difference between the minimum amount payable under the rates in effect as of July one, one thousand nine hundred sixty-one, and the amount said individual is in fact receiving by virtue of and under the laws of this state. The first such payment shall be made concurrently with the payment to him of workmen's compensation for the period next following the expiration of the twelfth calendar week after this article becomes effective and subsequent payments shall be made during the period thereafter in which such participant shall be entitled to workmen's compensation benefits by virtue of and under the laws of this state.


1 Payments to an individual entitled to participate in the disabled workmen's relief fund may be made from said fund by separate check or may be made from said fund and from the workmen's compensation fund by one check, but each such check drawn on the two funds shall be so written as to show plainly the payments made from each fund. No disbursements shall be made from the work-
§23-4A-5. Employers providing own system of compensation.

The commissioner shall promptly require of each employer who has elected to pay compensation direct under the provisions of section nine, article two of this chapter a verified list of the names and addresses of all persons to whom such employer is paying workmen's compensation on account of permanent total disability or because of the death of an employee and such evidence respecting such persons as the commissioner may reasonably deem necessary to determine the eligibility of any such person to participate in the disabled workmen's relief fund. Any person claiming the right to participate in said fund under the provisions of this section may file his application therefor with the commissioner and shall be accorded a hearing thereon.


In the investigation and determination of the right of persons to participate in the disabled workmen's relief fund, the commissioner shall have and exercise all the powers which he possesses under the other articles of this chapter. His powers and jurisdiction over each case shall be continuing, but there shall be no appeal from his decisions to any other body or tribunal. No attorney, representative or agent of any claimant or participant shall be entitled to charge or receive a fee or compensation or gratuity in any form for representing or assisting or pretending to represent or assist any person to become a participant in said disabled workmen's relief fund.

§23-4A-7. Employees to administer disabled workmen's relief fund; payment of salaries.

The commissioner shall employ such employees as may be necessary to discharge his duties and responsibilities under this article. The salaries and expenses of such employees shall be paid by the treasurer of the state from the disabled workmen's relief fund upon vouchers authorized and signed as provided in section two, article one of this chapter.
§23-4A-8. Disabled workmen's relief fund; how funded.

For the purpose of carrying out the provisions of this article, the commissioner shall transfer annually, out of the interest earned during the previous year on investments held by the workmen's compensation fund, an amount estimated by the commissioner to be necessary to carry out the provisions of this article for one year. Such money shall be deposited by the commissioner in the disabled workmen's relief fund, as required by this article.

ARTICLE 5. REVIEW.

§23-5-1. Notice by commissioner of decision; objections and hearing; appeal.


§23-5-3a. Continuances and supplemental hearings; claims not to be denied on technicalities.

§23-5-5. Fees of attorney for claimant or dependent.

§23-5-1. Notice by commissioner of decision; objections and hearing; appeal.

The commissioner shall have full power and authority to hear and determine all questions within his jurisdiction, but upon the making or refusing to make any award, or upon the making of any modification or change with respect to former findings or orders, as provided by section sixteen, article four of this chapter, the commissioner shall give notice, in writing, to the employer, employee, claimant, or dependent, as the case may be, of his action, which notice shall state the time allowed for filing an objection to such finding, and such action of the commissioner shall be final unless the employer, employee, claimant or dependent shall, within thirty days after the receipt of such notice, object, in writing, to such finding. Upon receipt of such objection the commissioner shall, within thirty days from receipt thereof, set a time and place for the hearing of evidence. Any such hearing may be conducted by the commissioner or his duly authorized representative at the county seat of the county wherein the injury occurred, or at any other place which may be agreed upon by the interested parties, and in the event the interested parties cannot agree, and it appears in the opinion of the com-
missioner that the ends of justice require the taking
of evidence elsewhere, then at such place as the com-
missioner may direct, having due regard for the con-
venience of witnesses. Both the employer and claimant
shall be notified of such hearing at least ten days in
advance, and the hearing shall be held within sixty
days after the filing of objection to the commissioner's
findings as hereinafore provided, unless such hearing
be postponed by agreement of the parties or by the com-
missioner for good cause. The evidence taken at such
hearing shall be transcribed and become part of the
record of the proceedings, together with the other
records thereof in the commissioner's office. At any time
within forty-five days after hearing, if the commissioner
is of the opinion that the facts have not been adequately
developed at such hearing, he may order supplemental
hearing upon due notice to the parties. After final
hearing the commissioner shall, within forty-five days,
render his decision affirming, reversing or modifying,
his former action, which shall be final: Provided, That
the claimant or the employer may apply to the appeal
board herein created for a review of such decision;
but no appeal or review shall lie unless application
therefor be made within thirty days of receipt of notice
of the commissioner's final action, or in any event within
sixty days of the date of such final action, regardless of
notice.

After protest by the employer only to any finding or
determination of the commissioner made on or after July
one, one thousand nine hundred seventy-one, and the em-
ployer does not prevail in its protest and, in the event
the claimant is required to attend a hearing by subpoena
or agreement of counsel or at the express direction of the
commissioner, then such claimant in addition to reason-
able traveling and other expenses shall be reimbursed
for loss of wages incurred by him in attending such hear-
ing.


There shall be a board to be known as the “Workmen's
Compensation Appeal Board”, which shall be referred
to in this article as the “board”, to be composed of three
members, none of whom shall be a contributor to the
compensation fund or in any way connected with a
contributor thereto and none of whom shall be a bene-
iciary of the compensation fund or in any way connected
with a beneficiary thereof. Two members of such board
shall be of opposite politics to the third, and all three
shall be citizens of this state who have resided therein
for a period of at least five years. All members of the
board shall be appointed by the governor for a term of
six years. The governor is hereby vested with the power
to remove any member of the board in accordance with
the provisions of section four, article six, chapter six
of this code. Notwithstanding the provisions of section
two-a, article seven, chapter six of this code, they shall
each receive an annual salary of seven thousand five
hundred dollars, payable in monthly installments, and
shall also be entitled to reasonable and necessary trav-
eling and other expenses incurred while actually en-
gaged in the performance of their duties. The governor
shall designate one of the members of the board as
chairman thereof, and the board shall meet at the capitol
or at such other places throughout the state as it may
deeb proper at regular sessions commencing on the
first Tuesday in February, April, June, August, October
and December, and continuing as long as may be neces-
sary for the proper and expeditious transaction of the
business before it. All clerical services required by the
board shall be paid for by the compensation commis-
sioner from any funds at his disposal. The board shall,
from time to time, compile and promulgate such rules
of practice and procedure as to it shall appear proper
for the prompt and efficient discharge of its business
and such rules shall be submitted to the supreme court
of appeals for approval, and if approved by such court
shall have the same force and effect as the approved
rules of procedure of circuit courts. The board shall
employ such clerical staff as may be necessary for the
efficient conduct of its business but the number of such
employees shall not exceed two. Salaries of the board,
and its employees, and all of its necessary operating
expense shall be paid from the workmen's compensation
fund. The board shall submit its annual budget to the
state compensation commissioner for inclusion as a sep-
arate item in the budget estimates prepared by him
annually and within the limits of such budget, all ex-
penses of the board shall be by the requisition of the
commissioner. Salaries of the employees of the board
shall be fixed by the board.

§23-5-3a. Continuances and supplemental hearings; claims not
to be denied on technicalities.

1 It is the policy of this chapter that the rights of claim-
ants for workmen's compensation be determined as
speedily and expeditiously as possible to the end that
those incapacitated by injuries and the dependents of de-
ceased workmen may receive benefits as quickly as pos-
sible in view of the severe economic hardships which
immediately befall the families of injured or deceased
workmen. Therefore, the criteria for continuances and
supplemental hearings "for good cause shown" are to be
strictly construed by the commissioner and his authorized
representatives to prevent delay, in granting or denying
continuances and supplemental hearings. It is also the
policy of this chapter to prohibit the denial of just claims
of injured or deceased workmen or their dependents on
technicalities.

§23-5-5. Fees of attorney for claimant or dependent.

1 On or after July one, one thousand nine hundred
seventy-one, no attorney's fee in excess of twenty-five
percent of any award granted shall be charged or received
by an attorney for a claimant or dependent. In the event
of any award to be paid for the remainder of the life of
the claimant or in the event of any award to a dependent
of an employee, an attorney's fee shall not be charged or
received by the attorney of such claimant or dependent
in excess of twenty-five percent of the benefits to be paid
during a period of two hundred eight weeks. This para-
graph shall not apply to awards made prior to July one,
one thousand nine hundred seventy-one: Provided, That
the interest on disability or dependent benefits as pro-
Ch. 178] Berkeley County

14vided for in this chapter shall not be considered as part of
15the award in determining any such attorney's fee.

ARTICLE 6. SEVERABILITY.

§23-6-1. Severability.

1If any provision of this chapter or the application there-
2of to any person or circumstance is held unconstitutional
3or invalid, such unconstitutionality or invalidity shall not
4affect other provisions or applications of the chapter, and
5to this end the provisions of this chapter are declared to
6be severable.

CHAPTER 178

(House Bill No. 1022—By Mr. Steptoe and Mr. Terry)

[Passed March 11, 1971; in effect ninety days from passage. Approved by the
Governor.]

AN ACT to authorize a lump sum contribution of budgeted
funds by the Berkeley county court.

Be it enacted by the Legislature of West Virginia:

BERKELEY COUNTY.

§1. County court authorized to make lump sum contribution
of budgeted funds.

1The county court of Berkeley county, as an aid to the
2health and welfare of the citizens of said county, is
3hereby authorized and empowered to appropriate and
4pay out of the general county fund such amounts as it
5deems necessary to the South Berkeley volunteer fire
6company, Bedington volunteer fire company, Hedgesville
7volunteer fire company, eastern panhandle training cen-
ter for the retarded and handicapped, Adam Stephen as-
sociation and the Berkeley county committee on the
10aging, for the support and maintenance of such organi-
zations.
CHAPTER 179

(House Bill No. 806—By Mr. Romine and Mr. White, of Cabell)

[Passed March 13, 1971; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, chapter one hundred seventy-eight, acts of the Legislature, regular session, one thousand nine hundred fifty-nine, as last amended and reenacted by chapter eighty-two, acts of the Legislature, regular session, one thousand nine hundred seventy, relating to the Cabell county youth center.

Be it enacted by the Legislature of West Virginia:

That section four, chapter one hundred seventy-eight, acts of the Legislature, regular session, one thousand nine hundred fifty-nine, as last amended and reenacted by chapter eighty-two, acts of the Legislature, regular session, one thousand nine hundred seventy, be amended and reenacted to read as follows:

CABELL COUNTY YOUTH CENTER.

§4. Foster homes division.

1 The foster homes division of the Cabell county youth center shall be erected and maintained at the Cabell county farm at Ona, West Virginia, as homes for Cabell county children who are orphans, homeless, neglected or deserted, or who, if permitted to run ungoverned or un-disciplined, are apt to become delinquent, and which said children are within the age prescribed by the statutes of this state for juveniles.

2 The board of supervisors of the Cabell county youth center with the approval of the Cabell county court, is authorized to erect and maintain at said farm sufficient cottages and of capacity to comfortably house the aforementioned juveniles. Each cottage when children are housed therein shall have as "cottage parents" a husband and wife team in charge, both of whom shall be persons of good moral character, experienced in child care, having proper understanding of children and temperamentally fit to care and rear them. Each cottage shall be conducted comparable to a well ordered home, with proper supervision and understanding discipline main-
tained by the "cottage parents". The children therein housed shall be treated as members of a well ordered family where there is proper intellectual, physical, spiritual and exemplary moral training. Each child shall be given a home therein so long as its need therefor exists and it remains a juvenile or until a satisfactory permanent home has been found or it is placed for adoption.

The foster homes division shall be made available for any and all Cabell county children now or hereafter to be under the control of the state or county department of welfare.

Both the West Virginia and Cabell county departments of welfare, at the earliest practicable time after the facilities hereinabove provided have been made ready to receive said children, may appear before the juvenile court of Cabell county and bring to the court's attention the name of any child then in Cabell county and in the custody of both of the said departments, the whereabouts of each child, and all facts and circumstances which to the department or the court may appear pertinent with relation to each child, and all of which the court shall consider, and having so considered shall then enter an order committing said child to the foster homes division, or releasing it to the department as to the court may seem just and proper, and the court may from time to time make such other and further orders for the disposition of said child or children as may be just or proper.

For the support and maintenance of the children placed in said foster homes divisions, the departments of welfare shall contribute according to institutional formula paid by the departments in other counties of the state. The money so contributed shall be paid to the county court of Cabell county and by that court set aside for the use of said foster homes division.

The "cottage parents" and all other personnel required for the efficient operation of said cottages in which children are maintained shall be carefully selected by the board of supervisors. Said "cottage parents" shall be responsible for the supervision and training of all the children committed to their care; for keeping them
in school during school terms and hours; for teaching
them to do a reasonable amount of work, and for making
each cottage as nearly self-supporting as possible.

The children residing in said foster homes shall be
required, when within school age, and when their health
and physical condition permits, to attend the public
schools. The board of education of said county shall make
provisions for them in the public school at Ona, West
Virginia, or if any one or more of them be in a grade
higher than is taught at Ona, then provision therefor
shall be made in a school wherein such grade is taught.

Complete supervision of the foster homes division to-
gether with the employment and discharge of any and
all personnel including "cottage parents" shall be under
the board of supervisors. The salary of each person so
employed shall be reasonable and be determined by the
board, and when approved by the said board of super-
visors shall be certified for payment as is provided in
section six hereof. In the submission by the board of
supervisors of the estimate of all monetary needs of
the Cabell county youth center to the county court as
provided in section six hereof, the board shall include
all reasonable monetary needs of the foster homes di-
vision for the next fiscal year, said estimate shall cover
all anticipated costs for services for all employees and
personnel employed in the reasonable operation of said
foster homes, and all other reasonable expenses incident
thereto.

Physical facilities constructed after the effective date
of this act (June 2, 1959) may be used as deemed ap-
propriate by the board of supervisors in carrying out
the provisions of sections three, four or five of this act.

CHAPTER 180

(House Bill No. 544—By Mr. Perry)

[Passed March 1, 1971; in effect from passage. Approved by the Governor.]

AN ACT to authorize the board of education of the county of
Jefferson to negotiate and sell, by private sale, to the United States certain real estate.

Be it enacted by the Legislature of West Virginia:

JEFFERSON COUNTY.

§1. Board of education authorized to negotiate and sell certain real estate, by private sale, to the United States.

1 The board of education of the county of Jefferson is hereby authorized and empowered to negotiate and sell to the United States department of interior, division of national park service, that certain real estate together with the improvements thereon and the appurtenances thereunto belonging, commonly known as Grand View school, and consisting of a four room brick building with an addition of cinder block and the grounds on which said building is situated consisting of eight lots fronting on Putnam street, Harpers Ferry, West Virginia, which lots total two hundred forty feet by two hundred sixty-four feet, more or less.

13 The board of education of the county of Jefferson is hereby further authorized and empowered to negotiate and sell to the United States department of interior, division of national park service, that certain real estate together with the improvements thereon and the appurtenances thereunto belonging, commonly known as Shipley elementary school, and consisting of ten classrooms, cafeteria and toilets of brick construction, situate on Washington and Filmore streets, Harpers Ferry, West Virginia, which said real estate is two hundred forty feet by three hundred twenty-six feet, more or less.

24 Any such sale may be a private sale and the process of requiring bids or holding a public auction shall not be required.

CHAPTER 181

(House Bill No. 1039—By Mr. Sparacino)

(Passed March 11, 1971; in effect from passage. Approved by the Governor.)

AN ACT to amend and reenact section nine, chapter two hundred twelve, acts of the Legislature, regular session, one
thousand nine hundred sixty-three, relating to the Raleigh county airport authority.

Be it enacted by the Legislature of West Virginia:

That section nine, chapter two hundred twelve, acts of the Legislature, regular session, one thousand nine hundred sixty-three, be amended and reenacted to read as follows:

RALEIGH COUNTY AIRPORT AUTHORITY.


1 The Raleigh county airport authority is hereby given power and authority as follows:

2 (1) To make and adopt all necessary bylaws, rules and regulations for its organization and operations not inconsistent with law;

3 (2) To elect its own officers, to appoint committees and to employ and fix the compensation for personnel necessary for its operation;

4 (3) To enter into contracts with any person, governmental department, firm or corporation, and generally to do any and all things necessary or convenient, including the development of an industrial park, for the purpose of acquiring, equipping, constructing, maintaining, improving, extending, financing and operating a public airport in Raleigh county, West Virginia;

5 (4) To delegate any authority given to it by law to any of its officers, committees, agents or employees;

6 (5) To apply for, receive and use grants-in-aid, donations and contributions from any source or sources, including but not limited to the federal government and any agency thereof, and the state of West Virginia, and to accept and use bequests, devises, gifts and donations from any person, firm or corporation;

7 (6) To acquire lands and hold title thereto in its own name;

8 (7) To purchase, own, hold, sell and dispose of personal property and to sell, lease or otherwise dispose of any real estate which it may own;

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

(9) To raise funds by the issuance and sale of revenue bonds in the manner provided by the applicable provisions of article sixteen, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, it being hereby expressly provided that the Raleigh county airport authority is a “governing body” within the definition of that term as used in said article sixteen, chapter eight of the code;

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

(11) To own and operate a water and sewer system for its own use and for the use of any person, residence, firm, corporation or governmental department located within a reasonable distance from the airport.

CHAPTER 182

(House Bill No. 1003—By Mr. Fitzgerald)

[Passed March 12, 1971; in effect from passage. Approved by the Governor.]

AN ACT to authorize the expenditure of one hundred thirty thousand dollars by the city of Ripley.

Be it enacted by the Legislature of West Virginia:

CITY OF RIPLEY.

§1. Authority to issue bonds for purchase of land and construction of a county library and a community swimming pool.

1 The city of Ripley is hereby authorized and empowered to hold a city election seeking public approval of the issuance of bonds in the amount of one hundred thirty thousand dollars to be supported by city levy, the pro-
ceeds of which are to be distributed one hundred thousand dollars to the Jackson county board of education to be used as fifty percent local share for federal matching funds to build a community swimming pool and thirty thousand dollars to be expended by such city for the purpose of purchasing land to be transferred to the Jackson county library board for the construction of a new library thereon.

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CHAPTER 183
(Senate Bill No. 93—By Mr. Dillon)

[Passed March 4, 1971; in effect ninety days from passage. Approved by the Governor.]

AN ACT to authorize the expenditure of surplus funds by the Summers county court.

Be it enacted by the Legislature of West Virginia:

SUMMERS COUNTY COURT.

§1. Expenditure of county funds for expenses of Summers County centennial celebration.

In addition to any and all authority and power heretofore granted to the county court of Summers county with respect to the expenditure of unexpended sums and surpluses, such county court is hereby authorized and empowered to use fifteen hundred dollars of unexpended sums and surpluses, presently or hereafter existing, in the general fund or in any special fund of said county, for the purpose of paying for the expenses of the Summers county centennial celebration.
Adopting Joint Rules of the Senate and House of Delegates.

Resolved by the Legislature of West Virginia:

(1) That Joint Rule Nos. 5 and 18 of the 59th Legislature be amended to read as follows:

**Introduction of Bills**

5. No bill, other than an appropriation bill, shall be introduced in either house after the fiftieth day of a regular session unless permission to introduce the bill be given by a concurrent resolution, setting out the title to the bill, and adopted by a two-thirds vote of all the members of each house present and voting.

When permission is requested to introduce a bill under the provisions of this rule, quadruplicate copies of such bill shall accompany the resolution when filed for introduction or introduced.

**Action of Governor on Bills**

18. When the Legislature is in session, any bill, including an appropriation bill or any part thereof, disapproved by the Governor shall be returned by him to the house in which it originated, with his objections thereto, within five days after receipt thereof, Sundays excepted, or become a law. If the Legislature, by adjournment, prevents the return of a disapproved bill, other than an appropriation bill, within such time, it shall be filed by the Governor in the office of the Secretary of State with his objections within fifteen days, after adjournment, or become a law. If the Legislature, by adjournment, prevents the return of a disapproved appropriation bill or any part thereof, it shall be filed by the

[1009]
Governor in the office of the Secretary of State with his objections within five days after adjournment, or become a law. When any bill, including an appropriation bill or any part thereof, is disapproved after adjournment of the Legislature and such bill with the Governor’s objections is filed in the office of the Secretary of State within the prescribed time as aforesaid, the Governor shall notify the house in which the bill originated of his action.

Every bill approved by the Governor shall, within the prescribed time after it is presented to him, as aforesaid, be filed by the Governor in the office of the Secretary of State and the fact of such approval communicated by the Governor to the house in which said bill originated.

Any bill which shall be neither approved nor disapproved by the Governor shall immediately after the expiration of the time fixed by the Constitution in which he may disapprove the same, be filed in the office of the Secretary of State, who shall forthwith engross thereon a certificate to the following effect: “I certify that the foregoing act, having been presented to the Governor for his approval, and not having been returned by him to the house of the Legislature in which it originated within the time prescribed by the Constitution of the State, has become a law without his approval,” and shall date and sign the same. The Governor shall notify the house in which the bill originated of each bill becoming a law without his approval.

When a bill is returned to either house of the Legislature with the objections of the Governor, proceedings thereon shall be governed by section fourteen, article seven of the State Constitution. In such cases the clerk of the Senate and the clerk of the House of Delegates shall engross the action, if any, of their respective houses on the reconsideration of the bill, and sign the same.

The action of the Governor on all bills presented to him shall be appropriately noted in the journals of the two houses.

(2) That the foregoing Rules as amended and all other Joint Rules governing the proceedings of the 59th Legislature are hereby adopted for the 60th Legislature.
Requesting Congress to adopt legislation reimbursing counties for revenue loss due to federal land acquisition.

WHEREAS, Taxation of real property is the fundamental source of revenue for the operation of county government; and

WHEREAS, The federal government, which pays no real property taxes has acquired large tracts of land in various parts of the United States and in West Virginia in particular; and

WHEREAS, This acquisition of land has all but destroyed the tax base in some counties of this State resulting in a serious curtailment in county services and facilities; therefore, be it

Resolved by the Legislature of West Virginia:

That the Congress of the United States is hereby requested to adopt appropriate legislation to provide annual reimbursement to the county from which such land may be removed or has been heretofore removed from the tax rolls, equivalent to the revenue lost to such county, and that there be a showing of necessity before there be acquisition; and, be it

Further Resolved, That the Clerk of the House of Delegates is hereby directed to forward copies of this resolution to the members of the West Virginia congressional delegation in Washington, D. C.

HOUSE CONCURRENT RESOLUTION NO. 8
(By Mr. Speaker, Mr. Boiarisky, and Mr. Ours)
(Adopted March 13, 1971)

Directing the Joint Committee on Government and Finance to make a study concerning the feasibility of consolidating into one department or agency all existing departments,
agencies, boards and commissions that have authority regarding environmental matters.

WHEREAS, Protection of the environment is a major concern of the people; and

WHEREAS, It is the duty of the West Virginia Legislature to respond to the concerns of the people of the State; and

WHEREAS, There is a need for concerted effort in meeting the problem of environmental protection; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance be directed to conduct a comprehensive study of the feasibility of consolidating into one department or agency all existing departments, agencies, boards and commissions that have authority regarding environmental matters; and, be it

Further Resolved, That the Joint Committee report its findings and recommendations to the Legislature prior to the convening of its regular session, 1972; and, be it

Further Resolved, That the expenses necessary to conduct the study, to prepare reports and to draft any proposed legislation shall be paid from the legislative appropriations made to the Joint Committee on Government and Finance.

HOUSE CONCURRENT RESOLUTION NO. 9
(By Mr. Speaker, Mr. Boiarsky, and Mr. Seibert)
[Adopted January 20, 1971]

Memoralizing the Congress of the United States to call a convention for the sole purpose of amending the United States Constitution to provide for intergovernmental sharing of federal income tax revenues.

WHEREAS, A resolution of our Nations myriad and diverse problems is contingent upon a viable partnership between the Federal Government and strengthened state governments; and

WHEREAS, The Federal Government, by its extensive reliance on the graduated income tax as a revenue source, has virtually
preempted the use of this course from state and local governments, thereby creating a disabling fiscal imbalance between the Federal Government and state and local governments; and

WHEREAS, Increasing demands upon state and local governments for essential public services have compelled the states to rely heavily on highly regressive and inelastic consumer taxes and property taxes; and

WHEREAS, Federal revenues based predominantly on income taxes increase significantly faster than economic growth, while state and local revenues based heavily on sales and property taxes do not keep pace with economic growth; and

WHEREAS, The fiscal crisis of state and local governments is the overriding problem of intergovernment relations and of continuing a viable federal system, and the only solution to this problem is a meaningful sharing of federal income tax resources; and

WHEREAS, The Congress of the United States, despite the immediate and imperative need therefor, has failed to enact acceptable revenue sharing legislation; and

WHEREAS, In the event of such Congressional inaction, Article V of the Constitution of the United States grants to the states the right to initiate change by applications from the legislatures of two thirds of the several states to Congress, calling for a constitutional convention; and

WHEREAS, The Congress of the United States is required by the Constitution to call such a convention upon receipt of applications from the legislatures of two thirds of the several states; therefore, be it

Resolved by the Legislature of West Virginia:

That pursuant to Article V of the Constitution of the United States, the Legislature of the State of West Virginia does hereby make application to the Congress of the United States to call a convention for the sole purpose of proposing to the several states a constitutional amendment which shall provide that a portion of the taxes on income levied by Congress pursuant to the sixteenth amendment of the Constitution of the United States shall be made available each year to state gov-
ernments and political subdivisions thereof, by means of direct allocation, tax credits, or both, without limiting directly or indirectly the use of such moneys for any purpose not inconsistent with any other provision of the Constitution of the United States; and, be it

Further Resolved, That this application shall constitute a continuing application until the legislatures of two thirds of the states shall have made like applications and such convention shall have been called by the Congress of the United States unless previously rescinded by this Legislature; and, be it

Further Resolved, That certified copies of this resolution be presented forthwith to the President of the Senate and Speaker of the House of Representatives of the United States and to the legislature of each of the several states attesting the adoption of this resolution by the Legislature of the State of West Virginia.

HOUSE CONCURRENT RESOLUTION NO. 10
(By Mr. Speaker, Mr. Boiarsky)
[Adopted March 13, 1971]

Directing the West Virginia Board of Banking and Financial Institutions to make a study with the view of strengthening the Board of Banking and Financial Institutions and the Department of Banking, which study shall also include branch banking, bank mergers and bank holding companies and to report its findings and recommendations to the Legislature.

WHEREAS, The West Virginia Board of Banking and Financial Institutions is authorized by law to make studies of the organization, programs and services of financial institutions and the laws relating thereto in this State and in other jurisdictions and is authorized to make a report with its recommendations to the Legislature; and

WHEREAS, The Legislature can be assisted materially by the West Virginia Board of Banking and Financial Institutions
through a study by the Board and the development by it of recommendations relative to the complex questions involved in branch banking, bank mergers and bank holding companies and the social and economic results that might occur if present West Virginia Banking laws are modified; therefore, be it

Resolved by the Legislature of West Virginia:

That the West Virginia Board of Banking and Financial Institutions shall make a study with the view of strengthening the Board of Banking and Financial Institutions and the Department of Banking, which study shall also include branch banking, bank mergers and bank holding companies with inquiry being made into the present laws of this and other states and the social and economic results of a continuation of present banking laws in this State and of any changes thereto recommended by the Board of this State. The Board shall report to the Legislature not later than the first day of the regular session of the Legislature, 1973, on its findings, conclusions and recommendations, together with drafts of legislation that the Board finds necessary to carry out its recommendations for changes to the West Virginia banking laws.

HOUSE CONCURRENT RESOLUTION NO. 16

(By Mr. Seibert)

[Adopted March 12, 1971]

Directing the West Virginia Board of Regents to formulate a plan for the establishment of a state system of comprehensive community colleges as a part of the higher educational system of West Virginia.

WHEREAS, The West Virginia Board of Regents has expressed serious concern over the limited number of higher educational opportunities of less than the baccalaureate degree level available to high school graduates and adults in the State; and

WHEREAS, At the request of the Board of Regents, a consultant team was appointed by the Southern Regional Education Board, to assess the two-year college needs in West Virginia; and
WHEREAS, That team has recommended that the Board of Regents work to effect the establishment of a statewide comprehensive community college program as a part of the state system of higher education in West Virginia; and

WHEREAS, National commissions, associations, and agencies including the Carnegie Commission on Higher Education have endorsed the comprehensive community college as the most effective agency for providing post high school academic, occupational and general educational programs of less than the baccalaureate degree for high school graduates and adults; and

WHEREAS, The development of community college programs statewide will have a significant and beneficial impact on the cultural and economic future of the State of West Virginia and its citizenry; therefore, be it

Resolved by the Legislature of West Virginia:

That the West Virginia Board of Regents is hereby directed to formulate and recommend to the Governor and Legislature not later than November 1, 1971, a state plan, with drafts of proposed legislation necessary to put the plan in effect, for the establishment, operation and maintenance of a state system of comprehensive community colleges which, as a part of the higher educational system of the State, will provide post high school programs of two years or less duration including career technical-occupational programs leading to certificates or associate degrees, college parallel or transfer programs of two years or less duration, credit and noncredit general education, continuing education and cultural development offerings, work-study or cooperative education programs and specialized industry training programs. The plan shall include but shall not be limited to the following:

(1) Designation of a network of districts or regions for providing community college programs throughout the State,

(2) Proposals whereby community college programs may be offered in each district making maximum use of existing private and state higher educational resources in the district,

(3) Forecasts of potential enrollment in community college programs in each district,
(4) Appraisal of available and needed physical facilities,
(5) Projections of operating and capital outlay costs; and
(6) Recommended financial plan for developing and operating the state community college program; and, be it

Further Resolved, That the Board of Regents is authorized to employ such professional assistance as may be necessary to prepare the plan and draft proposed legislation with all expenses being paid from appropriations to the Board of Regents.

HOUSE CONCURRENT RESOLUTION NO. 19
(By Mr. Huffman and Mr. Steptoe)

[Adopted March 13, 1971]

Directing the Joint Committee on Government and Finance to make a study to identify conflicts between the West Virginia Rules of Civil Procedure and statutory provisions concerning civil pleading and practice and to develop any clarifications and corrections needed.

WHEREAS, The Rules of Civil Procedure as promulgated by the Supreme Court of Appeals and statutory provisions concerning civil pleading and practice conflict in some areas; and

WHEREAS, Such conflicts cause confusion and uncertainty as to what procedure should be followed; and

WHEREAS, Uniform, nonconflicting rules of civil procedure promote efficiency and fairness in the state court system; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance is hereby directed to make a study to identify conflicts between the West Virginia Rules of Civil Procedure and statutory provisions concerning civil pleading and practice and to develop any clarifications and corrections needed; and, be it

Further Resolved, That the Joint Committee on Government and Finance consult with the Judicial Council in this study; and, be it
Further Resolved, That the Joint Committee on Government and Finance submit its report to the regular session of the Legislature, 1972, concerning its findings, conclusions and recommendations, together with drafts of any proposed legislation determined necessary to carry its recommendations into effect; and, be it

Further Resolved, That the expenses necessary to conduct such study, to prepare such report and draft such proposed legislation be paid from legislative appropriations to the Joint Committee on Government and Finance.

HOUSE CONCURRENT RESOLUTION NO. 22
(By Mr. White, of Cabell, and Mr. Holt)
[Adopted March 13, 1971]

Requesting the National Rail Passenger Corporation to establish between Norfolk, Virginia, and Cincinnati, Ohio, a route with intermediate stops in West Virginia.

WHEREAS, The 91st Congress of the United States has enacted Public Law 91-518, commonly known as the “Rail Passenger Service Act of 1970” the purpose of which is to streamline the railroad passenger system by providing modern efficient management and relieving the financial burden on the present system; and

WHEREAS, Said public law directed the United States Department of Transportation to submit a preliminary report not later than December 31, 1970, and a final report not later than January 28, 1971, which said reports identified the end points of the various passenger services that will be established, and identified the intermediate points now in existence; and

WHEREAS, The incorporation of the National Rail Passenger Corporation, on or before May 1, 1971, will designate the frequency and type of service between the end points, and will designate the route and the intermediate stopping points between the end points; and

WHEREAS, The United States Department of Transportation, in its final report dated January 28, 1971, designated Norfolk, Virginia, and Cincinnati, Ohio, as two of the end points; and
WHEREAS, The best interests of the State of West Virginia will be served if the intermediate stops between said end points are White Sulphur Springs, Hinton, Prince, Charleston and Huntington which is the present route of the Chesapeake and Ohio Railway's "George Washington", trains one and two; therefore, be it

Resolved by the Legislature of West Virginia:

That the Legislature respectfully prays and petitions the National Rail Passenger Corporation to establish between Norfolk, Virginia, and Cincinnati, Ohio, a route with intermediate stops in the West Virginia cities of White Sulphur Springs, Hinton, Prince, Charleston and Huntington; and, be it

Further Resolved, That the Legislature requests that at least one route be through the New River Gorge in the daylight hours for scenic purposes; and, be it

Further Resolved, That the Clerk of the West Virginia House of Delegates is hereby instructed to forward copies of this resolution to Mr. David W. Kendall, Chairman, National Rail Passenger Corporation, 800 L'enfant Plaza, Washington, D. C., 20001.

HOUSE CONCURRENT RESOLUTION NO. 39
(Originating in the Committee on the Judiciary)

[Adopted March 13, 1971]

Directing the Joint Committee on Government and Finance to conduct a study into the area of conservation and prevention of waste of oil and gas in this State and the feasibility of unitizing pools and the regulated spacing of oil and gas wells.

WHEREAS, The oil and gas reserves in West Virginia constitute one of the major natural resources of this State; and

WHEREAS, There has been expressed great concern with respect to the conservation of these natural resources and opinions have been expressed as to the various methods of conserving oil and gas and proper drilling procedures, well spacing and other methods of fully utilizing the oil and gas reserves of this State and preventing the waste thereof; and
WHEREAS, Some of these proposals could pose grave economic consequences to those persons engaged in the industry of exploring and drilling for or producing oil and gas, as well as consequences and effects upon landowners and others who have an interest in such oil and gas reserves as well as for the entire State of West Virginia; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance conduct a complete and detailed study of the manner and methods for conserving the oil and gas reserves of this State and the prevention of waste of such reserves; such study to include, but not be limited to, the drilling procedures presently used in this State and other states, the feasibility and desirability of unitizing pools for the production of such oil and gas, the spacing of wells used in and about the production of oil and gas, the effects of all of the foregoing upon landowners and other persons in the oil and gas industry and the need for legislation to these and other related matters with respect to the production of oil and gas; and, be it

Further Resolved, That the Joint Committee on Government and Finance report its findings, conclusions and recommendations together with any proposed legislation that the Committee can recommend to the regular session of the Legislature, 1972; and, be it

Further Resolved, That the expenses necessary to conduct such study, to prepare a report and to draft any proposed legislation be paid from the legislative appropriations to the Joint Committee on Government and Finance.

HOUSE CONCURRENT RESOLUTION NO. 55
(Originating in the Committee on Constitutional Revision)
[Adopted March 13, 1971]

Directing the Joint Committee on Government and Finance to conduct a study into the feasibility and advisability of amending the Constitution to allow consolidation of county and municipal governments.
WHEREAS, Municipal and county governments have many problems in common; and

WHEREAS, These common problems may best be solved by one consolidated government which could pool its resources for greater efficiency and uniformity; and

WHEREAS, Consolidation of municipal and county governments would be a significant change in local governmental structure; and

WHEREAS, Any significant change in governmental structure should be studied thoroughly to determine any immediate or future effects; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance is hereby directed to study the feasibility and advisability of amending the Constitution to allow consolidation of county and municipal governments; and, be it

Further Resolved, That the Joint Committee on Government and Finance submit its report to the regular session of the Legislature, 1972, concerning 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 such report and draft such proposed legislation be paid from legislative appropriations to the Joint Committee on Government and Finance.

HOUSE CONCURRENT RESOLUTION NO. 64
(By Mr. Myles)
[Adopted March 13, 1971]

Directing the Joint Committee on Government and Finance to conduct a study of the broadest possible scope of the feasibility of granting adult status to eighteen-year-olds with special attention to the ramifications this change would have on present law.
WHEREAS, Very little information is available to determine the various problems that would result from granting adult status to eighteen-year-olds; and

WHEREAS, A computer search of the West Virginia Code has revealed approximately ten thousand references to the terms “minor,” “infant,” “under disability,” etc., involving a wide range of subjects, such as the right to contract, liability for contracts, crimes, elections, marriage and property rights; and

WHEREAS, The granting of adult status to eighteen-year-olds requires careful and meticulous consideration; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance conduct a comprehensive study of the broadest possible scope regarding the feasibility of granting adult status to eighteen-year-olds, the effects this would have on established legal concepts and any problems that might arise from such change; and, be it

Further Resolved, That the Joint Committee on Government and Finance submit its report to the regular session of the Legislature, 1972, concerning its findings, conclusions and recommendations, together with drafts of any proposed legislation determined necessary to carry its recommendations into effect; and, be it

Further Resolved, That the expenses necessary to conduct such study, to prepare such report and to draft such proposed legislation be paid from legislative appropriations to the Joint Committee on Government and Finance.

SENATE CONCURRENT RESOLUTION NO. 4
(By Mr. Gainer)
[Adopted March 3, 1971]

Creating a continuing special interim Forest Management Review Commission to review the multiple use, sustained yield management policy or any other management policy of the United States Department of Agriculture and the United States Forest Service on national forest lands
located within West Virginia, to determine if the objectives of the multiple use, sustained yield concept are being complied with and to take any appropriate action necessary to protect the public's interest on such lands.

WHEREAS, The West Virginia Legislature created a special commission known as the "Forest Management Practices Commission," which conducted a comprehensive study and evaluated forest management practices, particularly clear-cutting or even-aged management, as applied by the United States Forest Service on national forest lands located in West Virginia; and

WHEREAS, The Forest Management Practices Commission submitted to the West Virginia Legislature, the Secretary of the United States Department of Agriculture, the Chief of the United States Forest Service and members of the West Virginia congressional delegation its report, which stated the multiple use, sustained yield concept was not being complied with and that even-aged management, i.e. clear-cutting, was being overused, and made fourteen recommendations to correct present problems, which to be complied with requires action of the United States Congress, the United States Department of Agriculture and the United States Forest Service; and

WHEREAS, The implementation of these fourteen recommendations is very important if the multiple use, sustained yield concept of forest management is to be complied with on national forest lands in West Virginia and the Forest Management Practices Commission recommended that a continuing special legislative interim commission be established to aid in the implementation of these fourteen recommendations, review national forest management policy, serve the public's interest, act as a forum for the expression of public opinion regarding use, operation and management of national forest lands in West Virginia and keep the West Virginians currently informed; therefore, be it

Resolved by the Legislature of West Virginia:

That a continuing special interim commission to be known as the "Forest Management Review Commission," consisting of three members of the Senate, to be appointed by the Presi-
dent thereof, no more than two of whom shall be appointed from the same political party, one of whom the President shall designate as cochairman, and three members of the House of Delegates, to be appointed by the Speaker thereof, no more than two of whom shall be appointed from the same political party, one of whom the Speaker shall designate as cochairman, and three persons residing within the State who are knowledgeable in the fields of conservation and forestry who shall be appointed jointly by the President of the Senate and the Speaker of the House of Delegates, is hereby created to constantly review the multiple use, sustained yield management policy, or any other management policy, of the United States Department of Agriculture and the United States Forest Service on national forest lands located in West Virginia to determine if the objectives of the multiple use, sustained yield concept are being complied with, to counsel with the United States Department of Agriculture and the United States Forest Service and aid in the implementation of the recommendations made by the Forest Management Practices Commission and the coordination of management policy with state and local agencies and report any inadequacies or deficiencies along with any recommendations as periodically as necessary to the Joint Committee on Government and Finance, and to each session of the West Virginia Legislature, the West Virginia congressional delegation, the United States Department of Agriculture and the United States Forest Service; and, be it

Further Resolved, That the Commission is hereby authorized to meet with officials of the United States Department of Agriculture, United States Forest Service, West Virginia congressional delegation, state and local agencies, to personally survey national forests in West Virginia, to hold public hearings and to travel as necessary for these purposes; 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, but no expenses whatever shall be incurred unless the approval of the Joint Committee on Government and Finance is first had and obtained by said commission; and, be it
SENATE CONCURRENT RESOLUTIONS 1025

Further Resolved, That the Clerk of the Senate be directed to cause copies of the resolution to be forwarded to the Secretary of the United States Department of Agriculture and the Chief of the United States Forest Service and to each member of the West Virginia congressional delegation.

SENATE CONCURRENT RESOLUTION NO. 8

(By Mr. Carrigan)

[Adopted March 3, 1971]

Directing the Joint Committee on Government and Finance to make a comprehensive study of the laws relating to regulations and control of land use on areas adjoining state parks, state forests and state recreational facilities, with special emphasis upon the feasibility and desirability of establishing a statewide authority to augment existing controls.

WHEREAS, The West Virginia Legislature has over the years appropriated moneys and authorized the sale of revenue bonds for financing development of new state parks and recreation areas, representing a major investment by the people of West Virginia in outdoor recreation and tourism; and

WHEREAS, The proven potential of state parks, state forests and state recreational areas for attracting visitors from out of state, thus adding substantially to the state and local economy, has confirmed the wisdom of such investment; and

WHEREAS, The attractiveness of these facilities is due in large measure to their natural setting, including the sense of repose engendered by relative remoteness; and

WHEREAS, Certain commercial or urban developments tend to appear along the approaches to the more popular state facilities, bringing about deterioration of scenic values and lessening the attractiveness of these state facilities; and

WHEREAS, Existing planning agencies have generally lacked the necessary capability for restricting such urbanizing trends; therefore, be it
Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance be directed to make a comprehensive study of the law relating to land use controls on areas adjoining state parks, state forests and state recreational facilities, with special emphasis upon the feasibility and desirability of establishing a statewide authority to augment existing controls; 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, 1972; and, be it

Further Resolved, That the expenses necessary to conduct such study be paid from the legislative appropriations to the Joint Committee on Government and Finance.

SENATE CONCURRENT RESOLUTION NO. 13
(By Mr. McCourt, Mr. President, and Mr. Gainer)
[Adopted February 18, 1971]

Directing the Joint Committee on Government and Finance to make a comprehensive study of the feasibility of the State of West Virginia acquiring and operating a scenic railroad for tourists, commonly referred to and known as the Webster-Randolph Scenic Railroad, approximately one hundred twenty miles in length, running from Webster Springs, West Virginia, to Elkins, West Virginia.

WHEREAS, Scenic beauty, natural and recreational areas abound in the State of West Virginia that should be made accessible to citizens of the State and the public at large for their enjoyment and use; and

WHEREAS, The proposed Webster-Randolph Scenic Railroad would open many of these now inaccessible areas to the public; and

WHEREAS, The Webster-Randolph Scenic Railroad would be a prime tourist attraction that would cause the State's economy, as well as that of the counties wherein the railroad is
located to expand and bring additional revenues into the state treasury; and

WHEREAS, The Webster-Randolph Scenic Railroad established and operated as an excursion train would perpetuate an important part of the heritage and history of the State and of America, enabling adults and children to ride on and observe in action the steam locomotive so important in welding this vast country and its people together; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance make a comprehensive study of the feasibility of the State of West Virginia acquiring and operating a scenic railroad for tourists, commonly referred to and known as the Webster-Randolph Scenic Railroad, approximately one hundred twenty miles in length, running from Webster Springs, West Virginia, to Elkins, West Virginia; ascertain the cost of acquisition and operation of the railroad; the approximate effect of its operation on local and state economy; and anticipated revenue to be derived by the local and state governments from its operation; and, be it

Further Resolved, That members of the Joint Committee on Government and Finance are expressly authorized to meet with officials of the Western Maryland Railroad, Mower Lumber Company and of other railroads, lumber companies, organizations and government as is necessary and proper to make this study and accomplish the purposes set forth in this resolution; and to personally survey the general area through which the proposed Webster-Randolph Scenic Railroad would run; and, be it

Further Resolved, That the Joint Committee on Government and Finance complete its field survey, necessary travel and meetings with officials prior to November 1, 1971, and report its findings and recommendations, together with any drafts of any legislation to carry out its recommendations, to the Legislature at its regular session, 1972; and, be it

Further Resolved, That the expenses necessary to conduct this study, to prepare its reports and to draft any proposed
legislation be paid from legislative appropriations to the Joint Committee on Government and Finance.

SENATE CONCURRENT RESOLUTION NO. 22
(By Mr. McCourt, Mr. President, and Mr. Carrigan)
[Adopted March 13, 1971]

Directing the Joint Committee on Government and Finance and the Commission on Interstate Cooperation to continue certain studies.

WHEREAS, Certain studies referred to the Joint Committee on Government and Finance and the Commission on Interstate Cooperation by prior sessions of the Legislature have not been completed and require additional study; therefore, be it

Resolved by the Legislature of West Virginia:

That the studies authorized by the following resolutions be continued:

1. House Concurrent Resolution No. 86, regular session, 1970, relating to banking.

2. Senate Concurrent Resolution No. 11, regular session, 1957, and last continued by Committee Substitute for House Concurrent Resolution No. 80, regular session, 1970, relating to institutions of higher education.

3. Senate Concurrent Resolution No. 15, regular session, 1968, and last continued by Committee Substitute for House Concurrent Resolution No. 80, regular session, 1970, relating to highway safety.

4. House Concurrent Resolution No. 6, first extraordinary session, 1970, relating to a homestead exemption.

5. House Concurrent Resolution No. 4, first extraordinary session, 1970, relating to a mental health complex.

6. House Concurrent Resolution No. 20, regular session, 1969, and continued by Committee Substitute for House Con-
current Resolution No. 80, regular session, 1970, relating to nonpublic school and college aid.

7. House Concurrent Resolution No. 8, regular session, 1968, and last continued by Committee Substitute for House Concurrent Resolution No. 80, regular session, 1970, relating to the Potomac River Basin Compact.

8. Senate Concurrent Resolution No. 52, regular session, 1970, relating to public employee relations.

9. House Concurrent Resolution No. 31, regular session, 1969, and continued by Committee Substitute for House Concurrent Resolution No. 80, regular session, 1970, relating to the tax structure of West Virginia.

10. Committee Substitute for House Concurrent Resolution No. 80, regular session, 1970, relating to a water study; and, be it

Further Resolved, That all provisions of said concurrent resolutions be continued in force; 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, 1972.

SENATE CONCURRENT RESOLUTION NO. 24
(By Mrs. Leonard and Mr. Sharpe)
(Adopted March 11, 1971)

Expressing concern and sympathy to the families of West Virginians, and to the families of all Americans, held as prisoners of War in Southeast Asia.

WHEREAS, All captured American personnel held in Southeast Asia suffer privation and hardship; and

WHEREAS, Prisoners held in North Vietnam are existing under particularly harsh circumstances; and

WHEREAS, Many of these prisoners are confined in a primitive jungle environment in Vietnam, Laos or Cambodia; and
WHEREAS, These prisoners are primarily members of the United States Army, Navy, Air Force and Marine Corps; and

WHEREAS, These prisoners include American civilians; and

WHEREAS, The enemy's refusal to acknowledge publicly the presence of all prisoners in these areas, and the enemy's refusal to permit certain prisoners to correspond with their families, have increased the burden of anxiety and concern on the families of prisoners of war; and

WHEREAS, The government of West Virginia and the government of the United States are concerned with continuing efforts to bring national and world public opinion to bear in securing humane treatment for, and the release of, our beloved sons of West Virginia, and all captured American personnel; and

WHEREAS, The National League of Families of American Prisoners Missing in Southeast Asia, recognizes that the Prisoner of War issue is not a political issue, but a humanitarian issue; and

WHEREAS, The West Virginia State Coordinator of the National League of Families of American prisoners missing in Southeast Asia has received permission from a few families to furnish names of certain West Virginians who are prisoners of war; and

WHEREAS, Lieutenant Commander William Hardman, U. S. Navy, son of Mrs. Sadie M. Thompkins, St. Albans, West Virginia; Major Glenn H. Wilson, U. S. Air Force, son of Mr. and Mrs. Stanley Wilson, St. Albans, West Virginia; and Major Hubert Kelley Flesher, U. S. Air Force, nephew of Mrs. Charles Carson, Jane Lew, West Virginia, are prisoners in Hanoi; and

WHEREAS, Sergeant Albert H. Altizer, son of Mr. and Mrs. Kenneth W. Altizer, Squire, West Virginia, and Chief Warrant Officer Joseph A. Rose, U. S. Army, son of Mr. and Mrs. Joseph Rose, Morgantown, West Virginia, are believed to be prisoners of war in Southeast Asia; and

WHEREAS, There are more than fifteen hundred Americans known to be missing or prisoners; therefore, be it
Resolved by the Legislature of West Virginia:

That the members of the Legislature express their deep concern and sympathy for the families of all West Virginians held by hostile forces in Southeast Asia; and, be it

Further Resolved, That the members of the Legislature express their deep concern and sympathy for the families of all Americans held by hostile forces in Southeast Asia; and, be it

Further Resolved, That the members of the Legislature are mindful of the sacrifice of West Virginians and many Americans who have given their lives in the Vietnam War, and that the Legislature of West Virginia expresses sympathy to the families of those who will not return; and, be it

Further Resolved, That the Legislature of West Virginia urges humane treatment for communication with, and the release of, all prisoners of war; and, be it

Further Resolved, That the Clerk of the Senate is hereby directed to forward a copy of this resolution to the families of the West Virginians named herein who are prisoners of war or who are known to be missing and to The Honorable Richard M. Nixon, President of the United States, Washington, D. C.; The Honorable Ton Duc Thang, President, Democratic Republic of North Vietnam, Hanoi, North Vietnam; The Honorable David K. E. Bruce, U. S. Delegation to the Paris Meeting, U. S. Embassy, 2 Avenue Gabriel, Paris, France; Minister Xuan Thuy, 8 Avenue General Le Clerc, 94 Choisy-Le-Roi, Paris, France; Mme. Nguyen Thi Binh, 39 Avenue Georges Mandell, Paris 16, France; and Mrs. Bobby G. Vinson, National Coordinator, National League of Families of American Prisoners Missing in Southeast Asia, 1 Constitution Avenue, N. E., Washington, D. C.
desirability of regulating timber management practices on privately-owned lands within the State.

WHEREAS, the preservation, protection and perpetration of forests and the tree covered lands, the conservation of all resources from these forests and lands and protection of the environment involved or influenced thereby for the equal and guaranteed use of present and future generations are of the utmost concern to the West Virginia Legislature; and

WHEREAS, It is in the public interest, and for the protection of the health and welfare of citizens of this State, for it to prescribe certain rules of forestry practice and silviculture to be observed and abided in the growing and harvesting of timber and utilizing of natural resources from forests and tree covered lands in this State; and

WHEREAS, Unregulated and mismanaged timbering operations can cause erosion, land slides, stream pollution and siltation, accumulation of stagnant water, increase likelihood of floods and slides, destroy the value of some lands for agricultural or recreational purposes, destroy aesthetic values, counteract efforts to conserve soil, water and other resources, and destroy and impair the health, safety, welfare and property rights of citizens of the State; and

WHEREAS, Bills regulating timber management practices on privately-owned lands were introduced in the Senate and House of Delegates of the West Virginia Legislature during its regular session, 1971, that are meritorious and should be given full and proper consideration; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance make a comprehensive study of the need for, and desirability of, regulating timber management practices on privately-owned lands within the State, giving particular consideration to all bills introduced regarding this proposition during the regular session of the Legislature, 1971, and present recommendations for adequate regulation; and, be it

Further Resolved, That the Joint Committee report its findings and recommendations, together with drafts of any legis-
Further Resolved, That the expenses necessary to conduct the study, to prepare its reports and any legislation proposed shall be paid from legislative appropriations to the Joint Committee on Government and Finance.

SENATE CONCURRENT RESOLUTION NO. 33
(By Mr. Holliday and Mr. Sharpe)
[Adopted March 13, 1971]

Directing the Joint Committee on Government and Finance to make a study of the Department of Mental Health and its institutions; the office of the Commissioner of Public Institutions; the Department of Health; and all mental health, humane, penal and correctional institutions thereof; and of the programs, needs and laws relating thereto; providing for a special committee to make certain visits and inspections and to assist said Joint Committee on Government and Finance; and requiring the Joint Committee to prepare and submit a comprehensive plan to reorganize the entire mental health, health, correctional and charitable institutional structure and system to correct all problems revealed by the study.

WHEREAS, The many problems in the field of mental health, health and correctional systems and the problems with respect to the care and treatment of persons in state health, mental health, humane, penal and correctional institutions are of such magnitude as to demand full and adequate information for use by members of the Legislature in order for such members to evaluate intelligently the budgetary requests and other matters of interest pertaining to these areas of concern; and

WHEREAS, The time available during the session of the Legislature is inadequate for the members of the standing committees of both branches of the Legislature dealing with such departments and institutions to make detailed studies and
analyses thereof of the needs of said departments and institutions under their control and supervision, their practices, problems and needs, and to make adequate, constructive recommendations for the improvement of services and facilities in all such departments and institutions under their control; and

WHEREAS, The institutions, programs and practices of, and laws relating to, the Department of Mental Health, the office of the Commissioner of Public Institutions, the Department of Health and all units and divisions thereof, cover broad and complicated areas for legislative consideration and action which can best be conducted, investigated and analyzed between the current session of the Legislature and the next regular session thereof, to be held in January, 1972; and

WHEREAS, A full and complete study must be made and a comprehensive plan developed to correct existing problems in the mental health, health, correctional and charitable institutional structure in order to conserve revenues and to obtain from those expended maximum benefits for those under care or treatment and for citizens of this State; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance make a continuing study of the Department of Mental Health; the office of the Commissioner of Public Institutions; the Department of Health; and of all mental health, health, humane, penal and correctional institutions under their control and jurisdiction; of the programs, needs and laws relating thereto, with particular emphasis on the total programs, functions and needs of all mental health, health, humane, penal and correctional institutions in order to discover existing problems, how these should be corrected, how revenues can be conserved while maximizing the services and benefits derived from revenues expended; and that the Joint Committee prepare and submit a comprehensive plan to reorganize the entire mental health, health, correctional and charitable institutional structure and system to correct all problems revealed by the study at the regular session of the Legislature, 1972; and, be it

Further Resolved, That three members of the Senate Standing Committee on Public Institutions, to be designated by the
President of the Senate, and three members of the House of Delegates Standing Committee on Health and Welfare, to be designated by the Speaker of the House of Delegates, no more than two of those designated from each house to be of the same political party, hereinafter referred to as the "special committee", shall assist the Joint Committee on Government and Finance in making such study to the extent specified by the Joint Committee on Government and Finance. Any four members of the special committee shall constitute a quorum. In addition to assisting the Joint Committee on Government and Finance as above specified, the special committee shall be charged with the responsibility to visit the state health, humane, penal and correctional institutions of this State in order to inspect the condition thereof; to consult with the Director of the Department of Health, and of the Department of Mental Health, the Commissioner of Public Institutions, and the Director of the Division of Corrections, the superintendents of all such institutions and their staffs; and to report their findings, conclusions and recommendations to the Joint Committee on Government and Finance or any proper subcommittee thereof. No such visitations and inspections shall be made unless the approval of the Joint Committee on Government and Finance therefor is first had and obtained by said special committee; and, be it

Further Resolved, That the Joint Committee on Government and Finance shall make a report to the Legislature at its regular session, 1972, on its findings, conclusions and recommendations, together with drafts of legislation that shall be necessary to carry its recommendations into effect. Such report shall be distributed to each member of the West Virginia Legislature and a copy of such report shall be submitted to the Governor, the Director of the Department of Mental Health, the Director of Health, the Commissioner of Public Institutions, the Director of the Division of Corrections and the chief administrative officer of any other department or agency of state government under whose jurisdiction any such institution may be; and, be it

Further Resolved, That the members of the special committee, who are not members of the Joint Committee, participating in this study shall be reimbursed for their expenses
as provided for in Enrolled Senate Bill No. 326, regular session of the Legislature, 1971; and, be it

Further Resolved, That the expenses necessary to conduct the study and to prepare a report and drafts of proposed legislation be paid from the legislative appropriation to the Joint Committee on Government and Finance.

SENATE CONCURRENT RESOLUTION NO. 37
(Originating in the Committee on Natural Resources)
[Adopted March 13, 1971]

Directing the Joint Committee on Government and Finance to conduct a study of the existing state laws relating to surface mining and proposed revisions in West Virginia's surface mining laws to correct problems and inadequacies discovered in those laws.

WHEREAS, The interest displayed in surface mining during this session of the Legislature indicates a great public awareness of surface mining and the environmental and economic effects thereof; and

WHEREAS, It is the opinion of the Legislature that the Legislature must be kept fully informed on what will be taking place in the surface mining industry in West Virginia during the remainder of the year 1971; and

WHEREAS, Bills have been introduced at this session of the Legislature to prohibit the surface mining of coal, which bills would have the Legislature find that the surface mining of coal causes ecological deterioration and destruction extending beyond the sites of the disturbed land, entailing economic and social costs to the state and its citizens in excess of the benefits derived therefrom; causes excessive and unacceptable waste, defacement and destruction of the surface of the land, which is a natural resource of the State that must be conserved in the interest of this and succeeding generations; depreciates drastically those qualities and amenities of the State that make it either a pleasant or acceptable place to live and work; will adversely affect the State's population as the level of the land's
despoilation becomes intolerable for living and employment opportunity; tends to debase the value of property for ad valorem tax purposes thereby depriving the counties, the county boards of education and municipalities of a revenue source essential to the support of their services and institutions; offends sensibilities, creates unsightliness, and will make the State an eyesore for the people now living here and for those who may otherwise be attracted to live and work in our State; adversely affects the long-range economic development, growth and tourist travel in many counties and regions of the State occasioned by its extreme impairment of land, water and aesthetic qualities; detrimentally affects the lands and properties of the state and federal government owned and held in public trust; destroys the grandeur and natural beauty of the country-side which contributes highly important factors to the public welfare of the State; causes soil erosion, landslides, destruction of forests and wildlife habitat, and leaves land isolated and hazardous; causes stream pollution, sedimentation and flooding of streams, the progressive deterioration of rivers and watercourses extending far beyond the lands disturbed by such mining, and threatens public and private water supplies; cannot be adequately regulated; disturbs considerably more acres each year, and causes or will cause the aforementioned undesirable effects to a far greater degree, than the surface mining of other minerals; and

WHEREAS, It has been asserted that a prohibition on the surface mining of coal would adversely affect employment and the economy, as well as the fulfillment of the State's and nation's energy requirements; and

WHEREAS, West Virginia is reported to have vast reserves of readily recoverable reserves of strippable coal located in forty of West Virginia's fifty-five counties; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance obtain and compile for the Legislature and the public all information relevant to the problems incident to the surface mining industry, the adequacy of surface-mining laws, the effect of such laws on the surface-mining industry, the adequacy of existing laws with respect to environmental and economic
effects of surface mining on the people of and the property in the State of West Virginia, whether laws related to the subject matter of surface mining are being fully implemented and whether any new or additional laws are necessary to properly protect the people and property in the State of West Virginia with respect to surface mining; and, be it

Further Resolved, That the Joint Committee on Government and Finance give top priority to this study and commit the necessary resources and staff to the obtaining and compiling of comprehensive and in-depth information on the study subject matter including but not limited to the employment of independent objective experts as to the problems of surface mining and reclamation to aid and assist the committee; and, be it

Further Resolved, That the Joint Committee on Government and Finance distribute to the members of the Legislature, make public through a news release, not later than forty-five days from the last day of the regular session of the Legislature, one thousand nine hundred seventy-one, an outline of the study which it intends to conduct or of the questions to which it will seek answers as directed by this resolution; and, be it

Further Resolved, That the Joint Committee on Government and Finance complete its inquiry and report all information compiled by it which shall include but not be limited to findings, conclusions and recommendations together with drafts of proposed legislation necessary, to the members of the Legislature not later than the first day of January, one thousand nine hundred seventy-two; and, be it

Further Resolved, That expenses necessary to conduct such study, employ such staff and prepare and distribute such report be paid from the legislative appropriation to the Joint Committee on Government and Finance.

SENATE CONCURRENT RESOLUTION NO. 39
(By Mr. McCourt, Mr. President)
[Adopted March 13, 1971]
Directing the Joint Committee on Government and Finance to continue its study of the budget process.
WHEREAS, Adoption of the Modern Budget Amendment in 1968 has raised many uncertainties regarding the legislative power of budget making; and

WHEREAS, Changes may be needed in the statutes relating to the budget making process to resolve any inconsistencies between statutory and constitutional law; and

WHEREAS, The Joint Committee on Government and Finance initiated study of the budget making process on March 3, 1970, and this study has not yet been completed; 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 budgetary process of this State and to make recommendation to the Legislature regarding the same; and, be it

Further Resolved, That the Committee report to the regular session of the Legislature, 1972, 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 a study, to prepare a report and to draft proposed legislation be paid from legislative appropriation to the Joint Committee on Government and Finance.

SENATE CONCURRENT RESOLUTION NO. 40
(By Mr. McCourt, Mr. President and Mr. Carrigan)

[Adopted March 13, 1971]

Directing the Joint Committee on Government and Finance to conduct a study of the physical needs of all health, humane, penal and correctional institutions under the control of the Commissioner of Public Institutions and all institutions under the control of the Department of Mental Health and to propose a method or methods of financing any needed rebuilding, repairs or replacement of any equipment or structure connected with such institutions.
effects of surface mining on the people of and the property in the State of West Virginia, whether laws related to the subject matter of surface mining are being fully implemented and whether any new or additional laws are necessary to properly protect the people and property in the State of West Virginia with respect to surface mining; and, be it

*Further Resolved*, That the Joint Committee on Government and Finance give top priority to this study and commit the necessary resources and staff to the obtaining and compiling of comprehensive and in-depth information on the study subject matter including but not limited to the employment of independent objective experts as to the problems of surface mining and reclamation to aid and assist the committee; and, be it

*Further Resolved*, That the Joint Committee on Government and Finance distribute to the members of the Legislature, make public through a news release, not later than forty-five days from the last day of the regular session of the Legislature, one thousand nine hundred seventy-one, an outline of the study which it intends to conduct or of the questions to which it will seek answers as directed by this resolution; and, be it

*Further Resolved*, That the Joint Committee on Government and Finance complete its inquiry and report all information compiled by it which shall include but not be limited to findings, conclusions and recommendations together with drafts of proposed legislation necessary, to the members of the Legislature not later than the first day of January, one thousand nine hundred seventy-two; and, be it

*Further Resolved*, That expenses necessary to conduct such study, employ such staff and prepare and distribute such report be paid from the legislative appropriation to the Joint Committee on Government and Finance.

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**SENATE CONCURRENT RESOLUTION NO. 39**

(By Mr. McCourt, Mr. President)

[Adopted March 13, 1971]

Directing the Joint Committee on Government and Finance to continue its study of the budget process.
WHEREAS, Adoption of the Modern Budget Amendment in 1968 has raised many uncertainties regarding the legislative power of budget making; and

WHEREAS, Changes may be needed in the statutes relating to the budget making process to resolve any inconsistencies between statutory and constitutional law; and

WHEREAS, The Joint Committee on Government and Finance initiated study of the budget making process on March 3, 1970, and this study has not yet been completed; 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 budgetary process of this State and to make recommendation to the Legislature regarding the same; and, be it

Further Resolved, That the Committee report to the regular session of the Legislature, 1972, 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 a study, to prepare a report and to draft proposed legislation be paid from legislative appropriation to the Joint Committee on Government and Finance.

SENATE CONCURRENT RESOLUTION NO. 40
(By Mr. McCourt, Mr. President and Mr. Carrigan)

[Adopted March 13, 1971]

Directing the Joint Committee on Government and Finance to conduct a study of the physical needs of all health, humane, penal and correctional institutions under the control of the Commissioner of Public Institutions and all institutions under the control of the Department of Mental Health and to propose a method or methods of financing any needed rebuilding, repairs or replacement of any equipment or structure connected with such institutions.
WHEREAS, There is great concern and awareness by the Legislature regarding the present physical condition of many institutions under the control of both the Commissioner of Public Institutions and the Department of Mental Health, as well as the pressing need to rebuild, repair or replace much equipment and many structures connected with such institutions; and

WHEREAS, The time available during the session of the Legislature is inadequate to properly survey and study all such institutions or to recommend a method or methods of financing any needed rebuilding, repairs or replacement of any equipment and structures connected with such institutions; and

WHEREAS, The Legislature finds that such a survey and study must be completed before any long-range decisions can be made regarding the physical needs of such institutions and the method or methods of financing any needed rebuilding, repairs or replacement and such survey and study can best be conducted between the current session of the Legislature and the next regular session thereof to be held in January, one thousand nine hundred seventy-two; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance make a survey and study of the physical needs of all health, humane, penal and correctional institutions under the control of the Department of Public Institutions and all institutions under the control of the Department of Mental Health to determine the nature and extent of the physical needs of all equipment and structures connected with such institutions, and to recommend and propose a method or methods of financing any needed rebuilding, repairs or replacement of any equipment and structures connected with any such institutions; and, be it

Further Resolved, That the Joint Committee on Government and Finance shall make a report to the Legislature at its regular session, one thousand nine hundred seventy-two, on it findings, conclusions and recommendations, together with drafts of any proposed legislation that shall be necessary to carry its recommendations into effect; and, be it

Further Resolved, That expenses necessary to conduct such study and to prepare any such report and drafts of proposed
legislation be paid from the legislative appropriation to the Joint Committee on Government and Finance.

SENATE JOINT RESOLUTION NO. 3
(By Mr. Moreland)
[Adopted February 8, 1971]

Proposing an amendment to the Constitution of the State, amending section two, article fourteen thereof, relating to making amendments to the Constitution.

Resolved by the Legislature of West Virginia, two thirds of all the members elected to each House agreeing thereto:

That the question of ratification or rejection of an amendment to the Constitution of the State of West Virginia be submitted to the voters of the State at the next general election to be held in the year one thousand nine hundred seventy-two, which proposed amendment is that section two, article fourteen thereof be amended to read as follows:

ARTICLE XIV. AMENDMENTS.

§2. How amendments are made.

Any amendment to the Constitution of the State may be proposed in either House of the Legislature at any regular or extraordinary session thereof; and if the same, being read on three several days in each House, be agreed to on its third reading, by two thirds of the members elected thereto, the proposed amendment, with the yeas and nays thereon, shall be entered on the Journals, and it shall be the duty of the Legislature to provide by law for submitting the same to the voters of the State for ratification or rejection, at a special election, or at the next general election thereafter, and cause the same to be published, at least three months before such election in some newspaper in every county in which a newspaper is printed. If a majority of the qualified voters, voting on the question at the polls held pursuant to such law, ratify the proposed amendment, it shall be in force from the time of such ratification, as part of the Constitution of the State. If two or more amendments be submitted at the same
time, the vote on the ratification or rejection shall be taken on each separately, but an amendment may relate to a single subject or to related subject matters and may amend or modify as many articles and as many sections of the Constitution as may be necessary and appropriate in order to accomplish the objectives of the amendment. Whenever one or more amendments are submitted at a special election, no other question, issue or matter shall be voted upon at such special election, and the cost of such special election throughout the state shall be paid out of the state treasury.
AN ACT making a supplementary appropriation of public money out of the treasury from the balance of all general revenue remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred seventy-two, to the Department of Agriculture, Account No. 510, chapter six, acts of the Legislature, regular session, one thousand nine hundred seventy-one, known as the "Budget Bill."

WHEREAS, The estimated revenue in the state fund, general revenue, for the fiscal year 1971-72, substantiated by the "Executive Budget" prepared by the governor, communications from the governor and enacted legislation totals $368,161,706.00; and

WHEREAS, In addition to the estimate of revenue provided by the governor, there existed available for appropriation cash balances from the previous fiscal year and anticipated expirations; and,
WHEREAS, The Legislature, basing its action upon the estimate of revenue as provided by the governor and the available cash balance and estimated expirations, enacted a budget bill for the fiscal year 1971-72, thereby making appropriations to the various accounts of state spending units, which total appropriations were well within the total of all revenues available for appropriation for the fiscal year 1971-72; and

WHEREAS, The governor, pursuant to his constitutional authority, disapproved and reduced items or parts of items contained in Enrolled Committee Substitute for Senate Bill No. 142, acts of the Legislature, regular session, one thousand nine hundred seventy-one (now chapter 6, acts of the Legislature of 1971), known as the Budget Bill, wherein appropriations were made to certain designated accounts to be expended within the fiscal year ending June thirtieth, one thousand nine hundred seventy-two, the governor by his action reduced the amounts appropriated and thereby made additional revenue available for supplemental appropriations; and

WHEREAS, There now remains unappropriated a balance in the total general revenue available for further appropriation of $7,373,138.00 during the fiscal year ending June thirtieth, one thousand nine hundred seventy-two, a part of which balance is hereby appropriated by the terms of this supplementary appropriation bill.

Be it enacted by the Legislature of West Virginia:

That Account No. 510, chapter 6, acts of the Legislature, regular session, one thousand nine hundred seventy-one, known as the Budget Bill, be supplemented by adding thereto the following sums to each of the designated line items:

AGRICULTURE

80—Department of Agriculture

Acct. No. 510

2 Other Personal Services ........................................... $38,555.00

6 Total ........................................................................... $38,555.00
AN ACT making supplementary appropriations of surplus public money out of the treasury.

Be it enacted by the Legislature of West Virginia:

That notwithstanding, and in addition to, section three-a of an act of the Legislature, Enrolled Committee Substitute for Senate Bill No. 142, known as the Budget Bill for 1971-72, passed March sixteen, one thousand nine hundred seventy-one and signed into law by the governor, the same being supplemental to chapter five, acts of the Legislature, regular session, one thousand nine hundred seventy, known as the Budget Bill for 1970-71, the item set forth below in this section is appropriated from the state fund, general revenue for fiscal year 1970-71, subject to the terms and conditions set forth in this section. By Executive Message No. 16, dated March fifteen, one thousand nine hundred seventy-one, the governor transmitted to the Legislature a revised statement of the state fund, general revenue, for fiscal year 1970-71, revised as of March fifteen, one thousand nine hundred seventy-one, in which it is stated that the estimated revenue in the state fund, general revenue, for fiscal year 1970-71, will be $302,458,234.00. Therefore, the governor shall continue to review the revenue in the state fund, general revenue from the first day of July, one thousand nine hundred seventy, to the date the appropriation under this section is expected to be made available for expenditure and determine whether, in his opinion, the revenue in the state fund, general revenue then in prospect or on hand will be sufficient to meet all appropriations from the state fund, general revenue under the budget bill for fiscal year 1970-71, and make a finding with respect thereto. In the event that such findings shall show sufficient revenue in prospect or on hand to meet all other appropriations made from the state fund, general revenue under the budget bill for fiscal year 1970-71, the governor
may, from any excess over and above the amount required to meet all such appropriations, release the following item, if available funds will permit:

Item No. 6: Department of Finance and Administration, Information Systems Service Division, to the extent of any surplus in excess of said sum of $302,458,234.00, up to a maximum surplus of $200,000.00.

CHAPTER 3

(House Bill No. 123—Originating in the House Committee on Finance)

[Passed April 28, 1971; in effect from passage. Approved by the Governor.]

AN ACT making supplementary appropriations of surplus public money out of the treasury.

Be it enacted by the Legislature of West Virginia:

That notwithstanding, and in addition to, section three-a of an act of the Legislature, Enrolled Committee Substitute for Senate Bill No. 142, known as the Budget Bill for 1971-72, passed, March sixteenth, one thousand nine hundred seventy-one and signed into law by the governor, the same being supplemental to chapter five, acts of the Legislature, regular session, one thousand nine hundred seventy, known as the Budget Bill for 1970-71, the item set forth below in this section is appropriated from the state fund, general revenue, for fiscal year 1970-71, subject to the terms and conditions set forth in this section. By Executive Message No. 16, dated March fifteen, one thousand nine hundred seventy-one, the governor transmitted to the Legislature a revised statement of the state fund, general revenue, for fiscal year 1970-71, revised as of March fifteen, one thousand nine hundred seventy-one, in which it is stated that the estimated revenue in the state fund, general revenue, for fiscal year 1970-71, will be $302,458,234.00. Therefore, the governor shall continue to review the revenue in the state fund, general revenue from the first day of July, one thousand nine hundred seventy, to the date the appropriation under this sec-
tion is expected to be made available for expenditure and determine whether, in his opinion, the revenue in the state fund, general revenue then in prospect or on hand will be sufficient to meet all appropriations from the state fund, general revenue under the budget bill for fiscal year 1970-71, and make a finding with respect thereto. In the event that such findings shall show sufficient revenue in prospect or on hand to meet all other appropriations made from the state fund, general revenue under the budget bill for fiscal year 1970-71, the governor may, from any excess over and above the amount required to meet all such appropriations, release the following item, if available funds will permit:

Item No. 3: Department of Mental Health, to the extent of any surplus in excess of said sum of $302,458,234.00, up to a maximum surplus of $686,959.00 for the following purposes and accounts:

| Acct. No. 410—Roney's Point | Current Expenses | $ 20,000.00 |
| Acct. No. 410—Comprehensive Community Mental Health Center—Princeton | | 171,959.00 |
| Acct. No. 419—Colin Anderson Center | Current Expenses | 125,000.00 |
| Acct. No. 420—Weston State Hospital | Current Expenses | 200,000.00 |
| Acct. No. 421—Spencer State Hospital | Current Expenses | 75,000.00 |
| Acct. No. 422—Huntington State Hospital | Current Expenses | 50,000.00 |
| Acct. No. 423—Lakin State Hospital | Current Expenses | 25,000.00 |
| Acct. No. 424—Barboursville State Hospital | Current Expenses | 20,000.00 |

Any unexpended balance remaining in the appropriation for “Comprehensive Community Mental Health Center—Princeton” at the close of the fiscal year 1970-71 is hereby reappropriated for expenditure during the fiscal year 1971-72.
CHAPTER 4

(House Bill No. 126—Originating in the House Committee on Finance)

[Passed April 28, 1971; in effect from passage. Approved by the Governor.]

AN ACT making supplementary appropriations of surplus public money out of the treasury.

Be it enacted by the Legislature of West Virginia:

That notwithstanding, and in addition to, section three-a of an act of the Legislature, Enrolled Committee Substitute for Senate Bill No. 142, known as the Budget Bill for 1971-72, passed March sixteenth, one thousand nine hundred seventy-one and signed into law by the governor, the same being supplemental to chapter five, acts of the Legislature, regular session, one thousand nine hundred seventy, known as the Budget Bill for 1970-71, the item set forth below in this section is appropriated from the state fund, general revenue, for fiscal year 1970-71, subject to the terms and conditions set forth in this section. By Executive Message No. 16, dated March fifteen, one thousand nine hundred seventy-one, the governor transmitted to the Legislature a revised statement of the state fund, general revenue, for fiscal year 1970-71, revised as of March fifteen, one thousand nine hundred seventy-one, in which it is stated that the estimated revenue in the state fund, general revenue, for fiscal year 1970-71, will be $302,458,234.00. Therefore, the governor shall continue to review the revenue in the state fund, general revenue from the first day of July, one thousand nine hundred seventy, to the date the appropriation under this section is expected to be made available for expenditure and determine whether, in his opinion, the revenue in the state fund, general revenue then in prospect or on hand will be sufficient to meet all appropriations from the state fund, general revenue under the budget bill for fiscal year 1970-71, and make a finding with respect thereto. In the event that such findings shall show sufficient revenue in prospect or on hand to meet all other appropriations made from the state fund, general revenue under the budget bill for fiscal year 1970-71, the governor may,
from any excess over and above the amount required to meet all such appropriations, release the following item, if available funds will permit:

Item No. 5: Department of Natural Resources, to the extent of any surplus in excess of said sum of $302,458,234.00, up to a maximum surplus of $403,656.00:

Acct. No. 565:

- Park and recreation $205,925.00
- Water resources 197,731.00

Any unexpended balance remaining in these appropriations at the close of the fiscal year 1970-71 is hereby reappropriated for expenditure during the fiscal year 1971-72.

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CHAPTER 5

(House Bill No. 125—Originating in the House Committee on Finance)

[Passed April 29, 1971; in effect from passage. Approved by the Governor.]

AN ACT making supplementary appropriations of surplus public money out of the treasury.

Be it enacted by the Legislature of West Virginia:

That notwithstanding, and in addition to, section three-a of an act of the Legislature, Enrolled Committee Substitute for Senate Bill No. 142, known as the Budget Bill for 1971-72, passed March sixteen, one thousand nine hundred seventy-one and signed into law by the governor, the same being supplemental to chapter five, acts of the Legislature, regular session, one thousand nine hundred seventy, known as the Budget Bill for 1970-71, the item set forth below in this section is appropriated from the state fund, general revenue, for fiscal year 1970-71, subject to the terms and conditions set forth in this section. By Executive Message No. 16, dated March fifteen, one thousand nine hundred seventy-one, the governor trans-
mitted to the Legislature a revised statement of the state fund, general revenue for fiscal year 1970-71, revised as of March fifteen, one thousand nine hundred seventy-one, in which it is stated that the estimated revenue in the state fund, general revenue, for fiscal year 1970-71, will be $302,458,234.00. Therefore, the governor shall continue to review the revenue in the state fund, general revenue from the first day of July, one thousand nine hundred seventy, to the date the appropriation under this section is expected to be made available for expenditure and determine whether, in his opinion, the revenue in the state fund, general revenue then in prospect or on hand will be sufficient to meet all appropriations from the state fund, general revenue under the budget bill for fiscal year 1970-71, and make a finding with respect thereto. In the event that such findings shall show sufficient revenue in prospect or on hand to meet all other appropriations made from the state fund, general revenue under the budget bill for fiscal year 1970-71, the governor may, from any excess over and above the amount required to meet all such appropriations, release the following item, if available funds will permit:

Item No. 2. Early Childhood Education Demonstration Centers, to the extent of any surplus in excess of said sum of $302,458,234.00, up to a maximum surplus of $550,000.00.

Any unexpended balance remaining in this appropriation at the close of the fiscal year 1970-71 is hereby reappropriated for expenditure during the fiscal year 1971-72.

CHAPTER 6
(House Bill No. 113—By Mr. Speaker, Mr. McManus)

[Passed April 28, 1971; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public money out of the treasury from the balance of all general revenue remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred seventy-one,
to the Joint Expenses of the Legislature, Account No. 103, chapter five, acts of the Legislature, regular session, one thousand nine hundred seventy, known as the "Budget Bill."

WHEREAS, By Executive Message No. 16, dated March fifteen, one thousand nine hundred seventy-one, the governor transmitted to the Legislature a revised statement of the state fund, general revenue, for fiscal year 1970-71, revised as of March fifteen, one thousand nine hundred seventy-one, in which it is stated that the estimated revenue in the state fund, general revenue for fiscal year 1970-71 will be $302,458,234.00; and

WHEREAS, In addition to the estimate of revenue provided by the governor, there existed available for appropriation cash balances from the previous fiscal year and anticipated expirations; and

WHEREAS, The Legislature, basing its action upon the estimate of revenue as provided by the governor and the available cash balance and estimated expirations, enacted a budget bill for the fiscal year 1970-71, thereby making appropriations to the various accounts of state spending units, which total appropriations were well within the total of all revenues available for appropriation for the fiscal year 1970-71; and

WHEREAS, The governor, pursuant to his constitutional authority, disapproved and reduced items or parts of items contained in Enrolled Committee Substitute for Senate Bill No. 142, acts of the Legislature, regular session, one thousand nine hundred seventy-one (now chapter 6, acts of the Legislature of 1971), known as the Budget Bill, wherein supplemental appropriations were made to certain designated accounts to be expended within the fiscal year ending June thirtieth, one thousand nine hundred seventy-one, the governor by his action reduced the amounts appropriated and thereby made additional revenue available for supplemental appropriations; and

WHEREAS, There now remains unappropriated a balance in the total general revenue available for further appropriation of $1,030,030.00 during the fiscal year ending June thirtieth, one thousand nine hundred seventy-one, a part of which balance is hereby appropriated by the terms of this supplementary appropriation bill.
Be it enacted by the Legislature of West Virginia:

That Account No. 103, chapter five, acts of the Legislature, regular session, one thousand nine hundred seventy, known as the Budget Bill, be supplemented by adding thereto the following sums to each of the designated line items:

3—Joint Expenses

Acct. No. 103

Fiscal Year 1970-71

1 To pay the cost of legislative printing $ 75,000.00
2 Commission on Interstate Cooperation 11,000.00
3 Joint Committee on Government and Finance 797,500.00

CHAPTER 7

(House Bill No. 112—By Mr. Speaker, Mr. McManus)

[Passed April 28, 1971; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public money out of the treasury from the balance of all general revenue remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred seventy-two, to the Attorney General, Account No. 240, chapter six, acts of the Legislature, regular session, one thousand nine hundred seventy-one, known as the "Budget Bill."

WHEREAS, The estimated revenue in the state fund, general revenue, for the fiscal year 1971-72, substantiated by the "Executive Budget" prepared by the governor, communications from the governor and enacted legislation totals $368,161,706.00; and

WHEREAS, In addition to the estimate of revenue provided by the governor, there existed available for appropriation cash
balances from the previous fiscal year and anticipated expirations; and

WHEREAS, The Legislature, basing its action upon the estimate of revenue as provided by the governor and the available cash balance and estimated expirations, enacted a budget bill for the fiscal year 1971-72, thereby making appropriations to the various accounts of state spending units, which total appropriations were well within the total of all revenues available for appropriation for the fiscal year 1971-72; and

WHEREAS, The governor, pursuant to his constitutional authority, disapproved and reduced items or parts of items contained in Enrolled Committee Substitute for Senate Bill No. 142, acts of the Legislature, regular session, one thousand nine hundred seventy-one (now chapter 6, acts of the Legislature of 1971), known as the Budget Bill, wherein appropriations were made to certain designated accounts to be expended within the fiscal year ending June thirtieth, one thousand nine hundred seventy-two, the governor by his action reduced the amounts appropriated and thereby made additional revenue available for supplemental appropriations; and

WHEREAS, There now remains unappropriated a balance in the total general revenue available for further appropriation of $7,373,138.00 during the fiscal year ending June thirtieth, one thousand nine hundred seventy-two, a part of which balance is hereby appropriated by the terms of this supplementary appropriation bill.

Be it enacted by the Legislature of West Virginia:

That Account No. 240, chapter six, acts of the Legislature, regular session, one thousand nine hundred seventy-one, known as the Budget Bill, be supplemented by adding thereto the following sums to each of the designated line items:

<table>
<thead>
<tr>
<th>LINE</th>
<th>DESCRIPTION</th>
<th>AMOUNT</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>Other Personal Services</td>
<td>$269,871.00</td>
</tr>
<tr>
<td>8</td>
<td>Total</td>
<td>$269,871.00</td>
</tr>
</tbody>
</table>
CHAPTER 8

(House Bill No. 110—By Mr. Speaker, Mr. McManus)

[Passed April 28, 1971; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public money out of the treasury from the balance of all general revenue remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred seventy-two, to the Auditor, Account No. 150, chapter six, acts of the Legislature, regular session, one thousand nine hundred seventy-one, known as the "Budget Bill."

WHEREAS, The estimated revenue in the state fund, general revenue, for the fiscal year 1971-72, substantiated by the "Executive Budget" prepared by the governor, communications from the governor and enacted legislation totals $368,161,706.00; and

WHEREAS, In addition to the estimate of revenue provided by the governor, there existed available for appropriation cash balances from the previous fiscal year and anticipated expirations; and

WHEREAS, The Legislature, basing its action upon the estimate of revenue as provided by the governor and the available cash balance and estimated expirations, enacted a budget bill for the fiscal year 1971-72, thereby making appropriations to the various accounts of state spending units, which total appropriations were well within the total of all revenues available for appropriation for the fiscal year 1971-72; and

WHEREAS, The governor, pursuant to his constitutional authority, disapproved and reduced items or parts of items contained in Enrolled Committee Substitute for Senate Bill No. 142, acts of the Legislature, regular session, one thousand nine hundred seventy-one (now chapter 6, acts of the Legislature of 1971), known as the Budget Bill, wherein appropriations were made to certain designated accounts to be expended within the fiscal year ending June thirtieth, one thousand nine...
hundred seventy-two, the governor by his action reduced the amounts appropriated and thereby made additional revenue available for supplemental appropriations; and

WHEREAS, There now remains unappropriated a balance in the total general revenue available for further appropriation of $7,373,138.00 during the fiscal year ending June thirtieth, one thousand nine hundred seventy-two, a part of which balance is hereby appropriated by the terms of this supplementary appropriation bill.

Be it enacted by the Legislature of West Virginia:

That Account No. 150, chapter six, acts of the Legislature, regular session, one thousand nine hundred seventy-one, known as the Budget Bill, be supplemented by adding thereto the following sums to each of the designated line items:

FISCAL

9—Auditor’s Office—General Administration

Acct. No. 150

2 Other Personal Services $25,003.00
3 Current Expenses 7,500.00
6 Total $32,503.00

CHAPTER 9

(House Bill No. 114—By Mr. Speaker, Mr. McManus)

[Passed April 28, 1971; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public money out of the treasury from the balance of all general revenue remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred seventy-one, to the Senate, Account No. 101, chapter five, acts of
the Legislature, regular session, one thousand nine hundred seventy, known as the “Budget Bill.”

WHEREAS, By Executive Message No. 16, dated March fifteen, one thousand nine hundred seventy-one, the governor transmitted to the Legislature a revised statement of the state fund, general revenue, for fiscal year 1970-71, revised as of March fifteen, one thousand nine hundred seventy-one, in which it is stated that the estimated revenue in the state fund, general revenue for fiscal year 1970-71 will be $302,458,234.00; and

WHEREAS, In addition to the estimate of revenue provided by the governor, there existed available for appropriation cash balances from the previous fiscal year and anticipated expirations; and

WHEREAS, The Legislature, basing its action upon the estimate of revenue as provided by the governor and the available cash balance and estimated expirations, enacted a Budget Bill for the fiscal year 1970-71, thereby making appropriations to the various accounts of state spending units, which total appropriations were well within the total of all revenues available for appropriation for the fiscal year 1970-71; and

WHEREAS, The governor, pursuant to his constitutional authority, disapproved and reduced items or parts of items contained in Enrolled Committee Substitute for Senate Bill No. 142, acts of the Legislature, regular session, one thousand nine hundred seventy-one (now chapter 6, acts of the Legislature of 1971), known as the Budget Bill, wherein supplemental appropriations were made to certain designated accounts to be expended within the fiscal year ending June thirtieth, one thousand nine hundred seventy-one, the governor by his action reduced the amounts appropriated and thereby made additional revenue available for supplemental appropriations; and

WHEREAS, There now remains unappropriated a balance in the total general revenue available for further appropriation of $1,030,930.00, during the fiscal year ending June thirtieth, one thousand nine hundred seventy-one, a part of which balance is hereby appropriated by the terms of this supplementary appropriation bill.
Be it enacted by the Legislature of West Virginia:

That Account No. 101, chapter five, acts of the Legislature, regular session, one thousand nine hundred seventy, known as the Budget Bill, be supplemented by adding thereto the following sums to each of the designated line items:

LEGISLATIVE

1—Senate

Acct. No. 101

Fiscal Year
1970-71

2 Compensation and per diem of officers and

3 attaches $68,430.00

CHAPTER 10

(House Bill No. 127—Originating in the House Committee on Finance)

[Passed April 28, 1971; in effect from passage. Approved by the Governor.]

AN ACT making supplementary appropriations of surplus public money out of the treasury.

Be it enacted by the Legislature of West Virginia:

That notwithstanding, and in addition to, section three-a of an act of the Legislature, Enrolled Committee Substitute for Senate Bill No. 142, known as the Budget Bill for 1971-72, passed March sixteen, one thousand nine hundred seventy-one and signed into law by the governor, the same being supplemental to chapter five, acts of the Legislature, regular session, one thousand nine hundred seventy, known as the Budget Bill for 1970-71, the item set forth below in this section is appropriated from the state fund, general revenue for fiscal year 1970-71, subject to the terms and conditions set forth in this section. By Executive Message No. 16, dated March fifteen, one thousand nine hundred seventy-one, the governor transmitted
to the Legislature a revised statement of the state fund, general revenue, for fiscal year 1970-71, revised as of March fifteen, one thousand nine hundred seventy-one, in which it is stated that the estimated revenue in the state fund, general revenue, for fiscal year 1970-71, will be $302,458,234.00. Therefore, the governor shall continue to review the revenue in the state fund, general revenue from the first day of July, one thousand nine hundred seventy, to the date the appropriation under this section is expected to be made available for expenditure and determine whether, in his opinion, the revenue in the state fund, general revenue then in prospect or on hand will be sufficient to meet all appropriations from the state fund, general revenue under the budget bill for fiscal year 1970-71, and make a finding with respect thereto. In the event that such findings shall show sufficient revenue in prospect or on hand to meet all other appropriations made from the state fund, general revenue under the budget bill for fiscal year 1970-71, the governor may, from any excess over and above the amount required to meet all such appropriations, release the following item, if available funds will permit:

Item No. 7: State Tax Department, to the extent of any surplus in excess of said sum of $302,458,234.00, up to a maximum surplus of $104,666.00:

Acct. No. 180:
Current expenses $104,666.00

CHAPTER 11

(House Bill No. 122—Originating in the House Committee on Finance)

[Passed April 28, 1971; in effect from passage. Approved by the Governor.]

AN ACT making supplementary appropriations of surplus public money out of the treasury.
Be it enacted by the Legislature of West Virginia:

That notwithstanding, and in addition to, section three-a of an act of the Legislature, Enrolled Committee Substitute for Senate Bill No. 142, known as the Budget Bill for 1971-72, passed March sixteen, one thousand nine hundred seventy-one and signed into law by the governor, the same being supplemental to chapter five, acts of the Legislature, regular session, one thousand nine hundred seventy, known as the Budget Bill for 1970-71, the item set forth below in this section is appropriated from the state fund, general revenue for fiscal year 1970-71, subject to the terms and conditions set forth in this section. By Executive Message No. 16, dated March fifteen, one thousand nine hundred seventy-one, the governor transmitted to the Legislature a revised statement of the state fund, general revenue, for fiscal year 1970-71, revised as of March fifteen, one thousand nine hundred seventy-one, in which it is stated that the estimated revenue in the state fund, general revenue, for fiscal year 1970-71, will be $302,458,234.00. Therefore, the governor shall continue to review the revenue in the state fund, general revenue from the first day of July, one thousand nine hundred seventy, to the date the appropriation under this section is expected to be available for expenditure and determine whether, in his opinion, the revenue in the state fund, general revenue then in prospect or on hand will be sufficient to meet all appropriations from the state fund, general revenue under the budget bill for fiscal year 1970-71, and make a finding with respect thereto. In the event that such findings shall show sufficient revenue in prospect or on hand to meet all other appropriations made from the state fund, general revenue under the budget bill for fiscal year 1970-71, the governor may, from any excess over and above the amount required to meet all such appropriations, release the following item, if available funds will permit:

Item No. 1: West Virginia Board of Regents, to the extent of any surplus in excess of said sum of $302,458,234.00, up to a maximum surplus of $592,710.00.
CHAPTER 12

(House Bill No. 130—Originating in the House Committee on Finance)

[Passed April 29, 1971; 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 five, acts of the Legislature, regular session, one thousand nine hundred seventy, known as the "Budget Bill."

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. 373, Account No. 380, Account No. 426, and Account No. 430, chapter five, acts of the Legislature, regular session, one thousand nine hundred seventy, be transferred so as to read as follows:

39—West Virginia Forestry Camp—(Leckie)
   Acct. No. 373
   3 Repairs and Alterations .............................. 7,400.00
   4 Equipment ............................................. 11,300.00

43—West Virginia Children's Home
   Acct. No. 380
   1 Personal Services .................................... 70,464.00
   2 Current Expenses ................................... 40,130.00

57—Welch Emergency Hospital
   Acct. No. 426
   1 Personal Services .................................... 356,720.00
   2 Current Expenses ................................... 185,920.00
   3 Repairs and Alterations .............................. 29,750.00
   4 Equipment ............................................. 10,500.00
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-one shall be available for expenditure upon the effective date of this act.

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CHAPTER 13

(Senate Bill No. 8—By Mr. Carrigan)

[Passed April 28, 1971; in effect July 1, 1971. Approved by the Governor.]

AN ACT to amend and reenact section four, article seven, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to minimum and maximum compensation limits of elected county officials for each class of county.

Be it enacted by the Legislature of West Virginia:

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

§7-7-4. Minimum and maximum compensation limits of elected county officials for each class of county.

1 For the purpose of determining the compensation to be paid to the elected county officials of each county, the following minimum and maximum compensation limits for each county office by class are hereby established and shall be used by each county court in determining
the compensation of each of their county officials includ-
ing compensation of members of the county court:

<table>
<thead>
<tr>
<th>Class</th>
<th>County Court</th>
<th>Sheriff</th>
<th>County Clerk</th>
</tr>
</thead>
<tbody>
<tr>
<td>I</td>
<td>$9,600-12,800</td>
<td>$9,000-12,000</td>
<td>$13,800-18,400</td>
</tr>
<tr>
<td>II</td>
<td>$6,000-9,000</td>
<td>$7,800-11,700</td>
<td>$10,000-15,000</td>
</tr>
<tr>
<td>III</td>
<td>$4,400-6,600</td>
<td>$7,800-11,700</td>
<td>$8,000-12,000</td>
</tr>
<tr>
<td>IV</td>
<td>$2,800-4,200</td>
<td>$6,600-9,900</td>
<td>$6,600-9,900</td>
</tr>
<tr>
<td>V</td>
<td>$1,600-2,400</td>
<td>$4,800-7,200</td>
<td>$4,800-7,200</td>
</tr>
<tr>
<td>VI</td>
<td>$1,400-2,100</td>
<td>$4,400-6,600</td>
<td>$4,400-6,600</td>
</tr>
<tr>
<td>VII</td>
<td>$600-900</td>
<td>$3,600-5,400</td>
<td>$2,400-3,600</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Class</th>
<th>Circuit Clerk</th>
<th>Assessor</th>
<th>Prosecuting Attorney</th>
</tr>
</thead>
<tbody>
<tr>
<td>I</td>
<td>$13,800-18,400</td>
<td>$9,000-15,000</td>
<td>$20,000-26,000</td>
</tr>
<tr>
<td>II</td>
<td>$10,000-15,000</td>
<td>$9,000-13,500</td>
<td>$12,000-18,000</td>
</tr>
<tr>
<td>III</td>
<td>$8,000-12,000</td>
<td>$7,800-11,700</td>
<td>$9,000-13,500</td>
</tr>
<tr>
<td>IV</td>
<td>$6,600-9,900</td>
<td>$6,600-9,900</td>
<td>$7,200-9,600</td>
</tr>
<tr>
<td>V</td>
<td>$4,800-7,200</td>
<td>$4,800-7,200</td>
<td>$4,800-7,200</td>
</tr>
<tr>
<td>VI</td>
<td>$4,400-6,600</td>
<td>$4,400-6,600</td>
<td>$4,400-6,600</td>
</tr>
<tr>
<td>VII</td>
<td>$1,800-2,700</td>
<td>$3,000-4,500</td>
<td>$1,800-2,700</td>
</tr>
</tbody>
</table>

When the classification of a county is changed as pro-
vided in this article, the compensation of each elected
county official of that county for each fiscal year there-
after shall be set within the minimum and maximum
compensation limits established for each elected county
official in that class until the classification again changes.

CHAPTER 14

(House Bill No. 115—By Mr. Speaker, Mr. McManus, and Mr. Seibert)

[Passed April 29, 1971; in effect from passage. Approved by the Governor.]

AN ACT to amend chapter five of the code of West Virginia,
one thousand nine hundred thirty-one, as amended, by
adding thereto a new article, designated article sixteen,
relating to definitions; creating public employees insurance
board as a body corporate; effective date of insurance program; composition of board, powers and duties, expenses; chairman of board, executive secretary; authorization to establish group hospital and surgical insurance plan, group major medical insurance plan, and group life and accidental death insurance plan, rules and regulations for administration of plans, what plans may provide; conditions of insurance plans; authorization to execute contracts for group hospital and surgical insurance, group major medical insurance, and group life and accidental death insurance, limitations, awarding of contracts, reinsurance, certificates for covered employees, discontinuances of contracts; contract provisions for retiring employees, their spouses and dependents; payment of benefits; coverage for employee's dependents; payment of costs by the state, special funds created and duties of treasurer; employee's share, disposition of funds; expense fund; defining offenses and providing criminal penalties; permissive participation in the insurance program and exemptions therefrom; rules and regulations; and providing a severability clause.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.

§5-16-1. Short title.
§5-16-2. Definitions.
§5-16-3. Public employees insurance board created and established; body corporate.
§5-16-4. First meeting of board; effective date of program.
§5-16-5. Composition of board; powers and duties of board generally; expenses.
§5-16-6. Chairman of board; executive secretary.
§5-16-7. Authorization to establish group hospital and surgical insurance plan, group major medical insurance plan and group life and accidental death insurance plan; rules and regulations for administration of plans; what plans may provide.

§5-16-8. Conditions of insurance plans.
§5-16-9. Authorization to execute contracts for group hospital and surgical insurance, group major medical insurance, and group life and accidental death insurance; limitations; awarding of contracts; reinsurance; certificates for covered employees; discontinuances of contracts.

§5-16-10. Contract provisions for group hospital and surgical, group major medical, and group life and accidental death insurance for retiring employees, their spouses and dependents.

§5-16-11. To whom benefits paid.

§5-16-12. Payment of costs by employer and employee; coverage for employee's dependents generally.

§5-16-13. Payment of costs by the state as employer; special funds created; duties of treasurer with respect thereto.


§5-16-15. Expense fund.

§5-16-16. No member or employee of the board shall gain directly or indirectly from any contract or contracts provided for hereunder; criminal penalties.

§5-16-17. Permissive participation; exemptions.

§5-16-18. Rules and regulations for administration of article.


§5-16-1. Short title.

1 The short title by which this article may be referred to is "West Virginia Public Employees Insurance Act."

§5-16-2. Definitions.

1 The following words and phrases as used in this article, unless a different meaning is clearly indicated by the context, shall have the following meanings:

4 (1) "Board" means the public employees insurance board created by this article.

6 (2) "Employee" means any person, including elected officers, who works regularly full time in the service of the state. Any matters of doubt as to who is an employee within the meaning of this article shall be decided by the board.

11 (3) "Retired employee" shall mean an employee of the state who retires after the effective date of this article.

13 (4) "Employer" means the state of West Virginia, its boards, agencies, commissions, departments, institutions or spending units; except the following: The national guard, the board of regents and political subdivisions.
§5-16-3. Public employees insurance board created and established; body corporate.

The West Virginia public employees insurance board is hereby created and established to provide group hospital and surgical insurance, group major medical insurance, and group life and accidental death insurance for all employees of the state as hereinafter provided. The board shall constitute a body corporate. All business of the board shall be transacted in the name of the West Virginia public employees insurance board.

§5-16-4. First meeting of board; effective date of program.

The board shall meet as soon as possible after the effective date of this article for the purpose of negotiating and contracting to provide group insurance for those employees herein made eligible, such insurance coverage to be effective July one, one thousand nine hundred seventy-one, or as soon thereafter as practicable.

§5-16-5. Composition of board; powers and duties of board generally; expenses.

The board shall consist of:

(a) The auditor of the state by virtue of his office;
(b) The workmen’s compensation commissioner;
(c) The treasurer of the state by virtue of his office;
(d) Two members appointed by the governor from the state board of insurance of West Virginia, one from each political party, whose terms shall be concurrent with that of the governor.

The board shall hold a meeting at least twice each year and shall designate the time and place. Three board members shall constitute a quorum at any meeting of the board. Each board member shall be entitled to one vote on each question before the board. A majority of the quorum present shall be required for a decision by the board at its meetings. The board shall adopt its own rules of procedure and shall keep a record of its proceedings.

The board shall be responsible for the administration and management of the public employees insurance system as provided for in this article and in connection therewith shall have the power and authority to make all rules
and regulations necessary to effectuate the provisions of this article, except as is otherwise specifically provided in this article.

No member of the board shall receive any compensation for serving as such; however, each member of the board shall be reimbursed for all reasonable and necessary expenses actually incurred by him in carrying out his duties as a member of the board.

§5-16-6. Chairman of board; executive secretary.

The board shall elect from its own number a chairman who shall serve for one year, or until a successor is elected. The board shall appoint an executive secretary of the West Virginia employees insurance board, and said executive secretary shall be the chief administrative officer of the board. He shall perform such duties as are required of him under the provisions of this article and as the board shall delegate to him from time to time. The compensation of the executive secretary shall be fixed by the board. The executive secretary shall, with the approval of the board, employ such administrative, technical and clerical employees as shall be required for the proper administration of the insurance program herein provided.

§5-16-7. Authorization to establish group hospital and surgical insurance plan, group major medical insurance plan and group life and accidental death insurance plan; rules and regulations for administration of plans; what plans may provide.

The board is hereby empowered and authorized to establish a group hospital and surgical insurance plan or plans, a group major medical insurance plan or plans, and a group life and accidental death insurance plan or plans for employees of the state, and to establish and promulgate rules and regulations for the administration of such plans, subject to the limitations contained in this article. Such plans may provide for group hospital and surgical and group major medical insurance against the financial cost of hospitalization, surgical and medical treatment and care, and may also include, among other things, prescribed drugs, medicines, prosthetic appliances,
hospital inpatient and outpatient service benefits, and medical expenses and indemnifying benefits, and group life and accidental death insurance, and such other coverage and benefits deemed appropriate and desirable by the board.

§5-16-8. Conditions of insurance plans.

The insurance plans herein provided for shall be designed by the board:

1. To provide a reasonable relationship between the hospital, surgical and medical benefits to be included and the expected hospital, surgical and medical expenses to be incurred by the affected employee, his spouse and his dependents.
2. To include reasonable controls which may include deductible and coinsurance provisions applicable to some or all of the benefits.
3. To prevent unnecessary utilization of the various hospital, surgical and medical services available.
4. To provide reasonable assurance of stability in future years for the plans.
5. To provide major medical insurance for said employees.
6. To provide certain group life and accidental death insurance for the employees covered under this article.
7. To include provisions for the coordination of benefits payable by the terms of such plans with the benefits to which such employee, or his spouse or his dependents may be entitled by the provisions of any other group hospital, surgical or medical or group major medical insurance or any combination thereof.

§5-16-9. Authorization to execute contracts for group hospital and surgical insurance, group major medical insurance, and group life and accidental death insurance; limitations; awarding of contracts; reinsurance; certificates for covered employees; discontinuances of contracts.

The board is hereby given exclusive authorization to execute such contract or contracts as are necessary to
carry out the provisions of this article and to provide
the plan or plans of group hospital and surgical insurance
coverage, group major medical insurance coverage, and
group life and accidental death insurance coverage se-
lected in accordance with the provisions of this article,
such contract or contracts to be executed with one or
more agencies, corporations, insurance companies or ser-
vice organizations licensed to sell group hospital and
surgical insurance, group major medical insurance, and
group life and accidental death insurance in this state.

The group life and accidental death insurance herein
provided for shall not exceed an amount equal to the
annual salary of the employee to the nearest one thou-
sand dollar multiples and under no circumstances shall
the amount of the group life and accidental death insur-
ance exceed ten thousand dollars for any one employee.
The amount of the group life and accidental death in-
surance to which an employee would otherwise be en-
titled shall be reduced by fifty percent upon such em-
ployee attaining age sixty-five.

All of the insurance coverage to be provided for under
this article may be included in one or more similar con-
tracts issued by the same or different carriers.

The provisions of article three, chapter five-a of this
code, relating to the division of purchases of the depart-
ment of finance and administration, shall not apply to
any contracts for any insurance coverage authorized to
be executed under the provisions of this article; however,
before entering into any contract for any insurance cover-
age, as herein authorized, said board shall invite com-
petent bids from all qualified and licensed insurance
companies or carriers, who may wish to offer plans for
the insurance coverage desired. The board shall deal di-
rectly with insurers in presenting specifications and re-
ceiving quotations for bid purposes. No commission or
finder's fee, or any combination thereof, shall be paid to
any individual or agent. The board shall award
such contract or contracts on a competitive basis. In
awarding the contract or contracts the board shall take
into account the experience of the offering agency, cor-
poration, insurance companies or service organization in
the group hospital and surgical insurance field, group
major medical insurance field, and group life and acci-
dental death insurance field, and its facilities for the
handling of claims. In evaluating these factors, the board
may employ the services of impartial, professional in-
surance analysts or actuaries or both. Any contract ex-
ecuted by the board with a selected carrier shall be a
contract to govern all eligible employees subject to the
provisions of this article. Nothing contained in this article
shall prohibit any insurance carrier from soliciting em-
ployees covered hereunder to purchase additional hos-
pital and surgical, major medical or life and accidental
death insurance coverage.

The board may authorize the carrier with whom a
primary contract is executed to reinsure portions of such
contract with other carriers which elect to be a reinsurer
and who are legally qualified to enter into a reinsurance
agreement under the laws of this state.

Each employee who is covered under any such contract
or contracts shall receive a certificate setting forth a fee
schedule of the hospital, surgical or medical benefits to
which such employee, his spouse and his dependents are
entitled hereunder, to whom such benefits shall be pay-
able, to whom claims shall be submitted, and a summary
of the provisions of any such contract or contracts as they
affect the employee, his spouse and his dependents.

The board may at the end of any contract period dis-
continue any contract or contracts it has executed with
any carrier and replace the same with a contract or
contracts with any other carrier or carriers meeting the
requirements of this article.

§5-16-10. Contract provisions for group hospital and surgical,
group major medical, and group life and accidental
death insurance for retiring employees, their
spouses and dependents.

Any contract or contracts entered into hereunder may
provide for group hospital and surgical, group major
medical, and group life and accidental death insurance
for retiring employees and their spouses and dependents
as defined by rules and regulations of the board, and on such terms as the board may deem appropriate.

In the event the board provides the above benefits for retiring employees, their spouses and dependents, the board shall adopt rules and regulations prescribing the conditions under which retiring employees may elect to participate in or withdraw from the plan or plans. Any contract or contracts herein provided for shall supplement any hospital, surgical, major medical or health insurance plan administered by the United States department of health, education, and welfare to which the employee, spouse or dependent may be eligible under any law or regulation of the United States.

§5-16-11. To whom benefits paid.

Any benefits payable under any group hospital and surgical and group major medical plan or plans may be paid either directly to the attending physician, hospital, medical group, or other person, firm, association or corporation furnishing the service upon which the claim is based, or to the insured upon presentation of valid bills for such service, subject to such provisions designed to facilitate payments as may be made by the board.

§5-16-12. Payment of costs by employer and employee; coverage for employee's dependents generally.

The board is hereby authorized to provide under any contract or contracts entered into under the provisions of this article that the costs of any such group hospital and surgical insurance, group major medical insurance, group life and accidental death insurance benefit plan or plans may be paid by the employer and employee. In addition, each employee shall be entitled to have his spouse and dependents, as defined by the rules and regulations of the board, included in any group hospital and surgical insurance or group major medical insurance coverage provided upon agreeing to pay the costs of such coverage for such spouse and dependents. The board shall adopt rules and regulations governing the discontinuance and resumption of any employee's coverage for his spouse and dependents.
§5-16-13. Payment of costs by the state as employer; special funds created; duties of treasurer with respect thereto.

1 The state as an employer shall pay a sum for all insurance coverage provided hereunder as set by the board not less than twelve dollars per month for each employee electing to receive dependent accident and sickness insurance coverage, and for each employee electing to receive individual accident and sickness insurance coverage only, a monthly sum not less than fifty percent of the monthly sum paid by the state for each employee electing to receive dependent coverage.

2 The Legislature shall appropriate to the board annually from the general revenue fund such sums as may be required to pay the state's proportionate share of the premium costs of those spending units operating from the general revenue fund, and each spending unit operating from special revenue funds, or federal funds, or both, shall pay to the board their proportionate share of premium costs from their personal services budget.

3 The portion of the premium or cost attributable to all insurance coverage provided hereunder and not paid by the state shall be paid by the state employee.

4 The state employee's proportionate share of the premium or cost shall be withheld or deducted by the state from such employee's salary or wages as and when paid and such sums shall be forwarded to the board with such supporting data as the board may require.

5 All moneys received by the board shall be deposited in a special fund or funds as are necessary in the state treasury and the treasurer of the state shall be custodian of such fund or funds and shall administer such fund or funds in accordance with the provisions of this article or as the board may from time to time direct. The treasurer shall pay all warrants issued by the state auditor against such fund or funds as the board may direct in accordance with the provisions of this article.

The board is authorized to take full advantage of the benefits and provisions of any acts of Congress and to accept any and all gifts, grants and matching funds, whether in the form of money or services.

§5-16-15. Expense fund.

The Legislature shall annually appropriate such sums as may be necessary to pay the proportionate share of the administrative costs for the state as an employer, and each division, agency, board, commission or department of the state which operates out of special revenue funds or federal funds or both shall pay its proportionate share of the administrative costs of the insurance plan or plans authorized under the provisions of this article.

§5-16-16. No member or employee of board shall gain directly or indirectly from any contract or contracts provided for hereunder; criminal penalties.

No elected or appointed official of the state of West Virginia; nor any member, officer, or employees of the Legislature; nor any officer, agent, servant or employee in the executive branch of state government shall have any interest, direct or indirect, in the gain or profits arising from any contract or contracts provided for in this article. Any such person who shall gain, directly or indirectly, from any contract or contracts herein provided for, except as an insured beneficiary thereof, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not exceeding one thousand dollars, or by imprisonment in the county jail for a period not exceeding one year, or by both, in the discretion of the court.

§5-16-17. Permissive participation; exemptions.

The provisions of this article shall not be mandatory upon any employee, and nothing contained in this article-
3 shall be construed so as to compel any employee to enroll
4 in or subscribe to, any insurance plan authorized by the
5 provisions of this article.

6 Those employees enrolled in the insurance program
7 authorized under the provisions of article two-b, chapter
8 twenty-one-a of this code shall not be required to enroll
9 in or subscribe to an insurance plan or plans authorized
10 by the provisions of this article, and the employees of
11 any department which has an existing insurance pro-
12 gram for its employees to which the government of the
13 United States contributes any part or all of the premium
14 or cost thereof may be exempted from the provisions
15 of this article. Any employee exempted under the pro-
16 visions of this paragraph may enroll in any insurance
17 program authorized by the provisions of this article at
18 any time, to the same extent as any other qualified em-
19 ployee, but any such employee shall not remain enrolled
20 in both such programs. The provisions of articles four-
21 teen, fifteen and sixteen, chapter thirty-three of the code,
22 relating to group life insurance, accident and sickness
23 insurance, and group accident and sickness insurance,
24 shall not be applicable to the provisions of this article
25 whenever the provisions of said articles and chapter are
26 in conflict with or contrary to any provision set forth
27 herein.

§5-16-18. Rules and regulations for administration of article.
1 The board shall promulgate such rules and regulations
2 as may be required for the effective administration of
3 the provisions of this article. All rules and regulations
4 promulgated by the board and all hearings held by the
5 board shall be promulgated and held in accordance with
6 the provisions of chapter twenty-nine-a of the code.

1 If any provision of this article or the application thereof
2 to any person or circumstance is held unconstitutional
3 or invalid, such unconstitutionality or invalidity shall 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.
AN ACT to amend and reenact chapter one hundred forty, acts of the Legislature, regular session, one thousand nine hundred seventy-one, 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 ninety million dollars during the fiscal year ending June thirtieth, one thousand nine hundred seventy-two, for the sole purpose of raising funds for the building and construction of free state roads and highways as provided for by the constitution and the laws enacted thereunder; specifying the powers of and limitations upon the governor in the issuance and sale of such bonds; prescribing the duties of the auditor and treasurer with respect to such bonds; providing for transfer and registration fees with respect to registered bonds and the disposition of such fees; providing for places of payment of principal and interest on such bonds; exempting such bonds from taxation by the state, or by any county, district, or municipality thereof; setting forth the form of coupon and registered bonds and coupons; stating what moneys shall be paid into the state road sinking fund; providing for the disposition and investment of the state road sinking fund; providing a covenant between the state and the bondholders; providing that the proceeds from the sale of the bonds shall be paid into a separate and distinct account in the state road fund and for expenditures from such account; providing that the plates, etc., from which the bonds are produced or made shall be the property of the state; providing for interim certificates in lieu of permanent bonds; providing for the state treasurer to be financial advisor; providing for the attorney general or his duly appointed legal representa-
tive to serve as bond counsel; and providing that all necessary expenses, including legal expenses approved by the attorney general, incurred in the execution of this act shall be paid out of the state road fund on warrants of the auditor of the state drawn on the state treasurer.

Be it enacted by the Legislature of West Virginia:

ISSUANCE AND SALE OF ROAD BONDS.

§1. Road bonds; amount; when may issue.
§2. Transfer fee; registration fee; where payable; interest rate; tax exempt.
§3. Form of bond.
§4. Form of coupon.
§5. Listing by auditor.
§6. State road sinking fund sources used to pay bonds and interest; investment of remainder.
§7. Covenants of state.
§8. Sale by governor; minimum price.
§9. Proceeds paid into separate account in state road fund; expenditures.
§10. Plates, etc., property of state.
§11. Auditor to be custodian of unsold bonds.
§12. Interim certificates.
§13. State treasurer to be financial advisor; redemption of bonds.
§14. Attorney general or his duly appointed legal representative to serve as bond counsel.
§15. Approval and payment of all necessary expenses.

§1. Road bonds; amount; when may issue.

Bonds of the state of West Virginia, under authority of the Roads Development Amendment of 1968, of the par value not to exceed ninety million dollars during the fiscal year ending June thirty, one thousand nine hundred seventy-two, are hereby authorized to be issued and sold for the sole purpose of raising funds for the building and construction of free state roads and highways as provided for by the constitution and the laws enacted thereunder. Such bonds may be issued by the governor in such amounts, in coupons or registered form, in such denominations, at such time, bearing such date or dates, as the governor may determine, based upon an examination of the West Virginia department of highways' yearly program which justifies the issuance by the governor of said bonds, and shall become due and payable serially, annually or semiannually, in such amounts and
mature in such years as the governor may determine:
Provided, That such bonds shall mature within and not
exceeding twenty-five years from their date: Provided
further, That the governor shall not offer for sale more
than thirty million dollars of bonds at any one time:
Provided further, That the Governor must offer said
bonds for competitive bids from recognized financial in-
vestment institutions before said bonds may be sold.

§2. Transfer fee; registration fee; where payable; interest
rate; tax exempt.
The auditor and the treasurer are hereby authorized
to arrange for the transfer of registered bonds and for
each such transfer a fee of fifty cents shall be charged
by and paid to the state of West Virginia, to the credit
of the state road sinking fund. Bonds taken in exchange
shall be cancelled by the auditor and treasurer and be
carefully preserved by the treasurer. The treasurer shall
make provisions for registering “payable to bearer” bond
and for each bond registered a fee of fifty cents shall
likewise be charged by and paid to the state of West
Virginia, to the credit of the state road sinking fund. All
such bonds shall be payable at the office of the trea-
surer of the state of West Virginia, or, at the option of the
holder, at a bank in the city of New York to be desig-
nated by the governor, or, at the option of the holder
at such other bank or banks, within the state, as
may be designated or approved by the governor.
The bonds shall bear interest, payable semiannually,
to bearer, at the office of the treasurer of the
state of West Virginia, at the capitol of the state, or
at the banks designated and approved by the governor,
upon presentation and surrender of interest coupons,
then due, in the case of coupon bonds. For the payment
of interest on registered bonds, the treasurer of the
state of West Virginia shall requisition a warrant from
the auditor of the state to be drawn on the state trea-
surer, and shall mail such warrant to the registered
owner at the address as shown by the record of regis-
tration. Both the principal and interest of the bonds
shall be payable in lawful money of the United States.
of America and the bonds shall be exempt from taxation
by the state of West Virginia, or by any county, dis-
trict or municipality thereof, which facts shall appear
on the face of the bonds as part of the contract with the
holder thereof.

§3. Form of bond.
1 The bonds shall be executed on behalf of the state
2 of West Virginia, by the manual or facsimile signature
3 of the treasurer thereof, under the great seal of the
4 state or a facsimile thereof, and countersigned by the
5 manual or facsimile signature of the auditor of the state:
6 Provided, That one of said signatures on said bonds shall
7 be a manual signature and said bonds shall be in the
8 following form or to the following effect, as nearly as
9 may be, namely:

COUPON ROAD BOND
(Or registered road bond, as the case may be)
OF THE
STATE OF WEST VIRGINIA
$_________________ No._______________

The state of West Virginia, under and by virtue of au-
thority of an amendment to the constitution, which was
proposed by Senate Joint Resolution No. 2, adopted
the eighth day of February, one thousand nine hundred
sixty-eight, and was ratified by a vote of the people at
the general election on the fifth day of November, one
thousand nine hundred sixty-eight, which is hereby
made a part hereof as fully as if set forth at length
herein, acknowledges itself to be indebted to and hereby
promises to pay to the bearer hereof (in case of a coupon
bond) or to __________________________ or assigns (the
owner of record, in case of registered bonds) on the
______________________ day of _____________, 19______, in
lawful money of the United States of America at the
office of the treasurer of the state of West Virginia at
the capitol of said state, or, at __________________________
bank in the city of New York, or, at _________________
bank, at the option of the holder, the sum of________________
dollars, with interest thereon at __________________ per
centum per annum from the date, payable semiannually in like lawful money of the United States of America at the treasurer's office or banks aforesaid, on the first day of ___________ and the first day of ___________ of each year (and in the case of coupon bonds) according to the tenor of the annexed coupons bearing the facsimile signature of the treasurer of the state of West Virginia, upon surrender of such coupons. This bond (in case of a coupon bond) may be exchanged for a registered bond of like tenor upon application to the treasurer of the state of West Virginia.

(Redemption provisions, if any, to be inserted here)

To secure the payment of the principal and interest of this bond, the state of West Virginia covenants and agrees with the holder as follows: (1) That this bond shall constitute a direct and general obligation of the state of West Virginia; (2) that the full faith and credit of the state is pledged to secure the payment of the principal and interest of this bond; (3) that an annual state tax shall be collected in an amount sufficient to pay as it may accrue the interest on this bond and the principal thereof; and (4) that such tax shall be levied in any year only to the extent that the moneys in the state road fund irrevocably set aside and appropriated for and applied to the payment of the interest on and principal of this bond becoming due and payable in such year are insufficient therefor.

This bond is hereby made exempt from any taxation by the state of West Virginia, or by any county, district, or municipal corporation thereof.

In testimony whereof, witness the manual or facsimile signature of the treasurer of the state of West Virginia, and the manual or facsimile countersignature of the auditor of the state, hereto affixed according to law, dated the _______ day of ____________________, one thousand nine hundred ________________, and the seal of the state of West Virginia or a facsimile thereof.

--------------------------------------------------------
Treasurer of the State of West Virginia

(SEAL)
§4. Form of coupon.

The form of coupon shall be substantially as follows,
to wit:

STATE OF WEST VIRGINIA

Bond No. __________  Coupon No. __________

On the first day of ________________, 19___,
the state of West Virginia will pay to the bearer, in
lawful money of the United States of America, at the
office of the treasurer of the state, or, at ________________
bank in the city of New York, or, at ________________,
at the option of the holder, the sum of ________________
dollars, the same being semiannual interest on Road
Bond No. ________________.

Treasurer of the State of West Virginia

The signature of the treasurer to such coupon shall
be by his facsimile signature and the coupons shall be
numbered in the order of their maturity, from number
one consecutively. The bonds and coupons may be signed,
as provided in this act, by the present treasurer and
auditor, or by any of their respective successors in office,
and the bonds signed by the persons now in the office
may be sold by the governor or his successor in office
without being signed by the successor in office of the
present treasurer or auditor.

§5. Listing by auditor.

All coupons and registered bonds issued under this
act shall be separately listed by the auditor of the state
in books provided for the purpose, in each case giving
the date, number, character and amount of obligations
issued, and in case of registered bonds, the name and
post-office address of the person, firm or corporation reg-
istered as the owner thereof.

§6. State road sinking fund sources used to pay bonds and
interest; investment of remainder.

Into the state road sinking fund there shall be paid
all money from any and all appropriations made by the state from the state road fund for the purpose of paying the interest on such bonds or paying off and retiring the bonds, from transfer and registration fees as herein provided, and from any other source whatsoever which is made liable by law for the payment of the principal of such bonds or the interest thereon.

All such funds shall be kept by the treasurer in a separate account, under the designation aforesaid, and all moneys belonging to the fund shall be deposited in the state treasury to the credit thereof.

Such fund shall be applied by the treasurer of the state first to the payment of the semiannual interest on such bonds as it shall become due as herein provided. The remainder of the fund shall be turned over by the state treasurer to the state sinking fund commission, whose duty it shall be to invest the same in obligations of the government of the United States, bonds of the state of West Virginia, or any political subdivision thereof: Provided, That bonds or other obligations so purchased by the state sinking fund commission shall mature so as to provide sufficient money to pay off all bonds herein provided to be issued as they become due; and the money so paid into the state road sinking fund under the provisions of this act shall be expended for the purpose of paying the interest and principal of the bonds hereby provided for as they severally become due and payable and for no other purpose except that the fund may be invested until needed, as herein provided.

§7. Covenants of state.

The state of West Virginia covenants and agrees with the holders of the bonds issued pursuant hereto as follows: (1) That such bonds shall constitute a direct and general obligation of the state of West Virginia; (2) that the full faith and credit of the state is hereby pledged to secure the payment of the principal and interest of such bonds; (3) that an annual state tax shall be collected in an amount sufficient to pay as it may accrue the interest on such bonds and the principal
thereof; and (4) that such tax shall be levied in any
year only to the extent that the moneys in the state
road fund irrevocably set aside and appropriated for
and applied to the payment of the interest on and prin-
cipal of said bonds becoming due and payable in such
year are insufficient therefor.

§8. Sale by governor; minimum price.
1 The governor shall sell the bonds herein authorized
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 West Virginia commissioner of
6 highways, and after reviewing the program of the West
7 Virginia department of highways and subject to the limi-
tations contained in this act. All sales shall be at not less
9 than par and accrued interest. All interest coupons be-
10 coming payable prior to the sale date shall be cancelled
11 by the treasurer and rendered ineffective, before the
12 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
5 and highways provided for by the state constitution and
6 the laws enacted thereunder. Except for such sums
7 necessary for current operating balances, such account
8 shall be invested and reinvested in short-term obliga-
tions of the United States treasury: Provided, That no
9 such investment or reinvestment shall adversely affect
10 the current operating balances of such account.

§10. Plates, etc., property of state.
1 The plates, casts, dies or other forms from which the
2 bonds authorized by this act are produced or made shall
3 be the property of the state of West Virginia.

§11. Auditor to be custodian of unsold bonds.
1 The state auditor shall be the custodian of all unsold
2 bonds issued pursuant to the provisions of this act.
§12. Interim certificates.
1 The governor may authorize the issuance of interim
2 certificates to be issued to the purchasers of such bonds
3 to be held by them in lieu of permanent bonds. When
4 interim certificates are so issued, they shall become full
5 and legal obligations of the state of West Virginia under
6 all of the provisions of this act just as fully and com-
7 pletely as the permanent bonds.

§13. State treasurer to be financial advisor; redemption of
1 bonds.
2 The state treasurer shall serve as financial advisor to
3 the governor for the issuance and sale of such bonds.

§14. Attorney general or his duly appointed legal representa-
1 tive to serve as bond counsel.
2 The attorney general, or his duly appointed legal rep-
3 resentative, shall serve as bond counsel and shall be
4 responsible for the issuance of a final approving opinion
5 regarding the legality of the sale of such bonds.

§15. Approval and payment of all necessary expenses.
1 All necessary expenses, including legal expenses ap-
2 proved by the attorney general, incurred in the execution
3 of this act shall be paid out of state road fund on war-
4 rants of the auditor of the state drawn on the state
5 treasurer.

CHAPTER 16

(House Bill No. 108—By Mr. Speaker, Mr. McManus, and Mr. Seibert)

[Passed April 29, 1971; in effect July 1, 1971. Approved by the Governor.]
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-two, for the sole purpose of raising funds for the building and construction of state roads and highways as provided for by the constitution and the laws enacted thereunder; specifying the powers of and limitations upon the governor in the issuance and sale of such bonds; prescribing the duties of the auditor and treasurer with respect to such bonds; providing for transfer and registration fees with respect to registered bonds and the disposition of such fees; providing for places of payment of principal and interest on such bonds; exempting such bonds from taxation by the state, or by any county, district, or municipality thereof; setting forth the form of coupon and registered bonds and coupons; stating what moneys shall be paid into the state road sinking fund; providing for the disposition and investment of the state road sinking fund; providing a covenant between the state and the bondholders; providing that the proceeds from the sale of the bonds shall be paid into a separate and distinct account in the state road fund and for expenditures from such account; providing that the plates, etc., from which the bonds are produced or made shall be the property of the state; providing for interim certificates in lieu of permanent bonds; providing for the state treasurer to be financial advisor; providing for the attorney general or his duly appointed legal representative to serve as bond counsel; and providing that all necessary expenses, including legal expenses approved by the attorney general, incurred in the execution of this act shall be paid out of the state road fund on warrants of the auditor of the state drawn on the state treasurer.

Be it enacted by the Legislature of West Virginia:

ISSUANCE AND SALE OF ROAD BONDS.

§1. Road bonds; amount; when may issue.
§2. Transfer fee; registration fee; where payable; interest rate; tax exempt.
§3. Form of bond.
§4. Form of coupon.
§5. Listing by auditor.
§6. State road sinking fund sources used to pay bonds and interest; investment of remainder.
§7. Covenants of state.
§8. Sale by governor; minimum price.
§9. Proceeds paid into separate account in state road fund; expenditures.
§10. Plates, etc., property of state.
§11. Auditor to be custodian of unsold bonds.
§12. Interim certificates.
§13. State treasurer to be financial advisor; redemption of bonds.
§14. Attorney general or his duly appointed legal representative to serve as bond counsel.
§15. Approval and payment of all necessary expenses.

§1. Road bonds; amount; when may issue.

Bonds of the state of West Virginia, under authority of the Better Roads Amendment of 1964, of the par value not to exceed twenty million dollars during the fiscal year ending June thirty, one thousand nine hundred seventy-two, are hereby authorized to be issued and sold for the sole purpose of raising funds for the building and construction of state roads and highways as provided for by the constitution and the laws enacted thereunder. Such bonds may be issued by the governor in such denominations, at such time, bearing such date or dates as the governor may determine, based upon an examination of the West Virginia department of highways’ yearly program which justifies the issuance by the governor of said bonds, and shall become due and payable serially, annually or semiannually, in such amounts and mature in such years as the governor may determine: Provided, That such bonds shall mature within and not exceeding twenty-five years from their date: Provided further, That the Governor must offer said bonds for competitive bids from recognized financial investment institutions before said bonds may be sold.

§2. Transfer fee; registration fee; where payable; interest rate; tax exempt.

The auditor and the treasurer are hereby authorized to arrange for the transfer of registered bonds and for each such transfer a fee of fifty cents shall be charged by and paid to the state of West Virginia, to the credit
of the state road sinking fund. Bonds taken in exchange shall be cancelled by the auditor and treasurer and be carefully preserved by the treasurer. The treasurer shall make provisions for registering "payable to bearer" bonds, and for each bond registered a fee of fifty cents, shall likewise be charged by and paid to the state of West Virginia, to the credit of the state road sinking fund. All such bonds shall be payable at the office of the treasurer of the state of West Virginia, or, at the option of the holder, at a bank in the city of New York to be designated by the governor, or, at the option of the holder at such other bank or banks, within the state, as may be designated or approved by the governor. The bonds shall bear interest, payable semiannually, to bearer, at the office of the treasurer of the state of West Virginia, at the capitol of the state, or at the banks designated and approved by the governor, upon presentation and surrender of interest coupons then due, in the case of coupon bonds. For the payment of interest on registered bonds, the treasurer of the state of West Virginia shall requisition a warrant from the auditor of the state to be drawn on the state treasurer, and shall mail such warrant to the registered owner at the address as shown by the record of registration. Both the principal and interest of the bonds shall be made payable in lawful money of the United States of America and the bonds shall be exempt from taxation by the state of West Virginia, or by any county, district, or municipality thereof, which facts shall appear on the face of the bonds as part of the contract with the holder thereof.

§3. Form of bond.

The bonds shall be executed on behalf of the state of West Virginia, by the manual or facsimile signature of the treasurer thereof, under the great seal of the state or a facsimile thereof, and countersigned by the manual or facsimile signature of the auditor of the state: Provided, that one of said signatures on said bonds shall be a manual signature and said bonds shall be in the following form or to the following effect, as nearly as may be, namely:
COUPON ROAD BOND

(Or registered road bond, as the case may be)

OF THE

STATE OF WEST VIRGINIA

$_______  No._______

The state of West Virginia, under and by virtue of
authority of an amendment to the constitution, which
was proposed by House Joint Resolution No. 10, adopted
the seventh day of March, one thousand nine hundred
sixty-three, and was ratified by a vote of the people
at the general election on the third day of November,
one thousand nine hundred sixty-four, which is here-
by made a part hereof as fully as if set forth at length
herein, acknowledges itself to be indebted to and hereby
promises to pay to the bearer hereof (in case of a coupon
bond) or to __________________ or assigns (the owner
of record, in case of registered bonds) on the ______ day
of __________________, 19____, in lawful money of the
United States of America at the office of the treasurer
of the state of West Virginia at the capitol of said state,
or, at ______________________ bank in the city of
New York, or, at ______________________ bank, at the
option of the holder, the sum of ___________ dollars,
with interest thereon at ____ per centum per annum
from the date, payable semiannually in like lawful money
of the United States of America at the treasurer's office
or banks aforesaid, on the first day of ___________ and
the first day of ___________ of each year (and in
the case of coupon bonds) according to the tenor of
the annexed coupons bearing the facsimile signature
of the treasurer of the state of West Virginia, upon sur-
render of such coupons. This bond (in case of a coupon
bond) may be exchanged for a registered bond of like
tenor upon application to the treasurer of the state of
West Virginia.

(Random redemption provisions, if any, to be inserted here)

To secure the payment of the principal and interest
of this bond, the state of West Virginia covenants and
agrees with the holder as follows: (1) That this bond
shall constitute a direct and general obligation of the
state of West Virginia; (2) that the full faith and credit of the state is pledged to secure the payment of the principal and interest of this bond; (3) that an annual state tax shall be collected in an amount sufficient to pay as it may accrue the interest on this bond and the principal thereof; and (4) that such tax shall be levied in any year only to the extent that the moneys in the state road fund irrevocably set aside and appropriated for and applied to the payment of the interest on and principal of this bond becoming due and payable in such year are insufficient therefor.

This bond is hereby made exempt from any taxation by the state of West Virginia, or by any county, district, or municipal corporation thereof.

In testimony whereof, witness the manual or facsimile signature of the treasurer of the state of West Virginia, and the manual or facsimile countersignature of the auditor of the state, hereto affixed according to law, dated the _____ day of __________, one thousand nine hundred_______, and the seal of the state of West Virginia or a facsimile thereof.

Treasurer of the State of West Virginia

(SEAL)

Countersigned:

Auditor of the State of West Virginia

§4. Form of coupon.

The form of coupon shall be substantially as follows,

STATE OF WEST VIRGINIA

Bond No. __________  Coupon No.________

On the first day of ____________, 19__, the state of West Virginia will pay to the bearer, in lawful money of the United States of America, at the office of the treasurer of the state, or, at ________________ bank in the city of New York, or, at ________________, at the option of the holder, the sum of ________________
dollars, the same being semiannual interest on Road
Bond No. ____________.

Treasurer of the State of West Virginia

The signature of the treasurer to such coupon shall
be by his facsimile signature and the coupons shall be
numbered in the order of their maturity, from number
one consecutively. The bonds and coupons may be
signed, as provided in this act, by the present treasurer
and auditor, or by any of their respective successors
in office, and the bonds signed by the persons now in
the office may be sold by the governor or his successor
in office without being signed by the successor in office
of the present treasurer or auditor.

§5. Listing by auditor.

All coupons and registered bonds issued under this
act shall be separately listed by the auditor of the state
in books provided for the purpose, in each case giving
the date, number, character and amount of obligations
issued, and in case of registered bonds, the name and
post-office address of the person, firm or corporation
registered as the owner thereof.

§6. State road sinking fund sources used to pay bonds and
interest; investment of remainder.

Into the state road sinking fund there shall be paid
all money from any and all appropriations made by
the state from the state road fund for the purpose of
paying the interest on such bonds or paying off and
retiring the bonds, from transfer and registration fees
as herein provided, and from any other source what-
soever which is made liable by law for the payment
of the principal of such bonds or the interest thereon.

All such funds shall be kept by the treasurer in a
separate account, under the designation aforesaid, and
all money belonging to the fund shall be deposited in
the state treasury to the credit thereof.

Such fund shall be applied by the treasurer of the
state first to the payment of the semiannual interest
on such bonds as it shall become due as herein pro-
The remainder of the fund shall be turned over by the state treasurer to the state sinking fund commission, whose duty it shall be to invest the same in obligations of the government of the United States, bonds of the state of West Virginia, or any political subdivision thereof: Provided, That bonds or other obligations so purchased by the state sinking fund commission shall mature so as to provide sufficient money to pay off all bonds herein provided to be issued as they become due; and the money so paid into the state road sinking fund under the provisions of this act shall be expended for the purpose of paying the interest and principal of the bonds hereby provided for as they severally become due and payable and for no other purpose except that the fund may be invested until needed, as herein provided.

§7. Covenants of state.

The state of West Virginia covenants and agrees with the holders of the bonds issued pursuant hereto as follows: (1) That such bonds shall constitute a direct and general obligation of the state of West Virginia; (2) that the full faith and credit of the state is hereby pledged to secure the payment of the principal and interest of such bonds; (3) that an annual state tax shall be collected in an amount sufficient to pay as it may accrue the interest on such bonds and the principal thereof; and (4) that such tax shall be levied in any year only to the extent that the moneys in the state road fund irrevocably set aside and appropriated for and applied to the payment of the interest on and principal of said bonds becoming due and payable in such year are insufficient therefor.

§8. Sale by governor; minimum price.

The governor shall sell the bonds herein authorized at such time or times as he may determine necessary to provide funds for the building and construction of state roads and highways, as herein provided, upon the recommendation of the West Virginia commissioner of highways, and after reviewing the program of the West
Virginia department of highways and subject to the limitations contained in this act. All sales shall be at not less than par and accrued interest. All interest coupons becoming payable prior to the sale date shall be cancelled by the treasurer and rendered ineffective, before the delivery of the bonds so sold.

§9. Proceeds paid into separate account in state road fund; expenditures.

The proceeds of all sales of bonds herein authorized shall be paid into a separate and distinct account in the state road fund and shall be used and appropriated solely for the building and construction of state roads and highways provided for by the state constitution and the laws enacted thereunder. Except for such sums necessary for current operating balances, such account shall be invested and reinvested in short-term obligations of the United States treasury: Provided, That no such investment or reinvestment shall adversely affect the current operating balances of such account.

§10. Plates, etc., property of state.

The plates, casts, dies or other forms from which the bonds authorized by this act are produced or made shall be the property of the state of West Virginia.

§11. Auditor to be custodian of unsold bonds.

The state auditor shall be the custodian of all unsold bonds issued pursuant to the provisions of this act.

§12. Interim certificates.

The governor may authorize the issuance of interim certificates to be issued to the purchasers of such bonds to be held by them in lieu of permanent bonds. When interim certificates are so issued, they shall become full and legal obligations of the state of West Virginia under all of the provisions of this act just as fully and completely as the permanent bonds.

§13. State treasurer to be financial advisor; redemption of bonds.

The state treasurer shall serve as financial advisor to the governor for the issuance and sale of such bonds.
§14. Attorney general or his duly appointed legal representative to serve as bond counsel.

1 The attorney general, or his duly appointed legal representative, shall serve as bond counsel and shall be responsible for the issuance of a final approving opinion regarding the legality of the sale of such bonds.

§15. Approval and payment of all necessary expenses.

1 All necessary expenses, including legal expenses approved by the attorney general, incurred in the execution of this act shall be paid out of state road fund on warrants of the auditor of the state drawn on the state treasurer.

CHAPTER 17

(Senate Bill No. 1—By Mr. McCourt, Mr. President, and Mr. Carrigan)

[Passed April 28, 1971; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty, article two-a, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to relocation assistance to and replacement housing costs for persons dislocated by highway construction.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2A. WEST VIRGINIA COMMISSIONER OF HIGHWAYS.

§17-2A-20. Relocation assistance to and replacement housing costs for persons dislocated by highway construction.

1 The payment of relocation costs and replacement housing costs to persons dislocated by highway construction
is hereby declared to be a cost of highway construction
and may be paid from the state road fund, subject to the
provisions of this section. The commissioner of highways
shall make the payments authorized by this section to
reduce hardships to persons so dislocated. In addition, the
commissioner shall render advisory assistance to persons
affected and shall call upon and coordinate the services
of such other agencies of state and local government as
may be capable of rendering such assistance to reduce
hardships to persons affected and to reduce delays in
highway construction. In rendering such advisory as-
sistance, the commissioner may accumulate and maintain
lists of various kinds of properties available to which per-
sons affected may be relocated, and acquire and file such
other information and take such other action as may be
necessary to render such advisory assistance. With re-
spect to persons dislocated by federal-aid highway
projects, the commissioner shall provide a relocation as-
sistance program which will comply with and implement
the federal laws and regulations relating to relocation
assistance to displaced persons.

Any individual, family, business concern (including the
operation of a farm) or nonprofit organization to be dis-
placed by a highway construction project shall be com-
pensated consistent with the provisions and limitations of
this section for reasonable and necessary costs to be in-
curred in consequence of being so displaced. When a
family is displaced, no additional payments shall be made
to individuals who are members of such family; but, if
two or more displaced families occupy the same dwelling
or comprise a single household, each family within such
dwelling or household may receive relocation costs as
provided in this section. Payments under this section
are subject to the following limitations and to any rules
and regulations made by the commissioner as herein
authorized:

(1) With respect to state highway projects not on the
federal-aid highway system:

(a) Payments shall not exceed two hundred dollars in
the case of a family or an individual, or three thousand
dollars in the case of a business concern (including the
operation of a farm) or nonprofit organization.

(b) In the case of a business concern (including the
operation of a farm) and in the case of a nonprofit
organization, the allowable expense for transportation
under this section shall not exceed the reasonable and
necessary cost of moving fifty miles from the point from
which such business or organization is being displaced
and no expenses shall be allowed if a substantial portion
of such business or organization is to be relocated outside
the state.

(2) With respect to federal-aid highway projects, the
commissioner shall have authority to make such payments
for relocation costs, replacement housing costs, including
the increased interest costs which the displaced person
is required to pay for financing the acquisition of a com-
parable replacement dwelling, and reasonable expenses
incurred by such displaced person for evidence of title,
recording fees, and other closing costs incident to the
purchase of the replacement dwelling, and expenses inci-
dental to the transfer of property as are authorized by
the federal laws and regulations relating to relocation
payments to displaced persons.

The commissioner shall establish by rules and regula-
tions a procedure for the payment of relocation costs
within the limits of and consistent with the policies of
this section. Such rules and regulations may authorize
lump sum payments to individuals or families, in lieu of
their respective provable costs, based upon the size of
the dwelling being vacated or the number of persons
being affected or any other reasonable basis. The com-
missioner may authorize the obligations of or payment of
relocation costs in advance of expenditure for relocation
by any person, firm or organization eligible to receive
such payment where such advance obligation or payment
would speed the clearance of highway construction sites
or reduce hardships.

With respect to federal-aid highway projects, the com-
missioner shall also have authority to comply with the
federal laws and regulations relating to providing re-
placement housing.
Nothing contained in this section or in the federal laws and regulations relating to relocation assistance and payments to displaced persons shall be construed as creating in any condemnation proceedings brought under the power of eminent domain, any element of damages not in existence on the effective date of this section or of the federal laws and regulations relating to relocation assistance and payments to displaced persons.

CHAPTER 18

(Senate Bill No. 21—Originating in the Senate Committee on Finance)

[Passed April 29, 1971; in effect ninety days from passage. Approved by the Governor.]

AN ACT transferring an amount between items of the total appropriation of a state spending unit as appropriated by chapter six, acts of the Legislature, regular session, one thousand nine hundred seventy-one, known as the "Budget Bill".

Be it enacted by the Legislature of West Virginia:

That an item of the total appropriation of Account No. 670, chapter six, acts of the Legislature, regular session, one thousand nine hundred seventy-one, be transferred so as to read as follows:

109—State Department of Highways

Acct. No. 670

TO BE PAID FROM STATE ROAD FUND

1 Out of the above appropriations there shall be transferred from Line Item 10, Nonfederal Aid Construction an amount of $900,000.00 which shall be expended for the replacement of Bridge No. 1406 on Alternate Route Three, spanning the New River at Hinton, West Virginia, Summers County.
AN ACT to amend and reenact sections two, three, seven and eight, chapter one hundred seventy-six, acts of the Legislature, regular session, one thousand nine hundred forty-seven; and to further amend said chapter by adding thereto a new section, designated section ten, all relating to University high school, erected on the grounds of West Virginia University in Morgantown, Monongalia county, West Virginia, and providing that the West Virginia board of regents is authorized to transfer the property used for said high school to the board of education of the county of Monongalia for continued use for school purposes if the board of education should agree to assume all the duties, obligations and responsibilities of the board of regents in regard to said high school.

Be it enacted by the Legislature of West Virginia:

That sections two, three, seven and eight, chapter one hundred seventy-six, acts of the Legislature, regular session, one thousand nine hundred forty-seven, be amended and reenacted; and that said chapter be further amended by adding thereto a new section, designated section ten, all to read as follows:

UNIVERSITY HIGH SCHOOL.

§2. Selection of name.
§3. Control and supervision.
§7. Payment for maintenance and instruction.
§10. Lease of property; transfer of duties and responsibilities.

§2. Selection of name.

1 The name of the said high school shall be selected joint-
2 ly by the West Virginia board of regents and the board of
3 education of the county of Monongalia.
§3. Control and supervision.
1 The board of regents and any other controlling authorities of the university, as provided by law, shall have general control and supervision of the said high school as a part of West Virginia University.

§7. Payment for maintenance and instruction.
1 The board of education of the county of Monongalia shall pay for maintenance and instruction of pupils enrolled in the said high school a tuition fee of one half of the average per capita cost for instruction and maintenance, exclusive of transportation costs, in high schools of West Virginia, as determined by the last preceding report of the state superintendent of schools of West Virginia. The board of regents and any other authorities of the university, as provided by law, shall provide the remainder of the cost of maintenance and instruction.

1 With the approval of the board of regents and any other authorities provided by law, the board of education of the county of Monongalia shall have the right to lay a levy for the erection of such additions and buildings as may be deemed necessary by all parties concerned to provide adequate facilities for said high school.

§10. Lease of property; transfer of duties and responsibilities.
1 The board of regents and the board of education of the county of Monongalia are hereby authorized to enter into an agreement, not to become effective prior to July one, one thousand nine hundred seventy-two, whereby the board of regents shall lease for a term not to exceed fifty years all of the property, real, personal and mixed, used in the operation of said high school to the board of education of the county of Monongalia in exchange for the promise of the board of education to assume by the end of two years all the duties, obligations and responsibilities of the board of regents in regard to said high school during the term of such lease.

If such an agreement is made by the two boards, the board of regents is hereby authorized to execute all deeds
of lease and other instruments necessary to lease said
high school property. In case of any such lease, the as-
sumption of the duties, obligations and responsibilities by
the board of education shall include the obligation without
any contribution from the board of regents after two
years, to continue to use said property as and for a high
school, or other school purposes in Monongalia county for
the term of the lease unless it should later be of the
opinion that it is not in the best interests of the citizens of
such county to continue such use.

In case of any such lease and transfer of duties, obliga-
tions and responsibilities, the principal, teachers and
members of the clerical and custodial staffs of said high
school shall become the employees of the board of educa-
tion and shall have the same rights in regard to such em-
ployment, tenure and retirement benefits that they would
have had if they had been employed by the board of edu-
cation at the time they were employed by the board of
regents or its predecessors. For the purpose of computing
state aid for the board of education of the county of
Monongalia for the fiscal year beginning after any such
lease and transfer of duties, obligations and responsi-
bilities, the state board of school finance shall count all
instructional personnel in said high school as if they had
been employed solely by said board of education during
the preceding fiscal year.

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RESOLUTION

HOUSE JOINT RESOLUTION NO. 1

(By Mr. Speaker, Mr. McManus, and Mr. Seibert)

[Adopted April 28, 1971.]

Ratifying the proposed amendment to the Constitution of the
United States extending the right to vote to citizens
eighteen years of age or older.

WHEREAS, The Ninety-second Congress of the United States
of America at its first session by a constitutional two-thirds vote
in both Houses adopted a Joint Resolution proposing an amend-
Proposing an amendment to the Constitution of the United States extending the right to vote to citizens eighteen years of age or older.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein),

That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within seven years from the date of its submission by the Congress:

ARTICLE

SECTION 1. The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age.

SEC. 2. The Congress shall have power to enforce this article by appropriate legislation.

Therefore, be it

Resolved by the Legislature of West Virginia:

That the Legislature of the State of West Virginia hereby ratifies this proposed amendment to the Constitution of the United States; and, be it

Resolved further, That the Secretary of State of the State of West Virginia notify the Administrator of General Services, Washington, D. C., the President of the Senate of the United States and the Speaker of the House of Representatives of the United States of this action by forwarding to each of them a certified copy of this Joint Resolution adopted by the West Virginia Legislature.
AN ACT transferring amounts between items of the total appropriation for the West Virginia alcohol beverage control account, as appropriated by chapter five, acts of the Legislature, regular session, one thousand nine hundred seventy, known as the Budget Bill.

WHEREAS, The alcohol beverage control commissioner has indicated a need to transfer specific amounts between items of appropriation heretofore made by the Legislature for such spending unit; and

WHEREAS, Such transfers are necessary in order to protect or to increase the efficiency of the service of such spending unit; therefore,

Be it enacted by the Legislature of West Virginia:

That items of the total appropriation of Account No. 837, chapter five, acts of the Legislature, regular session, one thousand nine hundred seventy, be transferred so as to read as follows:

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

TO BE PAID FROM SPECIAL REVENUE FUND

1 Other Personal Services $3,922,000.00
2 Current Expenses 1,024,098.00

[ 1099 ]
The foregoing constitute transfers of amounts from one item of appropriation to another item of appropriation within the total appropriation of the 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. 7—By Mr. Speaker, Mr. Boiarsky, and Mr. Seibert)

[Passed August 21, 1970; in effect from passage. Approved by the Governor.]

AN ACT to repeal sections thirty-two, thirty-five, thirty-six, thirty-seven and thirty-eight, article three, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and to amend said article by adding thereto six new sections, designated sections thirty-two, thirty-five, thirty-six, thirty-seven, thirty-eight and forty-seven, relating to the purchasing division of the department of finance and administration; relating to the furnishing of paper stock to contractor for state printing and prohibiting the furnishing of paper stock unless all bidders are notified in advance of the prices at which the state will supply such stock and prohibiting the furnishing of paper stock for other than state work under contract; prohibiting the commissioner of such department and the employees of such department from having any financial interest or any beneficial personal interest in the purchase of any commodities or printing or in any vendor furnishing them; prohibiting the commissioner of such department and the employees of such department from accepting or receiving any money or other thing of value, or any promise, obligation or contract for future reward, or compensation; expressly making bribery statute applicable; prohibiting the obtaining from the state under any contract made under the article by false pretense, token or
representation, or by delivery of inferior commodities, with intent to defraud, any money, goods or other property; prohibiting corrupt combinations, collusions or conspiracies in connection with the purchasing or supplying of commodities or printing; making various violations unlawful; and providing criminal penalties.

_Be it enacted by the Legislature of West Virginia:_

That sections thirty-two, thirty-five, thirty-six, thirty-seven and thirty-eight, article three, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed, and that said article be amended by adding thereto six new sections, designated sections thirty-two, thirty-five, thirty-six, thirty-seven, thirty-eight and forty-seven, to read as follows:

**ARTICLE 3. PURCHASING DIVISION.**

§SA-3-32. Furnishing paper stock to contractor for state printing.

§SA-3-35. Financial interest of commissioner, etc.; receiving reward from interested party; penalty; application of bribery statute.

§SA-3-36. Penalty for violation of article.

§SA-3-37. Obtaining money and property under false pretenses or by fraud from state; penalties.

§SA-3-38. Corrupt combinations, collusions or conspiracies prohibited; penalties.

§SA-3-47. Severability.

§SA-3-32. Furnishing paper stock to contractor for state printing.

1 Paper stock, if furnished by the state to the contractor, shall be billed at the current market price for the grade furnished in the quantity furnished. It shall be unlawful and discriminatory for the director to furnish the contractor with paper for any state work, unless all bidders are notified in advance of placing their bids of the prices at which the state will supply such stock. It shall also be unlawful for the director to furnish to the contractor any paper for other than the state work under contract.
§5A-3-35. Financial interest of commissioner, etc.; receiving reward from interested party; penalty; application of bribery statute.

Neither the commissioner, nor any employee of the department of finance and administration, shall be financially interested, or have any beneficial personal interest, directly or indirectly, in the purchase of any commodities or printing, nor in any firm, partnership, corporation or association furnishing them. Neither the commissioner nor any employee of said department shall accept or receive directly or indirectly from any person, firm or corporation, known by such commissioner or employee to be interested in any bid, contract or purchase, by rebate, gift or otherwise, any money or other thing of value whatsoever, or any promise, obligation or contract for future reward, or compensation.

A person who violates this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be confined in jail not less than three months nor more than one year, or fined not less than fifty nor more than one thousand dollars, or both, in the discretion of the court: Provided, That any person who violates any of the provisions of the last sentence of the first paragraph of this section under circumstances constituting the crime of bribery under the provisions of section three, article five-a, chapter sixty-one of this code, shall, upon conviction of bribery, be punished as provided in said article five-a.

§5A-3-36. Penalty for violation of article.

Any person who violates a provision of this article, except where another penalty is prescribed, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be confined in jail not less than ten days nor more than one year, or fined not less than ten nor more than five hundred dollars, or both, in the discretion of the court.
§5A-3-37. Obtaining money and property under false pretenses or by fraud from state; penalties.

1. It shall be unlawful for any person to obtain from the state under any contract made under the provisions of this article, by false pretense, token or representation, or by delivery of inferior commodities, with intent to defraud, any money, goods or other property, and upon violation thereof, such person shall be guilty of a felony, and, upon conviction thereof, shall be confined in the penitentiary not less than one year nor more than five years, and be fined not exceeding one thousand dollars.

§5A-3-38. Corrupt combinations, collusions or conspiracies prohibited; penalties.

1. It shall be unlawful for any person to corruptly combine, collude or conspire with one or more other persons with respect to the purchasing or supplying of commodities or printing to the state under the provisions of this article if the purpose or effect of such combination, collusion or conspiracy is either to (1) lessen competition among prospective vendors, or (2) cause the state to pay a higher price for such commodities or printing than would be or would have been paid in the absence of such combination, collusion or conspiracy, or (3) cause one prospective vendor or vendor to be preferred over one or more other prospective vendors or vendors. Any person who violates any provision of this section shall be guilty of a felony, and, upon conviction thereof, shall be confined in the penitentiary not less than one nor more than five years, and be fined not exceeding five thousand dollars.

§5A-3-47. Severability.

1. If any provision of this article or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the article, and to this end the provisions of this article are declared to be severable.
CHAPTER 3

(Com. Sub. for House Bill No. 8—By Mr. Speaker, Mr. Boiarsky, and Mr. Seibert)

[Passed August 22, 1970; in effect from passage. Approved by the Governor.]

AN ACT to amend chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article five-a, relating to bribery and other corrupt practices; adopting a bribery and corrupt practices act; defining certain words and phrases used in said act; specifying and defining the crime of bribery in official and political matters; prohibiting pecuniary benefit for past behavior of any public servant; prohibiting threats in official and political matters; prohibiting gifts or gratuities to public servants under certain circumstances; interrelating section thirty-five, article three, chapter five-a of said code; providing certain exceptions with respect to the prohibition against such gifts or gratuities; prohibiting trading in public office; specifying matters not to constitute defense; providing criminal penalties; disqualifying one for office or for a position of honor, trust or profit upon conviction; providing a six-year statute of limitations for misdemeanor offenses under said article five-a; providing a rule of construction to make it clear that certain other code provisions shall not be affected by said article five-a; specifying that the enactment of said article five-a shall not affect offenses committed under sections four, five, six and seven, article five, chapter sixty-one of said code; and providing a severability clause.

Be it enacted by the Legislature of West Virginia:

That chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article five-a, to read as follows:
ARTICLE 5A. BRIBERY AND CORRUPT PRACTICES.


§61-5A-6. Gifts or gratuities to public servants prohibited; exceptions.


§61-5A-10. Construction; certain other code provisions not affected; article not to affect offenses committed under other statutory provisions.


This article shall be known and may be cited as the "Bribery and Corrupt Practices Act".


The following words and phrases when used in this article shall have the meanings respectively ascribed to them in this section unless the context clearly requires a different meaning:

(1) "Government" includes the state, the state or any county board of education, or any county or municipality of the state;

(2) "Public servant" means any officer (whether executive, judicial, legislative or ministerial, and whether elected or appointed) or employee of the state, or of the state or any county board of education, or of any county or municipality of the state, including without in any way limiting the generality of the foregoing, commissioners of a court, justices of the peace, law-enforcement officers, and any person participating as juror; or any candidate for election to any state, county or local public office; but the term does not include witnesses;

(3) "Party official" means (i) a person who holds an office or position in a political party or political party
committee, whether by election, appointment or otherwise, by virtue of which he directs or conducts, or participates in directing or conducting party affairs at any level of responsibility (including, but not limited to, a treasurer of a political party committee), or (ii) a committee or any member thereof advancing the interests of any political party or candidate for election to any state, county or local public office (including, but not limited to, a financial agent as that term is now defined in chapter three of this code) or working for or against the approval of a public question by the voters at any election;

(4) "Administrative proceeding" means any adversary proceeding before any public servant, involving the exercise of administrative authority, and said term shall not be construed as including any legislative proceeding;

(5) "Judicial proceeding" means (i) any proceeding before any court or commissioner thereof or justice of the peace, or (ii) any quasi-judicial proceeding before a board, commission or public servant, the outcome of which is required to be based on a record or documentation prescribed by law;

(6) "Legislative proceeding" means any proceeding before the Legislature or either house or any committee thereof;

(7) "Official action" means a decision, award of contract, judgment, opinion, report, recommendation, vote, or other exercise of discretion;

(8) "Benefit" means a gain or advantage, or anything regarded, or which might reasonably be regarded, by the beneficiary as a gain or advantage, including a gain or advantage to any other person; and "pecuniary benefit" means a benefit in the form of money, tangible or intangible property, commercial interests or anything else the primary significance of which is economic gain; but the terms "benefit" and "pecuniary benefit" shall not be construed so as to include (a) salary, fees and other compensation and expenses paid by the government or political party or political party committee in behalf of which the official action or legal duty is per-
formed, or (b) concurrence in official action in the course of legitimate compromise among public servants, or (c) wages, salary or fees or other compensation paid to a public servant when the reason for such payment is not to affect his official impartiality;

(9) "Harm" means loss to a person, physical injury of a person or injury to the property of a person, including loss to, physical injury of or injury to the property of any other person in whose welfare he is interested;

(10) "Approval" means recommendation, failure to disapprove, or any other manifestation of favor or acquiescence; and

(11) "Disapproval" means failure to approve, or any other manifestation of disfavor or nonacquiescence.


1 A person is guilty of bribery under the provisions of this section if he offers, confers or agrees to confer to or upon another, or solicits, accepts or agrees to accept from another, directly or indirectly:

1 (1) Any pecuniary benefit as consideration for the recipient's official action as a public servant or party official; or

1 (2) Any benefit as consideration for the recipient's official action as a public servant in an administrative or judicial proceeding; or

1 (3) Any benefit as consideration for a violation of a legal duty as a public servant or party official.

1 A person is also guilty of bribery under the provisions of this section if he agrees to render or not to render official action as a public servant or party official as consideration for a pecuniary benefit being offered or conferred to or upon, or as consideration for a promise that a pecuniary benefit shall be offered or conferred to or upon, another person or a party official or a political party.


1 (a) It shall be unlawful for any person to solicit, accept or agree to accept, directly or indirectly, a pecuniary benefit for:
(1) Having engaged in official action as a public servant; or
(2) Having violated a legal duty as a public servant.
(b) It shall also be unlawful for any person to offer, confer or agree to confer, directly or indirectly, a pecuniary benefit, the receipt of which is prohibited by subsection (a) of this section.

1 It shall be unlawful for any person to threaten harm to another with intent to influence the official action of a public servant in a pending or prospective administrative or judicial proceeding before such public servant, or with intent to influence a public servant or party official to violate his legal duty as a public servant or party official.

§61-5A-6. Gifts or gratuities to public servants prohibited; exceptions.
(a) It shall be unlawful:
(1) For any public servant in any department, agency, division, board, bureau or commission of government exercising regulatory functions, or conducting inspections or investigations, or carrying on civil or criminal litigation on behalf of the government, or having custody of prisoners, to solicit, accept or agree to accept, directly or indirectly, any gift or gratuity from a person known by such public servant to be subject to such regulation, inspection, investigation or custody, or against whom such litigation is known by such public servant to be pending or contemplated; or
(2) For any public servant (except an officer or employee of the department of finance and administration who shall be subject to the prohibitions contained in section thirty-five, article three, chapter five-a of this code) having any official action to perform in connection with bids, contracts, purchases, claims or other pecuniary transactions of the government to solicit, accept or agree to accept, directly or indirectly, any gift or gratuity from any person known by such public servant to be interested in any such bid, contract, purchase, claim or transaction; or
(3) For any public servant having administrative or judicial authority and for any public servant employed by or in an agency or court or other body having such authority, or participating in the enforcement of its decisions, to solicit, accept or agree to accept, directly or indirectly, any gift or gratuity from a person known by such public servant to be interested in any matter before such public servant or an agency, court or body with which he is associated; or

(4) For any public servant in the legislative branch of government to solicit, accept or agree to accept, directly or indirectly, any gift or gratuity from any person known by such public servant to be interested in a bill, transaction or proceeding before the Legislature or either house thereof or any agency or committee thereof; or

(5) For any person to offer, give, or agree to give any gift or gratuity prohibited by the provisions of subdivisions (1), (2), (3) or (4) of this subsection (a).

(b) The prohibitions contained in subsection (a) of this section shall not apply to (1) gifts or gratuities conferred on account of kinship or other personal, professional or business relationship independent of the official status of the recipient; or (2) trivial gifts or gratuities involving no substantial risk of affecting official impartiality; or (3) social, professional or business entertainment involving no substantial risk of affecting official impartiality. The prohibitions contained in subdivisions (1), (2), (3) and (4) of subsection (a) of this section shall not apply to campaign contributions made for use in meeting campaign expenses by any public servant by or for whom a certificate of candidacy has been filed for election to the same or another public office for which such campaign is to be conducted, if such campaign contributions are made after the filing of such certificate of candidacy, if no part of such campaign contributions inures to the private financial gain of any public servant, and, when the provisions of article eight, chapter three of this code are applicable to the public office being sought, if such campaign contributions are within the limits specified in said article eight, are
reported as campaign contributions pursuant to the provisions of said article eight, and are not otherwise prohibited by said chapter three. The prohibitions contained in subdivision (5) of subsection (a) of this section shall not apply to campaign contributions made for use in meeting campaign expenses by any public servant by or for whom a certificate of candidacy has been filed for election to the same or another public office for which such campaign is to be conducted, if such campaign contributions are made after the filing of such certificate of candidacy, if the person offering, giving or agreeing to give such campaign contributions does not intend that any part of such campaign contributions inure to the private financial gain of any public servant, and, when the provisions of article eight, chapter three of this code are applicable to the public office being sought, if such campaign contributions are within the limits specified in said article eight, are not otherwise prohibited by said chapter three and if the person offering, giving or agreeing to give such campaign contributions does not intend that such contributions not be reported as campaign contributions pursuant to said article eight.


1 It shall be unlawful for any person to solicit, accept or agree to accept, or agree that any political party or political party committee or other person shall accept, or offer, confer or agree to confer, any pecuniary benefit as consideration for approval or disapproval by a public servant or party official of a person for appointment, employment, advancement or retention as a public servant or for nomination as a candidate for public office.


1 It shall be no defense to any prosecution under the provisions of section three or section five of this article that a person whom the actor sought to influence or otherwise affect or deal with was not qualified to act in the desired way, whether because he was a candidate for office, or had not yet assumed office or his position
of employment, or lacked authority or jurisdiction, or
the matter was not yet before him, or for any other
reason was not qualified to act in the desired way.

§61-5A-9. Penalties; disqualification to hold office; statute of
limitations for misdemeanor offenses.

(a) Any person who violates any of the provisions
of section three of this article shall be guilty of a felony,
and, upon conviction thereof, shall be punished, if an
individual, by imprisonment in the penitentiary not less
than one nor more than ten years, and, if a corporation,
by a fine of not exceeding fifty thousand dollars. Any
person convicted of violating any of the provisions of
section three of this article shall also be forever dis-
qualified from holding any office or position of honor,
trust or profit of government in this state.

(b) Any person who violates any of the provisions
of section four of this article shall be guilty of a mis-
demeanor, and, upon conviction thereof, shall be punished
by confinement in jail not less than three months nor
more than one year or by a fine of not exceeding five
thousand dollars or, in the discretion of the court, by
both such confinement and fine.

(c) Any person who violates any of the provisions
of section five of this article shall be guilty of a mis-
demeanor, and, upon conviction thereof, shall be pun-
ished by confinement in jail not less than three months
nor more than one year or by a fine of not exceeding
five thousand dollars or, in the discretion of the court,
by both such confinement and fine, unless such person
threatened to commit a crime or made a threat with
the purpose to influence an administrative or judicial
proceeding, in which event, he shall, upon conviction
thereof, be guilty of a felony and shall be punished as
specified in subsection (a) of this section for a violation
of any of the provisions of section three of this article.

(d) Any person who violates any of the provisions
of section six or section seven of this article shall be
guilty of a misdemeanor, and, upon conviction thereof,
shall be punished by confinement in jail not less than
three months nor more than one year or by a fine of
not less than fifty nor more than one thousand dollars
or, in the discretion of the court, by both such confine-
ment and fine.
(e) Notwithstanding the provisions of section nine,
article eleven of this chapter or any other provision of
law to the contrary, a prosecution for a misdemeanor
under the provisions of this article shall be commenced
within six years after the offense was committed.

§61-5A-10. Construction; certain other code provisions not
affected; article not to affect offenses committed
under other statutory provisions.

Under no circumstances whatever shall this article be
construed as superseding or in any way affecting the
provisions of (1) chapter three of this code dealing with
bribery and other corrupt practices and criminal offenses
in connection with elections, election officials, voters or
voting in elections; (2) sections seventeen and eighteen,
article two, chapter fifteen of this code; (3) section nine,
article two-a, chapter eighteen of this code; and (4) sec-
tions fifteen and twenty-two, article ten of this chapter
sixty-one; and the specific types of bribery, corrupt
practices and criminal offenses covered by the statutory
provisions referred to in this section shall continue to be
governed by such statutory provisions and not by this
article.

The provisions of this article shall govern and control
as to any offenses committed in violation thereof on and
after the effective date of this article, and the provisions
of sections four, five, six and seven, article five of this
chapter, shall govern and control as to any offenses com-
mitted in violation of said sections four, five, six and
seven prior to the effective date of this article five-a,
with like effect as to such prior offenses as if this article
five-a had not been enacted.


If any provision of this article or the application thereof
to any person or circumstance is held invalid, such in-
validity shall not affect other provisions or applications
of the article, and to this end the provisions of this
article are declared to be severable.
DISPOSITION OF BILLS ENACTED

The first column gives the number of the bill and the second column the chapter assigned to it.

Regular Session, 1971

HOUSE BILLS

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### Disposition of Bills Enacted

#### Senate Bills

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#### First Extraordinary Session, 1971

##### House Bills

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<tr>
<td>113</td>
<td>6</td>
</tr>
<tr>
<td>114</td>
<td>9</td>
</tr>
<tr>
<td>115</td>
<td>14</td>
</tr>
<tr>
<td>122</td>
<td>11</td>
</tr>
<tr>
<td>123</td>
<td>3</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Bill No.</th>
<th>Chapter</th>
</tr>
</thead>
<tbody>
<tr>
<td>125</td>
<td>5</td>
</tr>
<tr>
<td>126</td>
<td>4</td>
</tr>
<tr>
<td>127</td>
<td>10</td>
</tr>
<tr>
<td>128</td>
<td>2</td>
</tr>
<tr>
<td>130</td>
<td>12</td>
</tr>
</tbody>
</table>

#### Senate Bills

<table>
<thead>
<tr>
<th>Bill No.</th>
<th>Chapter</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>17</td>
</tr>
<tr>
<td>4</td>
<td>19</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Bill No.</th>
<th>Chapter</th>
</tr>
</thead>
<tbody>
<tr>
<td>8</td>
<td>21</td>
</tr>
</tbody>
</table>

#### Second Extraordinary Session, 1970

##### House Bills

<table>
<thead>
<tr>
<th>Bill No.</th>
<th>Chapter</th>
</tr>
</thead>
<tbody>
<tr>
<td>7</td>
<td>2</td>
</tr>
<tr>
<td>8</td>
<td>3</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Bill No.</th>
<th>Chapter</th>
</tr>
</thead>
<tbody>
<tr>
<td>11</td>
<td>1</td>
</tr>
</tbody>
</table>
# INDEX

## ACKNOWLEDGMENTS:

<table>
<thead>
<tr>
<th>Uniform Recognition of Acknowledgments Act</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>1</td>
</tr>
</tbody>
</table>

## ACTS AMENDED:

<table>
<thead>
<tr>
<th>Acts</th>
<th>Sess.</th>
<th>Ch.</th>
<th>Sec.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>Intermediate Court of McDowell County</td>
<td>227</td>
</tr>
<tr>
<td>1907</td>
<td>Reg.</td>
<td>28</td>
<td>9</td>
<td>239</td>
</tr>
<tr>
<td>1925</td>
<td>Reg.</td>
<td>120</td>
<td>2, 4</td>
<td>225</td>
</tr>
<tr>
<td>1947</td>
<td>Reg.</td>
<td>176</td>
<td>2, 3, 7, 8; 10</td>
<td>239</td>
</tr>
<tr>
<td>1959</td>
<td>Reg.</td>
<td>178</td>
<td>4</td>
<td>1002</td>
</tr>
<tr>
<td>1959</td>
<td>Reg.</td>
<td>185</td>
<td>2, 4</td>
<td>225</td>
</tr>
<tr>
<td>1959</td>
<td>Reg.</td>
<td>199</td>
<td>2, 5</td>
<td>239</td>
</tr>
<tr>
<td>1963</td>
<td>Reg.</td>
<td>212</td>
<td>9</td>
<td>1006</td>
</tr>
<tr>
<td>1964</td>
<td>Reg.</td>
<td>38</td>
<td>2, 4</td>
<td>237</td>
</tr>
<tr>
<td>1969</td>
<td>Reg.</td>
<td>156</td>
<td>1</td>
<td>221</td>
</tr>
<tr>
<td>1970</td>
<td>Reg.</td>
<td>34</td>
<td>2</td>
<td>222</td>
</tr>
<tr>
<td>1971</td>
<td>Reg.</td>
<td>140</td>
<td>1-15</td>
<td>1075</td>
</tr>
<tr>
<td>1971</td>
<td>Reg.</td>
<td>141</td>
<td>1-15</td>
<td>1083</td>
</tr>
</tbody>
</table>

## AGRICULTURE:

<table>
<thead>
<tr>
<th>Dogs</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>5</td>
<td>31</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

## AIR POLLUTION CONTROL:

<table>
<thead>
<tr>
<th>Attorney general</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Assistance to commission</td>
<td>73</td>
<td>365</td>
</tr>
<tr>
<td>Commission</td>
<td>73</td>
<td>363</td>
</tr>
<tr>
<td>Powers and duties</td>
<td>73</td>
<td>362</td>
</tr>
<tr>
<td>Definitions</td>
<td>73</td>
<td>465</td>
</tr>
<tr>
<td>Hearings</td>
<td>73</td>
<td>368</td>
</tr>
<tr>
<td>Motor vehicle pollution</td>
<td>73</td>
<td>367</td>
</tr>
<tr>
<td>Permits required for stationary sources of air pollutants</td>
<td>73</td>
<td>361</td>
</tr>
<tr>
<td>Policy</td>
<td>73</td>
<td>365</td>
</tr>
<tr>
<td>Prosecuting attorney</td>
<td>73</td>
<td>365</td>
</tr>
</tbody>
</table>

[1115]
## AIR POLLUTION CONTROL—(continued):

<table>
<thead>
<tr>
<th>Subject</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Records, reports, data or information</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Confidentiality</td>
<td>73</td>
<td>366</td>
</tr>
<tr>
<td>Proceedings upon request to inspect or copy</td>
<td>73</td>
<td>367</td>
</tr>
<tr>
<td>Rules and regulations</td>
<td>73</td>
<td>363</td>
</tr>
</tbody>
</table>

## APPROPRIATIONS:

<table>
<thead>
<tr>
<th>Appropriation Description</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Budget Bill, making general appropriations for fiscal year 1972</td>
<td>6</td>
<td>34</td>
</tr>
<tr>
<td>Index to, by accounts</td>
<td>6</td>
<td>38</td>
</tr>
<tr>
<td>Supplementary appropriations</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Alcohol Beverage Control</td>
<td>1</td>
<td>1069</td>
</tr>
<tr>
<td>Attorney General</td>
<td>7</td>
<td>1052</td>
</tr>
<tr>
<td>Auditor's office</td>
<td>8</td>
<td>1054</td>
</tr>
<tr>
<td>Board of Regents</td>
<td>11</td>
<td>1058</td>
</tr>
<tr>
<td>Department of Agriculture</td>
<td>1</td>
<td>1043</td>
</tr>
<tr>
<td>Department of Finance and Administration</td>
<td>2</td>
<td>1045</td>
</tr>
<tr>
<td>Department of Highways (Acct. 670—Nonfederal Aid Construction)</td>
<td>18</td>
<td>1094</td>
</tr>
<tr>
<td>Department of Mental Health</td>
<td>3</td>
<td>1046</td>
</tr>
<tr>
<td>Department of Natural Resources</td>
<td>4</td>
<td>1048</td>
</tr>
<tr>
<td>Early childhood education demonstration centers</td>
<td>5</td>
<td>1049</td>
</tr>
<tr>
<td>Legislature (joint expenses)</td>
<td>6</td>
<td>1050</td>
</tr>
<tr>
<td>State Senate (per diem of officers and attaches)</td>
<td>9</td>
<td>1055</td>
</tr>
<tr>
<td>State Tax Department</td>
<td>10</td>
<td>1057</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Appropriation Description</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Transferring amounts of items of total appropriation</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Department of Welfare</td>
<td>7</td>
<td>101</td>
</tr>
<tr>
<td>Hopemont State Hospital</td>
<td>12</td>
<td>1060</td>
</tr>
<tr>
<td>Welch Emergency Hospital</td>
<td>12</td>
<td>1060</td>
</tr>
<tr>
<td>West Virginia Children's Home</td>
<td>12</td>
<td>1060</td>
</tr>
<tr>
<td>West Virginia Forestry Camp</td>
<td>12</td>
<td>1060</td>
</tr>
</tbody>
</table>

## ASSESSOR:

<table>
<thead>
<tr>
<th>Subject</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Assistants, deputies and employees</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Appointment</td>
<td>23</td>
<td>172</td>
</tr>
<tr>
<td>Compensation</td>
<td>23</td>
<td>172</td>
</tr>
<tr>
<td>Payment</td>
<td>23</td>
<td>174</td>
</tr>
<tr>
<td>Discharge</td>
<td>23</td>
<td>172</td>
</tr>
<tr>
<td>Mileage allowance</td>
<td>23</td>
<td>178</td>
</tr>
<tr>
<td>Compensation</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Additional</td>
<td>23</td>
<td>175</td>
</tr>
<tr>
<td>Affidavit acknowledging receipt of</td>
<td>23</td>
<td>175</td>
</tr>
<tr>
<td>Fixed by county court</td>
<td>23</td>
<td>170</td>
</tr>
<tr>
<td>Maximum and minimum limits</td>
<td>22,13</td>
<td>169,1061</td>
</tr>
<tr>
<td>Payment</td>
<td>23</td>
<td>174</td>
</tr>
<tr>
<td>Sharing that of deputy, etc., prohibited</td>
<td>23</td>
<td>178</td>
</tr>
<tr>
<td>Penalty</td>
<td>23</td>
<td>178</td>
</tr>
<tr>
<td>Duties, additional</td>
<td>24</td>
<td>182</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Subject</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Expenditures</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Report to county court</td>
<td>23</td>
<td>179</td>
</tr>
<tr>
<td>Mileage allowance</td>
<td>23</td>
<td>178</td>
</tr>
<tr>
<td>Request for appropriation of funds</td>
<td>23</td>
<td>172</td>
</tr>
<tr>
<td>When to devote full time to public duties</td>
<td>23</td>
<td>171</td>
</tr>
</tbody>
</table>

## ATTORNEY GENERAL:

<table>
<thead>
<tr>
<th>Subject</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Duties as to expenditures by spending units in excess of appropriation</td>
<td>15</td>
<td>118</td>
</tr>
<tr>
<td>Establishment of in-service training programs for prosecuting attorneys</td>
<td>23</td>
<td>166</td>
</tr>
</tbody>
</table>

## BANKS:

<table>
<thead>
<tr>
<th>Subject</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Communication from commissioner of banking</td>
<td>21</td>
<td>142</td>
</tr>
<tr>
<td>Examination by commissioner of banking</td>
<td>21</td>
<td>141</td>
</tr>
</tbody>
</table>
# INDEX

<table>
<thead>
<tr>
<th>BANKS—(continued):</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Examination by commissioner of banking—(continued):</td>
<td>21</td>
<td>142</td>
</tr>
<tr>
<td>Examination by federal agency in lieu of</td>
<td>21</td>
<td>143</td>
</tr>
<tr>
<td>Fees, costs and expenses</td>
<td>21</td>
<td>143</td>
</tr>
<tr>
<td>Collection</td>
<td>21</td>
<td>143</td>
</tr>
<tr>
<td>Report</td>
<td>21</td>
<td>142</td>
</tr>
<tr>
<td>Records to be retained</td>
<td>21</td>
<td>142</td>
</tr>
<tr>
<td>West Virginia Board of Banking and Financial Institutions</td>
<td></td>
<td>1014</td>
</tr>
<tr>
<td>Directed to make study and report on banking laws including branch banking, mergers, holding companies, etc. (HCR10)</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>BERKELEY COUNTY:</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>County court</td>
<td></td>
</tr>
<tr>
<td>Contribution from general fund for certain purposes</td>
<td>178</td>
</tr>
<tr>
<td>authorized</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>BLIND:</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>West Virginia Society for the Blind and Severely Disabled</td>
<td></td>
</tr>
<tr>
<td>Operation of food service in public office buildings</td>
<td>156</td>
</tr>
<tr>
<td>Policy of state as to</td>
<td>156</td>
</tr>
<tr>
<td>Schools for the deaf and blind</td>
<td></td>
</tr>
<tr>
<td>Continuation and management</td>
<td>158</td>
</tr>
<tr>
<td>Salary scale</td>
<td>158</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>BLOOD:</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Donation by minors without parental permission</td>
<td>74</td>
</tr>
<tr>
<td>Procuring, etc., human blood</td>
<td></td>
</tr>
<tr>
<td>Declared not a sale</td>
<td>75</td>
</tr>
<tr>
<td>Warranties inapplicable</td>
<td>75</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>BOARD OF REGENTS:</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>See Universities and Colleges.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>BOARDS OF EDUCATION:</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>County Boards of Education</td>
<td></td>
</tr>
<tr>
<td>Early childhood education</td>
<td></td>
</tr>
<tr>
<td>General provisions</td>
<td>148</td>
</tr>
<tr>
<td>Powers</td>
<td></td>
</tr>
<tr>
<td>General authority of boards</td>
<td>145</td>
</tr>
<tr>
<td>Pupils</td>
<td></td>
</tr>
<tr>
<td>Age limits</td>
<td>146</td>
</tr>
<tr>
<td>Transfer of pupils between districts</td>
<td></td>
</tr>
<tr>
<td>Computation of net enrollment</td>
<td>147</td>
</tr>
<tr>
<td>Tuition</td>
<td></td>
</tr>
<tr>
<td>Agreed upon by districts</td>
<td>147</td>
</tr>
<tr>
<td>Paid by district from which pupil transferred</td>
<td>147</td>
</tr>
<tr>
<td>School terms</td>
<td></td>
</tr>
<tr>
<td>Employment term</td>
<td>146</td>
</tr>
<tr>
<td>Instructional term for pupils</td>
<td>146</td>
</tr>
<tr>
<td>Extension</td>
<td>146</td>
</tr>
<tr>
<td>Minimum school term</td>
<td>146</td>
</tr>
<tr>
<td>State Board of Education</td>
<td></td>
</tr>
<tr>
<td>Compensation and expenses of members</td>
<td>143</td>
</tr>
<tr>
<td>Correspondence, business, occupational and trade schools</td>
<td></td>
</tr>
<tr>
<td>Advisory committee</td>
<td>144</td>
</tr>
<tr>
<td>Authorization for exempt schools</td>
<td>144</td>
</tr>
<tr>
<td>Bond required</td>
<td>144</td>
</tr>
<tr>
<td>Enforcement of regulations</td>
<td>144</td>
</tr>
<tr>
<td>Fines, penalties and forfeitures</td>
<td></td>
</tr>
<tr>
<td>Violations</td>
<td>144</td>
</tr>
<tr>
<td>Penalty for violations</td>
<td>144</td>
</tr>
<tr>
<td>Permits</td>
<td>144</td>
</tr>
<tr>
<td>Reports</td>
<td>144</td>
</tr>
</tbody>
</table>
INDEX

BOARDS OF EDUCATION—(continued):
State Board of Education—(continued):
  Creation, composition, appointment, qualifications, terms
    and removal of members ........................................ 143 789
  Early childhood education
    General provisions ............................................ 148 801
    Meetings .................................................................. 143 790
    Offices .................................................................... 143 790
  Public school support ............................................. 153 817
    See Schools.

BRIBERY:
Bribery and Corrupt Practices Act
  Article not to affect offenses committed under other statutory
    provisions .................................................................. 3 1112
  Citation ....................................................................... 3 1105
  Code provisions not affected ...................................... 3 1112
  Construction ................................................................ 3 1112
  Defense to prosecution
    Certain matters not to constitute defense .................... 3 1110
  Definitions .................................................................. 3 1105
  Disqualifications to hold office .................................. 3 1111
  Gifts or gratuities to public officials
    Prohibited .................................................................. 3 1108
    Exceptions .................................................................. 3 1108
  Offenses committed under other statutory provisions not
    affected ..................................................................... 3 1112
  Official matters
    Bribery in .................................................................. 3 1107
    Threats in .................................................................. 3 1108
  Past behavior, unlawful rewarding for........................... 3 1107
  Penalties ...................................................................... 3 1111
  Political matters
    Bribery in .................................................................. 3 1107
    Threats in .................................................................. 3 1108
  Severability of provisions of article .............................. 3 1112
  Short title .................................................................... 3 1105
  Statute of limitations for misdemeanor offenses ................. 3 1111
  Trading in public office .............................................. 3 1110
  Elections
    Persons convicted of bribery disqualified from voting ....... 55 311
  Limitation of actions
    Misdemeanor offenses under corrupt practices act .......... 3 1111
    Threats in official and political matters ....................... 3 1108

BUDGET BILL:
Making general appropriations for fiscal year 1972 ............... 6 34
  Index to, by accounts .............................................. 6 36

BUILDING AND LOAN ASSOCIATIONS:
Borrower
  Default in payments, etc............................................. 19 134
  Acceleration of maturity .......................................... 19 134
  Proceedings on security ............................................ 19 134
  Investments authorized ............................................. 19 136
  Loans ......................................................................... 19 138
  Profits
    Undivided profits account ........................................ 19 135
    Investment .............................................................. 19 135
  Reserve
    Amount and purpose ................................................. 19 134
  Savings accounts
    Rights, powers, etc., of state associations as to .......... 19 135
BUILDING COMMISSION:

Bond issues

<table>
<thead>
<tr>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>167</td>
<td>877</td>
</tr>
<tr>
<td>167</td>
<td>883</td>
</tr>
<tr>
<td>167</td>
<td>877</td>
</tr>
</tbody>
</table>

Special fund for retirement of

<table>
<thead>
<tr>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>167</td>
<td>878</td>
</tr>
</tbody>
</table>

State building revenue bonds

<table>
<thead>
<tr>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>167</td>
<td>878</td>
</tr>
</tbody>
</table>

Charleston, City of

<table>
<thead>
<tr>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>167</td>
<td>878</td>
</tr>
</tbody>
</table>

May dedicate streets, property, etc., to commission

<table>
<thead>
<tr>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>167</td>
<td>878</td>
</tr>
</tbody>
</table>

Compensation

<table>
<thead>
<tr>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>167</td>
<td>878</td>
</tr>
</tbody>
</table>

Contracts

<table>
<thead>
<tr>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>167</td>
<td>876</td>
</tr>
</tbody>
</table>

To be secured by bond

<table>
<thead>
<tr>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>167</td>
<td>876</td>
</tr>
</tbody>
</table>

When competitive bids required

<table>
<thead>
<tr>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>167</td>
<td>875</td>
</tr>
</tbody>
</table>

Debt

<table>
<thead>
<tr>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>167</td>
<td>882</td>
</tr>
</tbody>
</table>

Article not authority to create state

<table>
<thead>
<tr>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>167</td>
<td>871</td>
</tr>
</tbody>
</table>

Definitions

<table>
<thead>
<tr>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>167</td>
<td>883</td>
</tr>
</tbody>
</table>

Expenses

<table>
<thead>
<tr>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>167</td>
<td>875</td>
</tr>
</tbody>
</table>

Funds

<table>
<thead>
<tr>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>167</td>
<td>875</td>
</tr>
</tbody>
</table>

Audits

<table>
<thead>
<tr>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>167</td>
<td>875</td>
</tr>
</tbody>
</table>

Deposits and security for

<table>
<thead>
<tr>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>167</td>
<td>875</td>
</tr>
</tbody>
</table>

Disbursements

<table>
<thead>
<tr>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>167</td>
<td>875</td>
</tr>
</tbody>
</table>

Legislative findings

<table>
<thead>
<tr>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>167</td>
<td>870</td>
</tr>
</tbody>
</table>

Liberal construction of article

<table>
<thead>
<tr>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>167</td>
<td>882</td>
</tr>
</tbody>
</table>

Management and control of project

<table>
<thead>
<tr>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>167</td>
<td>881</td>
</tr>
</tbody>
</table>

Compliance with article and state constitution only

<table>
<thead>
<tr>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>167</td>
<td>882</td>
</tr>
</tbody>
</table>

restrictions

Members

<table>
<thead>
<tr>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>167</td>
<td>883</td>
</tr>
</tbody>
</table>

Appointment, terms and qualifications

<table>
<thead>
<tr>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>167</td>
<td>883</td>
</tr>
</tbody>
</table>

Name

<table>
<thead>
<tr>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>167</td>
<td>883</td>
</tr>
</tbody>
</table>

Powers enumerated

<table>
<thead>
<tr>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>167</td>
<td>872</td>
</tr>
</tbody>
</table>

Powers generally

<table>
<thead>
<tr>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>167</td>
<td>868</td>
</tr>
</tbody>
</table>

Revision of article

<table>
<thead>
<tr>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>167</td>
<td>870</td>
</tr>
</tbody>
</table>

Purpose

<table>
<thead>
<tr>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>167</td>
<td>882</td>
</tr>
</tbody>
</table>

Severability of article

<table>
<thead>
<tr>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>167</td>
<td>879</td>
</tr>
</tbody>
</table>

Trusts and trustees

<table>
<thead>
<tr>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>167</td>
<td>879</td>
</tr>
</tbody>
</table>

Trustee for holder of bonds

<table>
<thead>
<tr>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>167</td>
<td>880</td>
</tr>
</tbody>
</table>

Contents of trust agreement

<table>
<thead>
<tr>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>167</td>
<td>879</td>
</tr>
</tbody>
</table>

Trust existing in favor of existing bond holders

<table>
<thead>
<tr>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>167</td>
<td>880</td>
</tr>
</tbody>
</table>

BUILDINGS:

Food service for public office buildings by State Society for

<table>
<thead>
<tr>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>156</td>
<td>836</td>
</tr>
</tbody>
</table>

the Blind and Severely Disabled

<table>
<thead>
<tr>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>156</td>
<td>836</td>
</tr>
</tbody>
</table>

Definitions

<table>
<thead>
<tr>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>156</td>
<td>836</td>
</tr>
</tbody>
</table>

Policy of State

<table>
<thead>
<tr>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>156</td>
<td>836</td>
</tr>
</tbody>
</table>

Operation in public office buildings by State Division of

<table>
<thead>
<tr>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>156</td>
<td>837</td>
</tr>
</tbody>
</table>

Vocational Rehabilitation

<table>
<thead>
<tr>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>156</td>
<td>836</td>
</tr>
</tbody>
</table>

Construction of article

<table>
<thead>
<tr>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>156</td>
<td>836</td>
</tr>
</tbody>
</table>

BUSINESS AND OCCUPATION TAX:

Amusements

<table>
<thead>
<tr>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>169</td>
<td>901</td>
</tr>
</tbody>
</table>

Banking and other financial business

<table>
<thead>
<tr>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>169</td>
<td>903</td>
</tr>
</tbody>
</table>

Coal

<table>
<thead>
<tr>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>169</td>
<td>896</td>
</tr>
</tbody>
</table>

Contracting

<table>
<thead>
<tr>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>169</td>
<td>901</td>
</tr>
</tbody>
</table>

Definition

<table>
<thead>
<tr>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>169</td>
<td>893</td>
</tr>
</tbody>
</table>

Exemptions

<table>
<thead>
<tr>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>169</td>
<td>904</td>
</tr>
</tbody>
</table>

For hire property

<table>
<thead>
<tr>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>169</td>
<td>902</td>
</tr>
</tbody>
</table>

Imposition of privilege tax

<table>
<thead>
<tr>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>169</td>
<td>896</td>
</tr>
</tbody>
</table>

Industrial loan business

<table>
<thead>
<tr>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>169</td>
<td>902</td>
</tr>
</tbody>
</table>

Rate of tax
BUSINESS AND OCCUPATION TAX—(continued):  
Manufacturing and compounding products .............................................................. 169 899
Municipal corporations
Restricted from imposing additional tax ............................................................... 169 905
Natural resources
Rate of tax .............................................................................................................. 169 898
Normal tax
Computing .............................................................................................................. 169 905
Defined .................................................................................................................. 169 905
Reduction allowed in tax due .................................................................................. 169 905
Property
Selling tangible
Rate of tax .............................................................................................................. 169 900
Public utilities
Rate of tax .............................................................................................................. 169 900
Service business or calling not otherwise specifically taxed
Rate of tax .............................................................................................................. 169 902
Severability of provisions of article ........................................................................ 169 902
Small loan business
Rate of tax .............................................................................................................. 169 902

CABELL COUNTY:
Domestic Relations Court
Jurisdiction ............................................................................................................. 34 222
Intermediate Court
Jurisdiction ............................................................................................................. 37 237
Salary of judge ....................................................................................................... 37 238
Youth Center
Foster homes division ............................................................................................. 179 1002

CARRIERS:
Tax on gross income of certain .............................................................................. 169 890
Rate of tax .............................................................................................................. 169 891

CHILD MOLESTING:
Penalty ..................................................................................................................... 43 247

CIRCUIT COURTS:
Circuits
Counties comprising .............................................................................................. 30 216
Number of judges for .............................................................................................. 30 217
Judges
Allowances
Stationery, postage and stenographic services ........................................................ 32 220
Election
Dates for .................................................................................................................. 30 217
Thirty-second and thirty-third circuits .................................................................. 30 218
Salaries .................................................................................................................... 31 219
Additional compensation from counties .................................................................. 31 219
Terms and sessions
Thirty-second circuit ............................................................................................... 30 218
Thirty-third circuit ................................................................................................. 30 218
Thirteenth judicial circuit (Kanawha County)
Law assistant to judge
Appointment, qualification and salary .................................................................... 33 221

CIVIL SERVICE:
Deputy sheriffs
Age disqualification ............................................................................................... 29 213
Appointments and promotions .............................................................................. 29 215
Appointing officer defined .................................................................................... 29 196
Appointments from eligible list ............................................................................... 29 208
### CIVIL SERVICE—(continued):

Deputy Sheriffs—(continued):

<table>
<thead>
<tr>
<th>Appointments and promotions—(continued):</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chief deputy, rights of</td>
<td>29</td>
<td>208</td>
</tr>
<tr>
<td>Discrimination prohibited on political or religious grounds</td>
<td>29</td>
<td>208</td>
</tr>
<tr>
<td>Eligible list for appointments</td>
<td>29</td>
<td>204</td>
</tr>
<tr>
<td>Posting</td>
<td>29</td>
<td>201</td>
</tr>
<tr>
<td>Probationary period</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Civil service commission

| Appointment of members                   | 29  | 196  |
| Clerk                                    | 29  | 199  |

Examinations

| Age requirements                         | 29  | 202  |
| Applicant                                 | 29  | 204  |
| Qualifications of applicant               | 29  | 204  |
| Application                               | 29  | 202  |
| Character of Applicant                    | 29  | 203  |
| Notice of                                | 29  | 204  |
| Political or religious test prohibited    | 29  | 208  |
| Prescribed by state civil service commission | 29  | 203  |
| Presence of representatives of the press  | 29  | 204  |
| Qualifications of applicant               | 29  | 204  |
| Refusal to examine or certify applicant   | 29  | 205  |
| Review                                    | 29  | 205  |

| Training and retraining programs         | 29  | 204, 210 |
| Funds for                                | 29  | 199 |
| Offices and supplies                     | 29  | 199 |
| Powers and duties                        | 29  | 199 |
| Qualifications of members                | 29  | 196 |
| Removal of members                       | 29  | 197 |
| Rules and regulations                    | 29  | 201 |

| Counties to which application of acts mandatory | 29  | 195 |
| Determination of population               | 29  | 196 |
| Other counties may adopt                  | 29  | 214 |
| System once established mandatory         | 29  | 215 |
| Definitions                               | 29  | 196 |
| Inconsistent acts repealed                | 29  | 215 |
| Offenses and penalties                    | 29  | 213 |
| Political activity prohibited             | 29  | 209 |
| Removal for                               | 29  | 209 |

| Promotions                                | 29  | 207 |
| Eligibility                               | 29  | 207 |
| Provisions of article severable           | 29  | 215 |
| Removal, discharge, suspension or reduction in rank or pay | 29  | 211 |
| Appeal to circuit court                   | 29  | 212 |

| Training and retraining programs         | 29  | 210 |
| Vacancies                                | 29  | 207 |

| Filled by promotion                       | 29  | 207 |
| Noncompetitive examination for filling    | 29  | 207 |
| Provisional appointment                   | 29  | 207 |

### CLAIMS AGAINST THE STATE:

Against Department of Mental Health, Board of Regents and Department of Public Institutions

| Overspending appropriations                  | 15  | 118 |
| Payment authorized                           | 15  | 118 |

| Court of Claims                             |     |      |
| Compensation of judges                      | 13  | 115 |
| Expenses of judges                          | 13  | 115 |

| Declaring certain to be moral obligations and directing payment | 14  | 115 |
## CLERKS OF CIRCUIT COURTS:

<table>
<thead>
<tr>
<th>Assistants, deputies and employees</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Appointment</td>
<td>23</td>
<td>172</td>
</tr>
<tr>
<td>Compensation</td>
<td>23</td>
<td>172</td>
</tr>
<tr>
<td>Payment</td>
<td>23</td>
<td>174</td>
</tr>
<tr>
<td>Discharge</td>
<td>23</td>
<td>173</td>
</tr>
<tr>
<td>Mileage allowance</td>
<td>23</td>
<td>178</td>
</tr>
<tr>
<td>Compensation</td>
<td>23</td>
<td>175</td>
</tr>
<tr>
<td>Affidavit acknowledging receipt of Compensation</td>
<td>23</td>
<td>175</td>
</tr>
<tr>
<td>Fixed by county court</td>
<td>23</td>
<td>170</td>
</tr>
<tr>
<td>Maximum and minimum limits</td>
<td>23, 13</td>
<td>169, 1061</td>
</tr>
<tr>
<td>Payment</td>
<td>23</td>
<td>174</td>
</tr>
<tr>
<td>Sharing that of deputy, etc., prohibited</td>
<td>23</td>
<td>176</td>
</tr>
<tr>
<td>Penalty</td>
<td>23</td>
<td>176</td>
</tr>
</tbody>
</table>

### Expenditures

| Report to county court | 23 | 179 |
| Mileage allowance      | 23 | 178 |
| Request for appropriation of funds | 23 | 172 |
| When to devote full time to public duties | 23 | 171 |

## CLERKS OF COUNTY COURTS:

<table>
<thead>
<tr>
<th>Assistants, deputies and employees</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Appointment</td>
<td>23</td>
<td>172</td>
</tr>
<tr>
<td>Compensation</td>
<td>23</td>
<td>172</td>
</tr>
<tr>
<td>Payment</td>
<td>23</td>
<td>174</td>
</tr>
<tr>
<td>Discharge</td>
<td>23</td>
<td>173</td>
</tr>
<tr>
<td>Mileage allowance</td>
<td>23</td>
<td>178</td>
</tr>
<tr>
<td>Compensation</td>
<td>23</td>
<td>175</td>
</tr>
<tr>
<td>Affidavit acknowledging receipt of Compensation</td>
<td>23</td>
<td>175</td>
</tr>
<tr>
<td>Fixed by county court</td>
<td>23</td>
<td>170</td>
</tr>
<tr>
<td>Maximum and minimum limits</td>
<td>23, 13</td>
<td>169, 1061</td>
</tr>
<tr>
<td>Payment</td>
<td>23</td>
<td>174</td>
</tr>
<tr>
<td>Sharing that of deputy, etc., prohibited</td>
<td>23</td>
<td>176</td>
</tr>
<tr>
<td>Penalties</td>
<td>23</td>
<td>176</td>
</tr>
</tbody>
</table>

### Expenses

| Report to county court | 23 | 179 |
| Liability for illegal payment of compensation to officials, deputies, etc. | 23 | 176 |
| Mileage allowance      | 23 | 178 |
| Request for appropriation of funds | 23 | 172 |
| When to devote full time to public duties | 23 | 171 |

## CODE AMENDED:

<table>
<thead>
<tr>
<th>Ch.</th>
<th>Art.</th>
<th>Sec.</th>
<th>Congressional districts</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>2</td>
<td>3</td>
<td>Legal holidays</td>
<td>425</td>
</tr>
<tr>
<td>3</td>
<td>1</td>
<td>2, 3</td>
<td>Scope of chapter, election law definitions and persons entitled to vote...</td>
<td>310</td>
</tr>
<tr>
<td>3</td>
<td>1</td>
<td>3a*</td>
<td>Persons entitled to vote, etc.</td>
<td>313</td>
</tr>
<tr>
<td>3</td>
<td>1</td>
<td>9</td>
<td>Political party committees</td>
<td>315</td>
</tr>
<tr>
<td>3</td>
<td>2</td>
<td>2</td>
<td>Voter registration requirements</td>
<td>312</td>
</tr>
<tr>
<td>3</td>
<td>2</td>
<td>2a</td>
<td>Voting by absentees in circuit clerk's office</td>
<td>317</td>
</tr>
<tr>
<td>4</td>
<td>1</td>
<td>20*</td>
<td>Space in capitol building for use of Legislature</td>
<td>427</td>
</tr>
<tr>
<td>4</td>
<td>2A*</td>
<td>1-10</td>
<td>Compensation and expenses of members of Legislature</td>
<td>430</td>
</tr>
<tr>
<td>4</td>
<td>5*</td>
<td>1-4</td>
<td>Purchasing Practices and Procedures Commission</td>
<td>436</td>
</tr>
</tbody>
</table>

(*) Indicates new chapter, article or section.
INDEX 1123  

<table>
<thead>
<tr>
<th>CODE AMENDED—(continued):</th>
<th>Ch.</th>
<th>Art.</th>
<th>Sec.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>5</td>
<td>6</td>
<td>1-15</td>
<td>State Building Commission 868</td>
</tr>
<tr>
<td></td>
<td>5</td>
<td>10</td>
<td>2, 17, 22, 29</td>
<td>Retirement benefits for members of the Legislature 720</td>
</tr>
<tr>
<td></td>
<td>5</td>
<td>11</td>
<td>2, 3, 4, 6, 8, 9, 10, 13; 17, 18, 19*</td>
<td>Human Rights Commission 374</td>
</tr>
<tr>
<td></td>
<td>5</td>
<td>16*</td>
<td>1-19</td>
<td>Public Employees Insurance Act 1063</td>
</tr>
<tr>
<td></td>
<td>5A</td>
<td>1</td>
<td>2</td>
<td>Compensation of Commissioner of Finance and Administration 263</td>
</tr>
<tr>
<td></td>
<td>5A</td>
<td>2</td>
<td>13</td>
<td>Estimates of revenue and reports on collections 264</td>
</tr>
<tr>
<td></td>
<td>5A</td>
<td>2</td>
<td>19</td>
<td>Transfers between items of appropriation 101</td>
</tr>
<tr>
<td></td>
<td>5A</td>
<td>3</td>
<td>32, 35, 36, 37, 38, 47*</td>
<td>Application of bribery statutes to illegal acts in connection with state purchases 1101</td>
</tr>
<tr>
<td></td>
<td>5A</td>
<td>5</td>
<td>3</td>
<td>Leasing of grounds, buildings, etc., by the state 265</td>
</tr>
<tr>
<td></td>
<td>5A</td>
<td>7</td>
<td>6</td>
<td>Information system services 266</td>
</tr>
<tr>
<td></td>
<td>6</td>
<td>3</td>
<td>1</td>
<td>Appointment of deputy sheriffs and conservators of the peace 663</td>
</tr>
<tr>
<td></td>
<td>6</td>
<td>7</td>
<td>2a</td>
<td>Appointment, term, salaries, etc., of certain appointive state officers 690</td>
</tr>
<tr>
<td></td>
<td>6</td>
<td>7</td>
<td>4</td>
<td>Salaries of judges of circuit courts 219</td>
</tr>
<tr>
<td></td>
<td>6</td>
<td>7</td>
<td>6</td>
<td>Stationery, postage and stenographic help for judges of circuit courts 220</td>
</tr>
<tr>
<td></td>
<td>7</td>
<td>1</td>
<td>1, 5</td>
<td>County courts, powers and duties 162</td>
</tr>
<tr>
<td></td>
<td>7</td>
<td>3</td>
<td>2</td>
<td>Closing courthouse on Saturdays 187</td>
</tr>
<tr>
<td></td>
<td>7</td>
<td>4</td>
<td>1</td>
<td>Duties of prosecuting attorney on election days 190</td>
</tr>
<tr>
<td></td>
<td>7</td>
<td>4</td>
<td>2</td>
<td>Rewards for apprehension of persons charged with crime; detection of crime, bounties and investigation of crime 191</td>
</tr>
<tr>
<td></td>
<td>7</td>
<td>7</td>
<td>1-20</td>
<td>County in-service training programs; compensation and expenses of county officials, their assistants, deputies and employees 165</td>
</tr>
<tr>
<td></td>
<td>7</td>
<td>7</td>
<td>4</td>
<td>Compensation of elected county officials 1061</td>
</tr>
<tr>
<td></td>
<td>7</td>
<td>7</td>
<td>6(30)</td>
<td>Compensation of stenographer to prosecuting attorney of Mingo County 193</td>
</tr>
<tr>
<td></td>
<td>7</td>
<td>14*</td>
<td>1-21</td>
<td>Civil service for deputy sheriffs 195</td>
</tr>
<tr>
<td></td>
<td>8</td>
<td>13</td>
<td>5a</td>
<td>Powers of municipalities to levy excise tax on purchaser and consumers of public utility services 590</td>
</tr>
<tr>
<td></td>
<td>8</td>
<td>13</td>
<td>13</td>
<td>Special charges for municipal services 592</td>
</tr>
<tr>
<td></td>
<td>8</td>
<td>14</td>
<td>5a*</td>
<td>Special parking lot or parking building police officers 603</td>
</tr>
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<td></td>
<td>8</td>
<td>15</td>
<td>6</td>
<td>Dissolution of volunteer fire companies 603</td>
</tr>
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<td>8</td>
<td>15</td>
<td>10</td>
<td>Hours of duty for municipal firemen 604</td>
</tr>
<tr>
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<td>8</td>
<td>16</td>
<td>4a*; 8, 17</td>
<td>Municipal public works and revenue bond financing 594</td>
</tr>
</tbody>
</table>

(*) Indicates new chapter, article or section.
CODE AMENDED—(continued):

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<thead>
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<th>Ch.</th>
<th>Art.</th>
<th>Sec.</th>
</tr>
</thead>
<tbody>
<tr>
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<td>16</td>
<td>7</td>
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<td>11</td>
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<td>11A</td>
<td>4</td>
<td>17, 18, 32</td>
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<td>12</td>
<td>6</td>
<td>11</td>
</tr>
<tr>
<td>13</td>
<td>2C</td>
<td>2, 3</td>
</tr>
<tr>
<td>14</td>
<td>2</td>
<td>8</td>
</tr>
<tr>
<td>15</td>
<td>2</td>
<td>3</td>
</tr>
<tr>
<td>15</td>
<td>2</td>
<td>29</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ordinance for construction of municipal public works</td>
<td>605</td>
</tr>
<tr>
<td>Publication of abstract of ordinance for municipal waterworks projects</td>
<td>607</td>
</tr>
<tr>
<td>Publication of abstract of ordinance for combined waterworks and sewerage projects</td>
<td>607</td>
</tr>
<tr>
<td>Disability, death and retirement benefits for firemen and policemen</td>
<td>609</td>
</tr>
<tr>
<td>Adopting federal standards for factory-built housing</td>
<td>621</td>
</tr>
<tr>
<td>Urban mass transportation systems</td>
<td>622</td>
</tr>
<tr>
<td>Appropriations by counties and municipalities for museums and cultural centers</td>
<td>629</td>
</tr>
<tr>
<td>Park and recreation boards</td>
<td>682</td>
</tr>
<tr>
<td>Selection of deputy assessors</td>
<td>180</td>
</tr>
<tr>
<td>Payment of salaries of assessors, deputies, etc.</td>
<td>886</td>
</tr>
<tr>
<td>Additional compensation and duties of assessors</td>
<td>886</td>
</tr>
<tr>
<td>Personal property books</td>
<td>887</td>
</tr>
<tr>
<td>Collection of capitation taxes for year 1970, etc.</td>
<td>887</td>
</tr>
<tr>
<td>Tax on income of certain carriers</td>
<td>890</td>
</tr>
<tr>
<td>Business and Occupation Tax</td>
<td>893</td>
</tr>
<tr>
<td>Unlawful acts of beer licensees</td>
<td>102</td>
</tr>
<tr>
<td>Brewers and distributors of beer</td>
<td>107</td>
</tr>
<tr>
<td>Meaning of terms in personal income tax law</td>
<td>906</td>
</tr>
<tr>
<td>Employer's return and payment of personal income taxes withheld</td>
<td>909</td>
</tr>
<tr>
<td>Meaning of terms in corporation net income tax law</td>
<td>907</td>
</tr>
<tr>
<td>Sheriff's receipt for taxes</td>
<td>887</td>
</tr>
<tr>
<td>Sale of lands for school fund</td>
<td>911</td>
</tr>
<tr>
<td>Recruitment, moving and other expenses of employees of Board of Regents</td>
<td>788</td>
</tr>
<tr>
<td>Investments of public funds</td>
<td>110</td>
</tr>
<tr>
<td>Purchase, sale or exchange of securities by Board of Investments</td>
<td>113</td>
</tr>
<tr>
<td>Legislative findings and definitions under the Industrial Development Bond Act</td>
<td>718</td>
</tr>
<tr>
<td>Compensation of judges of court of claims</td>
<td>115</td>
</tr>
<tr>
<td>Organization of Department of Public Safety and salaries of members</td>
<td>740</td>
</tr>
<tr>
<td>Criminal Identification Bureau, Department of Public Safety</td>
<td>742</td>
</tr>
</tbody>
</table>

(*) Indicates new chapter, article or section.
<table>
<thead>
<tr>
<th>Ch.</th>
<th>Art.</th>
<th>Sec.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>16</td>
<td>2</td>
<td>3</td>
<td>347</td>
</tr>
<tr>
<td>16</td>
<td>2A</td>
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</tr>
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<td>16</td>
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<td>4a</td>
<td>354</td>
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<td>16</td>
<td>4</td>
<td>10</td>
<td>355</td>
</tr>
<tr>
<td>16</td>
<td>13A</td>
<td>3, 3a</td>
<td>356</td>
</tr>
<tr>
<td>16</td>
<td>20</td>
<td>1, 2, 5; 11a, 11b, 11c*</td>
<td>361</td>
</tr>
<tr>
<td>16</td>
<td>21</td>
<td>1</td>
<td>370</td>
</tr>
<tr>
<td>16</td>
<td>23*</td>
<td>1</td>
<td>371</td>
</tr>
<tr>
<td>16</td>
<td>25</td>
<td>4, 13</td>
<td>372</td>
</tr>
<tr>
<td>17</td>
<td>2A</td>
<td>20</td>
<td>1091</td>
</tr>
<tr>
<td>17</td>
<td>4</td>
<td>20</td>
<td>769</td>
</tr>
<tr>
<td>17</td>
<td>10</td>
<td>23</td>
<td>888</td>
</tr>
<tr>
<td>17A</td>
<td>3</td>
<td>4</td>
<td>566</td>
</tr>
<tr>
<td>17A</td>
<td>4A</td>
<td>1, 2</td>
<td>569</td>
</tr>
<tr>
<td>17A</td>
<td>6</td>
<td>1; 10a*</td>
<td>571</td>
</tr>
<tr>
<td>17C</td>
<td>2</td>
<td>5</td>
<td>580</td>
</tr>
<tr>
<td>17C</td>
<td>9</td>
<td>5</td>
<td>581</td>
</tr>
<tr>
<td>17C</td>
<td>15</td>
<td>26</td>
<td>581</td>
</tr>
<tr>
<td>17C</td>
<td>15</td>
<td>44*</td>
<td>583</td>
</tr>
<tr>
<td>17C</td>
<td>17</td>
<td>11</td>
<td>587</td>
</tr>
<tr>
<td>17D</td>
<td>4</td>
<td>16</td>
<td>588</td>
</tr>
<tr>
<td>18</td>
<td>2</td>
<td>1, 3</td>
<td>789</td>
</tr>
<tr>
<td>18</td>
<td>2</td>
<td>10</td>
<td>792</td>
</tr>
<tr>
<td>18</td>
<td>5</td>
<td>13</td>
<td>795</td>
</tr>
<tr>
<td>18</td>
<td>5</td>
<td>15</td>
<td>798</td>
</tr>
</tbody>
</table>

(*) Indicates new chapter, article or section.
## INDEX

**CODE AMENDED—(continued):**

<table>
<thead>
<tr>
<th>Ch.</th>
<th>Art.</th>
<th>Sec.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>18</td>
<td>5</td>
<td>16a</td>
<td>800</td>
</tr>
<tr>
<td>18</td>
<td>5</td>
<td>18</td>
<td>801</td>
</tr>
<tr>
<td>18</td>
<td>7A</td>
<td>3</td>
<td>804</td>
</tr>
<tr>
<td>18</td>
<td>7A</td>
<td>14a</td>
<td>808</td>
</tr>
<tr>
<td>18</td>
<td>7A</td>
<td>26; 26e*</td>
<td>812</td>
</tr>
<tr>
<td>18</td>
<td>7A</td>
<td>34</td>
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</tr>
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<td>9</td>
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<td>888</td>
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<tr>
<td>18</td>
<td>9A</td>
<td>1-20</td>
<td>817</td>
</tr>
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<td>18</td>
<td>10A</td>
<td>3</td>
<td>833</td>
</tr>
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<td>18</td>
<td>10G*</td>
<td>1-3</td>
<td>835</td>
</tr>
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<td>11</td>
<td>10b</td>
<td>839</td>
</tr>
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<td>18</td>
<td>17</td>
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<td>841</td>
</tr>
<tr>
<td>18</td>
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</tr>
<tr>
<td>18</td>
<td>22B</td>
<td>6</td>
<td>842</td>
</tr>
<tr>
<td>18</td>
<td>23</td>
<td>4a*</td>
<td>843</td>
</tr>
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<td>18</td>
<td>24</td>
<td>4</td>
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</tr>
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<td>26</td>
<td>2</td>
<td>850</td>
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<tr>
<td>18</td>
<td>26</td>
<td>10; 13-24*</td>
<td>852</td>
</tr>
<tr>
<td>18</td>
<td>26</td>
<td>13a*</td>
<td>861</td>
</tr>
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<td>16</td>
<td>1, 5</td>
<td>29</td>
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<td>14-18</td>
<td>31</td>
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</table>

(*) Indicates new chapter, article or section.
CODE AMENDED—(continued):

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<th>Art.</th>
<th>Sec.</th>
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<td>1-3</td>
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<td>1, 2, 3, 4, 7</td>
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<td>5</td>
<td>2, 3, 5, 7, 10; 3a*</td>
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<td>6</td>
<td>3, 10; 15*</td>
</tr>
<tr>
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<td>6A*</td>
<td>1-7</td>
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<td>1-74</td>
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<tr>
<td>23</td>
<td>4A*</td>
<td>1-8</td>
</tr>
<tr>
<td>23</td>
<td>5</td>
<td>1, 2, 5; 3a*</td>
</tr>
<tr>
<td>23</td>
<td>6</td>
<td>1</td>
</tr>
<tr>
<td>24</td>
<td>1</td>
<td>2, 6</td>
</tr>
<tr>
<td>24</td>
<td>1</td>
<td>3</td>
</tr>
<tr>
<td>24</td>
<td>2</td>
<td>1; 13*</td>
</tr>
<tr>
<td>24</td>
<td>3</td>
<td>6</td>
</tr>
</tbody>
</table>

(*) Indicates new chapter, article or section.
<table>
<thead>
<tr>
<th>Ch.</th>
<th>Art.</th>
<th>Sec.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>24A</td>
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<td>3</td>
<td>1, 2</td>
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<td>30</td>
<td>3</td>
<td>4</td>
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<td>697</td>
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<td>30</td>
<td>22*</td>
<td>1-17</td>
<td>703</td>
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<tr>
<td>31</td>
<td>1</td>
<td>63, 63a</td>
<td>128</td>
</tr>
<tr>
<td>31</td>
<td>6</td>
<td>23, 25, 42; 43*</td>
<td>134</td>
</tr>
<tr>
<td>31</td>
<td>7</td>
<td>7</td>
<td>138</td>
</tr>
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<td>140</td>
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<tr>
<td>31</td>
<td>15</td>
<td>4, 6, 7, 8, 9, 13; 7a*</td>
<td>145</td>
</tr>
<tr>
<td>31A</td>
<td>2</td>
<td>6, 8</td>
<td>141</td>
</tr>
<tr>
<td>32</td>
<td>1</td>
<td>4</td>
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<td>36</td>
<td>5</td>
<td>1-5</td>
<td>332</td>
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<td>36</td>
<td>7</td>
<td>1, 2, 3, 4, 6, 7, 10, 11</td>
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</tr>
<tr>
<td>37</td>
<td>1</td>
<td>11</td>
<td>753</td>
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<td>39</td>
<td>1A*</td>
<td>1-9</td>
<td>1</td>
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<tr>
<td>44</td>
<td>2</td>
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</tbody>
</table>

(*) Indicates new chapter, article or section.
### CODE AMENDED—(continued):

<table>
<thead>
<tr>
<th>Ch.</th>
<th>Art.</th>
<th>Sec.</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>44</td>
<td>2</td>
<td>24a</td>
<td>Accounting by personal representative for moneys not capable of payment at time of final settlement of estate</td>
<td>321</td>
</tr>
<tr>
<td>44</td>
<td>6</td>
<td>2</td>
<td>Securities in which fiduciaries may invest</td>
<td>323</td>
</tr>
<tr>
<td>44</td>
<td>10</td>
<td>8</td>
<td>Disbursements by guardian from estate of infant wards</td>
<td>328</td>
</tr>
<tr>
<td>44</td>
<td>10A*</td>
<td>1-5</td>
<td>Guardianships for mentally retarded persons</td>
<td>329</td>
</tr>
<tr>
<td>46</td>
<td>9</td>
<td>403</td>
<td>Financing statements under Uniform Commercial Code</td>
<td>965</td>
</tr>
<tr>
<td>47</td>
<td>5*</td>
<td>1-6</td>
<td>Safety glazing materials</td>
<td>764</td>
</tr>
<tr>
<td>47</td>
<td>15*</td>
<td>1-6</td>
<td>Pyramid promotional schemes</td>
<td>767</td>
</tr>
<tr>
<td>48</td>
<td>1</td>
<td>12, 12a, 12c</td>
<td>Persons authorized to perform marriages</td>
<td>267</td>
</tr>
<tr>
<td>49</td>
<td>5</td>
<td>13a*</td>
<td>Prosecuting attorney to represent petitioner in juvenile proceedings</td>
<td>114</td>
</tr>
<tr>
<td>50</td>
<td>18</td>
<td>1</td>
<td>Criminal jurisdiction of justice of the peace</td>
<td>395</td>
</tr>
<tr>
<td>51</td>
<td>2</td>
<td>1; 1ff, 1gg*</td>
<td>Establishing 32nd and 33rd judicial circuits</td>
<td>216</td>
</tr>
<tr>
<td>52</td>
<td>2</td>
<td>3</td>
<td>Summoning jury commissioners; selection and summoning grand jurors</td>
<td>392</td>
</tr>
<tr>
<td>52</td>
<td>2</td>
<td>14*</td>
<td>Grand juries which may sit as long as one year</td>
<td>393</td>
</tr>
<tr>
<td>53</td>
<td>4A</td>
<td>3</td>
<td>Post-conviction review by writ of habeas corpus</td>
<td>345</td>
</tr>
<tr>
<td>54</td>
<td>1</td>
<td>9</td>
<td>Crossing or alteration of works of an entity having power of eminent domain by another entity having such right</td>
<td>318</td>
</tr>
<tr>
<td>56</td>
<td>2</td>
<td>2</td>
<td>Service of notice on nonresidents by publication</td>
<td>681</td>
</tr>
<tr>
<td>60</td>
<td>3</td>
<td>8a, 19a</td>
<td>Price increase on alcoholic liquors for retirement of Korean Veterans' Bonus Bonds; continuation of price increase and additional increase for retirement of state building revenue bond</td>
<td>882</td>
</tr>
<tr>
<td>60A*</td>
<td>1-6</td>
<td>Uniform Controlled Substances Act</td>
<td>289</td>
<td></td>
</tr>
<tr>
<td>61</td>
<td>3</td>
<td>49</td>
<td>Illegal purchase and transportation of copper wire, mercury, lead, etc.</td>
<td>244</td>
</tr>
<tr>
<td>61</td>
<td>5A*</td>
<td>1-11</td>
<td>Bribery and corrupt practices act</td>
<td>1105</td>
</tr>
<tr>
<td>61</td>
<td>6</td>
<td>19</td>
<td>Disruption of governmental processes</td>
<td>245</td>
</tr>
<tr>
<td>61</td>
<td>7</td>
<td>14, 15*</td>
<td>Purchase and sale of firearms</td>
<td>246</td>
</tr>
<tr>
<td>61</td>
<td>8</td>
<td>29</td>
<td>Child molesting</td>
<td>247</td>
</tr>
<tr>
<td>61</td>
<td>10</td>
<td>23</td>
<td>Debt pooling</td>
<td>248</td>
</tr>
<tr>
<td>61</td>
<td>10</td>
<td>31*</td>
<td>Conspiracy to defraud state, county, etc.</td>
<td>249</td>
</tr>
</tbody>
</table>

(*) Indicates new chapter, article or section.
## CODE AMENDED—(continued):

<table>
<thead>
<tr>
<th>Ch.</th>
<th>Art.</th>
<th>Sec.</th>
<th>Procedure in trial of criminal case and compensation of court appointed counsel</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>62</td>
<td>3</td>
<td>1</td>
<td></td>
<td>251</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Ch.</th>
<th>Art.</th>
<th>Sec.</th>
<th>Payment of jail fees</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>62</td>
<td>13</td>
<td>6a</td>
<td></td>
<td>253</td>
</tr>
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</table>

<table>
<thead>
<tr>
<th>Ch.</th>
<th>Art.</th>
<th>Sec.</th>
<th>Agreement on detainers</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>62</td>
<td>14*</td>
<td>1-7</td>
<td></td>
<td>254</td>
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## CODE REPEALED:

<table>
<thead>
<tr>
<th>Ch.</th>
<th>Art.</th>
<th>Sec.</th>
<th>Illegal acts in connection with state purchases</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>5A</td>
<td>3</td>
<td>32, 35, 36, 37, 38</td>
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<table>
<thead>
<tr>
<th>Ch.</th>
<th>Art.</th>
<th>Sec.</th>
<th>Compensation of county commissioners</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>7</td>
<td>1</td>
<td>4, 5(1)-5(54)</td>
<td></td>
<td>161</td>
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<table>
<thead>
<tr>
<th>Ch.</th>
<th>Art.</th>
<th>Sec.</th>
<th>Mileage allowance for sheriffs, assessors and their deputies</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>7</td>
<td>5</td>
<td>19</td>
<td></td>
<td>161</td>
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<table>
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<tr>
<th>Ch.</th>
<th>Art.</th>
<th>Sec.</th>
<th>Municipal capitation tax</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
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<tr>
<th>Ch.</th>
<th>Art.</th>
<th>Sec.</th>
<th>Salary and expenses of assessors</th>
<th>Page</th>
</tr>
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<tbody>
<tr>
<td>11</td>
<td>2</td>
<td>5, 5(1)-5(55), 10</td>
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<thead>
<tr>
<th>Ch.</th>
<th>Art.</th>
<th>Sec.</th>
<th>Poisons and narcotics</th>
<th>Page</th>
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<tbody>
<tr>
<td>16</td>
<td>8</td>
<td>8A</td>
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<th>Art.</th>
<th>Sec.</th>
<th>Narcotic drugs</th>
<th>Page</th>
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<tbody>
<tr>
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<td>8A</td>
<td>8B</td>
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<th>Ch.</th>
<th>Art.</th>
<th>Sec.</th>
<th>Dangerous drugs</th>
<th>Page</th>
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<td>14</td>
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<table>
<thead>
<tr>
<th>Ch.</th>
<th>Art.</th>
<th>Sec.</th>
<th>Supplemental retirement plans for employees of institutions of higher education</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>18</td>
<td>2</td>
<td>13f</td>
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<thead>
<tr>
<th>Ch.</th>
<th>Art.</th>
<th>Sec.</th>
<th>Branch colleges</th>
<th>Page</th>
</tr>
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<tbody>
<tr>
<td>18</td>
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<table>
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<tr>
<th>Ch.</th>
<th>Art.</th>
<th>Sec.</th>
<th>General school fund</th>
<th>Page</th>
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<tr>
<td>18</td>
<td>9</td>
<td>6, 8a</td>
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<table>
<thead>
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<th>Ch.</th>
<th>Art.</th>
<th>Sec.</th>
<th>Supplemental retirement plan for employees of West Virginia University</th>
<th>Page</th>
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<tr>
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<th>Art.</th>
<th>Sec.</th>
<th>Branch colleges</th>
<th>Page</th>
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</thead>
<tbody>
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<table>
<thead>
<tr>
<th>Ch.</th>
<th>Art.</th>
<th>Sec.</th>
<th>Potomac State School of West Virginia University</th>
<th>Page</th>
</tr>
</thead>
<tbody>
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<td>18</td>
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<table>
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<th>Ch.</th>
<th>Art.</th>
<th>Sec.</th>
<th>Commission on Higher Education</th>
<th>Page</th>
</tr>
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<tbody>
<tr>
<td>16</td>
<td>22</td>
<td>1-4</td>
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<tr>
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<th>Art.</th>
<th>Sec.</th>
<th>Student loan program</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>16</td>
<td>22A</td>
<td>1-11</td>
<td></td>
<td>851</td>
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<table>
<thead>
<tr>
<th>Ch.</th>
<th>Art.</th>
<th>Sec.</th>
<th>Establishment and operation of two-year branch colleges by governmental bodies</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>18</td>
<td>24</td>
<td>11</td>
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<td>861</td>
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<table>
<thead>
<tr>
<th>Ch.</th>
<th>Art.</th>
<th>Sec.</th>
<th>Stock law</th>
<th>Page</th>
</tr>
</thead>
<tbody>
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<td>19</td>
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<td></td>
<td>29</td>
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<table>
<thead>
<tr>
<th>Ch.</th>
<th>Art.</th>
<th>Sec.</th>
<th>Ohio River hunting and fishing licenses</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>20</td>
<td>2</td>
<td>42</td>
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<td>637</td>
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<table>
<thead>
<tr>
<th>Ch.</th>
<th>Art.</th>
<th>Sec.</th>
<th>Occupational diseases medical board; application for benefits and report of injuries by employer</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>23</td>
<td>4</td>
<td>8d, 8e, 8f, 15</td>
<td></td>
<td>969</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Ch.</th>
<th>Art.</th>
<th>Sec.</th>
<th>Service of process on president or cashier of branch bank</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>50</td>
<td>3</td>
<td>13</td>
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<td>395</td>
</tr>
</tbody>
</table>

(*) Indicates new chapter, article or section.

## COMMERCIAL CODE:

<table>
<thead>
<tr>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Secured transactions</td>
<td>175</td>
</tr>
<tr>
<td>Duration of filing</td>
<td>985</td>
</tr>
<tr>
<td>Duties of filing officer</td>
<td>986</td>
</tr>
<tr>
<td>Effect of lapsed filing</td>
<td>985</td>
</tr>
<tr>
<td>Filing</td>
<td>985</td>
</tr>
</tbody>
</table>
### INDEX

**COMMISSIONERS OF ACCOUNTS:**

<table>
<thead>
<tr>
<th>Subject</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Disbursements from corpus of estates</td>
<td>63</td>
<td>328</td>
</tr>
<tr>
<td>Fiduciaries</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Accounting for money not disposable at time of settlement</td>
<td>61</td>
<td>321</td>
</tr>
<tr>
<td>Proof and allowance of claims</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Accounts</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Accounting for money not disposable at time of settlement</td>
<td>61</td>
<td>321</td>
</tr>
<tr>
<td>Proceedings for subsequent distribution</td>
<td>61</td>
<td>322</td>
</tr>
<tr>
<td>References of decedents' estates</td>
<td></td>
<td></td>
</tr>
<tr>
<td>By county court</td>
<td>60</td>
<td>320</td>
</tr>
<tr>
<td>Estates of three thousand dollars or less</td>
<td>60</td>
<td>320</td>
</tr>
<tr>
<td>Reference not required</td>
<td>60</td>
<td>320</td>
</tr>
</tbody>
</table>

**COMMITMENT OF YOUTHFUL MALE OFFENDERS:**

<table>
<thead>
<tr>
<th>Section</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Care charged to state commissioner of public institutions</td>
<td>128</td>
<td>730</td>
</tr>
<tr>
<td>Commitment</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Age limits</td>
<td>128</td>
<td>730</td>
</tr>
<tr>
<td>Conveyance of boys</td>
<td>128</td>
<td>735</td>
</tr>
<tr>
<td>Expenses</td>
<td>128</td>
<td>735</td>
</tr>
<tr>
<td>Crime punishable by imprisonment</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Commitment of boys convicted in state or federal courts</td>
<td>128</td>
<td>734</td>
</tr>
<tr>
<td>Generally</td>
<td>128</td>
<td>730</td>
</tr>
<tr>
<td>Health requirements</td>
<td>128</td>
<td>731</td>
</tr>
<tr>
<td>Rules and regulations</td>
<td>128</td>
<td>735</td>
</tr>
<tr>
<td>Cost of detention</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Payment by counties</td>
<td>128</td>
<td>735</td>
</tr>
<tr>
<td>Application of county funds in state treasury</td>
<td>128</td>
<td>738</td>
</tr>
<tr>
<td>Compelling payment</td>
<td>128</td>
<td>739</td>
</tr>
<tr>
<td>Determination of payments due from counties</td>
<td>128</td>
<td>738</td>
</tr>
<tr>
<td>Levy</td>
<td>128</td>
<td>739</td>
</tr>
<tr>
<td>Preparation of inmate lists for billing purposes</td>
<td>128</td>
<td>738</td>
</tr>
<tr>
<td>Reimbursement</td>
<td>128</td>
<td>737</td>
</tr>
<tr>
<td>Discharge</td>
<td>128</td>
<td>736</td>
</tr>
<tr>
<td>Escape</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Arrest and return</td>
<td>128</td>
<td>737</td>
</tr>
<tr>
<td>Offenses relating to youth facilities</td>
<td>128</td>
<td>737</td>
</tr>
<tr>
<td>Penalties</td>
<td>128</td>
<td>737</td>
</tr>
<tr>
<td>Parole</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Arrest and return of paroled boys</td>
<td>128</td>
<td>736</td>
</tr>
<tr>
<td>Penitentiary</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Transfer of boys to and from</td>
<td>128</td>
<td>736</td>
</tr>
</tbody>
</table>

**COMMUNICABLE AND INFECTIOUS DISEASES:**

<table>
<thead>
<tr>
<th>Subject</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Compulsory immunization of school children against smallpox, diphtheria, polio, rubella, rubella, tetanus and whooping cough</td>
<td>69</td>
</tr>
<tr>
<td>Compulsory testing of school children and school personnel for tuberculosis</td>
<td>70</td>
</tr>
</tbody>
</table>

**CONGRESS:**

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Congressional districts</td>
<td>116</td>
</tr>
<tr>
<td>Memorializing the Congress to call a convention for purpose of amending the Constitution of the United States to provide for sharing federal income tax revenue with states and political subdivisions (HCR 9)</td>
<td></td>
</tr>
<tr>
<td>Reimbursement of counties for revenue loss resulting from federal land acquisition (HCR 3)</td>
<td></td>
</tr>
</tbody>
</table>
### CONSERVATORS OF THE PEACE:
- Appointment of local conservators of the peace: Ch. 118 Page 682
- Compensation: Ch. 118 Page 685
- Powers and duties: Ch. 118 Page 686
- Removal of conservator: Ch. 118 Page 689
- Vacating appointment of deputy sheriff: Ch. 118 Page 684

### CONSPIRACY:
- To defraud state, boards of education, county or municipality: Ch. 118 Page 45
- Construction of statute: Ch. 118 Page 250
- Penalties: Ch. 118 Page 250

### CONSTITUTION:
- State
  - Submission of Constitutional Improvement Amendment to voters: Ch. 17 Page 123
  - Joint resolution proposing (SJR 3): Ch. 1041
- United States
  - Ratifying amendment extending right to vote to citizens 18 years of age or older (HJR 1): Ch. 1097

### CONVICTS:
- Sale, lease or mortgage of lands: Ch. 136 Page 763
- Summary proceedings: Ch. 136 Page 763

### COPPER WIRE:
- Purchase or transportation by junk dealer: Ch. 40 Page 244

### CORPORATIONS:
- Banks
  - See Banks.
- Building and loan associations
  - See Building and Loan Associations.
- Credit unions
  - Supervision by and reports to commissioner of banking: Ch. 21 Page 140
- Domestic
  - Consolidation or merger: Ch. 18 Page 128
  - With foreign corporations: Ch. 18 Page 131
- Industrial loan companies
  - Limitations on powers: Ch. 20 Page 138
- Municipal corporations
  - Public museums, cultural centers, etc.
  - Authority of counties and municipalities to make appropriations: Ch. 107 Page 629
- Taxation
  - Meaning of terms in corporate net income tax law: Ch. 170 Page 907
  - West Virginia Industrial Development Authority
  - See Industrial Development Authority.

### COUNTIES:
- Classification for determining compensation of elected officials: Ch. 23 Page 167
- Compensation of elected county officials, deputies, assistants and employees: Ch. 23, 14 Page 165, 1061
- Courthouse
  - Closing on Saturday: Ch. 25 Page 188
- Officials and employees
  - In-service training programs established: Ch. 23 Page 186
  - Legislative findings and policy: Ch. 23 Page 186

### COUNTY COURTS:
- A corporation: Ch. 23 Page 162
- Commissioners
  - Compensation: Ch. 23 Page 169
  - Affidavit acknowledging receipt of: Ch. 23, 14 Page 169, 1061
  - Minimum and maximum limits: Ch. 23, 14 Page 169, 1061
<table>
<thead>
<tr>
<th>Index</th>
<th>PAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>COUNTY COURTS—(continued):</td>
<td>Ch.</td>
</tr>
<tr>
<td>Commissioners—(continued):</td>
<td></td>
</tr>
<tr>
<td>Powers and duties</td>
<td>23</td>
</tr>
<tr>
<td>Sharing compensation of county employee, etc., prohibited</td>
<td>23</td>
</tr>
<tr>
<td>Penalty</td>
<td>23</td>
</tr>
<tr>
<td>County officials</td>
<td></td>
</tr>
<tr>
<td>Compensation determined within limits</td>
<td>23</td>
</tr>
<tr>
<td>County property</td>
<td></td>
</tr>
<tr>
<td>To provide courthouse, jail, offices, etc.</td>
<td>25</td>
</tr>
<tr>
<td>Courthouse</td>
<td></td>
</tr>
<tr>
<td>Closing on Saturday</td>
<td>25</td>
</tr>
<tr>
<td>How constituted</td>
<td>23</td>
</tr>
<tr>
<td>President</td>
<td></td>
</tr>
<tr>
<td>Election</td>
<td>23</td>
</tr>
<tr>
<td>Reports on expenditures by county officers</td>
<td>23</td>
</tr>
<tr>
<td>COURT OF CLAIMS:</td>
<td></td>
</tr>
<tr>
<td>Compensation of judges</td>
<td>13</td>
</tr>
<tr>
<td>Expenses of judges</td>
<td>13</td>
</tr>
<tr>
<td>COURTS:</td>
<td></td>
</tr>
<tr>
<td>Circuit Courts</td>
<td></td>
</tr>
<tr>
<td>See Circuit Courts.</td>
<td></td>
</tr>
<tr>
<td>County Courts</td>
<td></td>
</tr>
<tr>
<td>See County Courts.</td>
<td></td>
</tr>
<tr>
<td>Court of Claims</td>
<td></td>
</tr>
<tr>
<td>Compensation and expenses of judges</td>
<td>13</td>
</tr>
<tr>
<td>Juvenile</td>
<td></td>
</tr>
<tr>
<td>When prosecuting attorney to represent petitioner</td>
<td>12</td>
</tr>
<tr>
<td>Limited jurisdiction</td>
<td></td>
</tr>
<tr>
<td>Compensation of judges paid from county treasury</td>
<td>23</td>
</tr>
<tr>
<td>Domestic Relations Court of Cabell County</td>
<td></td>
</tr>
<tr>
<td>Jurisdiction</td>
<td>34</td>
</tr>
<tr>
<td>Intermediate Court of McDowell County</td>
<td></td>
</tr>
<tr>
<td>See McDowell County.</td>
<td></td>
</tr>
<tr>
<td>Intermediate Court of Mercer County</td>
<td></td>
</tr>
<tr>
<td>Jurisdiction</td>
<td>37</td>
</tr>
<tr>
<td>Salary of judge</td>
<td>37</td>
</tr>
<tr>
<td>Intermediate Court of Ohio County</td>
<td></td>
</tr>
<tr>
<td>Salary of judge</td>
<td>38</td>
</tr>
<tr>
<td>Intermediate Court of Wood County</td>
<td></td>
</tr>
<tr>
<td>Jurisdiction</td>
<td>39</td>
</tr>
<tr>
<td>Salary of judge</td>
<td>39</td>
</tr>
<tr>
<td>Juvenile Court of Kanawha County</td>
<td></td>
</tr>
<tr>
<td>Jurisdiction</td>
<td>35</td>
</tr>
<tr>
<td>Salary of judge</td>
<td>35</td>
</tr>
<tr>
<td>CREDIT UNIONS:</td>
<td></td>
</tr>
<tr>
<td>Commissioner of banking</td>
<td></td>
</tr>
<tr>
<td>Fee for examination</td>
<td>21</td>
</tr>
<tr>
<td>Penalty for failure to report</td>
<td>21</td>
</tr>
<tr>
<td>Revocation of certificate of approval</td>
<td>21</td>
</tr>
<tr>
<td>Supervision by and reports to</td>
<td>21</td>
</tr>
<tr>
<td>CRIMES AND OFFENSES:</td>
<td></td>
</tr>
<tr>
<td>Bribery. See Bribery.</td>
<td></td>
</tr>
<tr>
<td>Crimes against chastity, morality and decency</td>
<td></td>
</tr>
<tr>
<td>Child molesting</td>
<td>43</td>
</tr>
<tr>
<td>Penalty</td>
<td>43</td>
</tr>
<tr>
<td>Crimes against property</td>
<td></td>
</tr>
<tr>
<td>Junk</td>
<td></td>
</tr>
<tr>
<td>Purchase or transportation of copper wire, etc., by junk dealers</td>
<td>40</td>
</tr>
</tbody>
</table>
CRIMES AND OFFENSES—(continued):

<table>
<thead>
<tr>
<th>Offense</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Crimes against public policy</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Conspicacy</td>
<td>45</td>
<td>249</td>
</tr>
<tr>
<td>Debt pooling</td>
<td>44</td>
<td>248</td>
</tr>
<tr>
<td>Crimes against the peace</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Disruption of governmental processes</td>
<td>41</td>
<td>245</td>
</tr>
<tr>
<td>Penalty</td>
<td>41</td>
<td>245</td>
</tr>
</tbody>
</table>

CRIMINAL IDENTIFICATION BUREAU:
See Department of Public Safety.

CRIMINAL PROCEDURE:

<table>
<thead>
<tr>
<th>Task</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Accused</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Copy of indictment for</td>
<td>46</td>
<td>252</td>
</tr>
<tr>
<td>Counsel for</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Appointed by court</td>
<td>46</td>
<td>252</td>
</tr>
<tr>
<td>Fee</td>
<td>46</td>
<td>252</td>
</tr>
<tr>
<td>List of jurors for</td>
<td>46</td>
<td>252</td>
</tr>
<tr>
<td>Trial, time for</td>
<td>46</td>
<td>251</td>
</tr>
<tr>
<td>Witnesses</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Deposit of</td>
<td>46</td>
<td>251</td>
</tr>
</tbody>
</table>

Detainers

<table>
<thead>
<tr>
<th>Task</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agreement on</td>
<td>48</td>
<td>254</td>
</tr>
</tbody>
</table>

See Detainers.

D

DANGEROUS WEAPONS:
See Weapons.

DEBT POOLING:

<table>
<thead>
<tr>
<th>Task</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Definition</td>
<td>44</td>
<td>248</td>
</tr>
<tr>
<td>Offenses and penalties</td>
<td>44</td>
<td>248</td>
</tr>
<tr>
<td>Jurisdiction</td>
<td>44</td>
<td>248</td>
</tr>
<tr>
<td>Pleading and proof</td>
<td>44</td>
<td>248</td>
</tr>
</tbody>
</table>

DEPARTMENT OF FINANCE AND ADMINISTRATION:
See Finance and Administration.

DEPARTMENT OF PUBLIC SAFETY:

<table>
<thead>
<tr>
<th>Task</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bonds</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Surety bonds of members</td>
<td>129</td>
<td>742</td>
</tr>
<tr>
<td>Approval by attorney general</td>
<td>129</td>
<td>742</td>
</tr>
<tr>
<td>Criminal identification bureau</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cooperation with other states and the United States</td>
<td>130</td>
<td>743</td>
</tr>
<tr>
<td>Establishment and maintenance</td>
<td>130</td>
<td>742</td>
</tr>
<tr>
<td>Failure to make reports; penalty</td>
<td>130</td>
<td>745</td>
</tr>
<tr>
<td>Fingerprints</td>
<td>130</td>
<td>743</td>
</tr>
<tr>
<td>Return upon acquittal</td>
<td>130</td>
<td>745</td>
</tr>
<tr>
<td>Information</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Duty of law-enforcement officers to furnish</td>
<td>130</td>
<td>744</td>
</tr>
<tr>
<td>Offenses and penalties</td>
<td>130</td>
<td>745</td>
</tr>
<tr>
<td>Officer in charge</td>
<td>130</td>
<td>743</td>
</tr>
<tr>
<td>Photographs</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Furnishing photographs of persons arrested</td>
<td>130</td>
<td>743</td>
</tr>
<tr>
<td>Purpose</td>
<td>130</td>
<td>742</td>
</tr>
<tr>
<td>Records</td>
<td>130</td>
<td>742</td>
</tr>
<tr>
<td>Removal or destruction; penalty</td>
<td>130</td>
<td>745</td>
</tr>
<tr>
<td>Reports</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Failure to make or perform duty; penalty</td>
<td>130</td>
<td>745</td>
</tr>
</tbody>
</table>

Department

<table>
<thead>
<tr>
<th>Task</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Companies or platoons</td>
<td>129</td>
<td>740</td>
</tr>
<tr>
<td>Composition and designation</td>
<td>129</td>
<td>740</td>
</tr>
<tr>
<td>Creation and equipment of department by superintendent</td>
<td>129</td>
<td>740</td>
</tr>
<tr>
<td>Salaries of members</td>
<td>129</td>
<td>740</td>
</tr>
</tbody>
</table>
**INDEX**

<table>
<thead>
<tr>
<th>DEPUTY SHERIFFS:</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Civil Service System</td>
<td></td>
<td></td>
</tr>
<tr>
<td>See Civil Service.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**DETAINERS:**

<table>
<thead>
<tr>
<th>Agreement on enactment</th>
<th>48</th>
<th>254</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commissioner of Public Institutions</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Administrator and information officer for agreement</td>
<td>48</td>
<td>262</td>
</tr>
<tr>
<td>Definition</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Appropriate court</td>
<td>48</td>
<td>261</td>
</tr>
<tr>
<td>Enforcement of agreement</td>
<td>48</td>
<td>262</td>
</tr>
<tr>
<td>Habitual criminal law</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Application not required</td>
<td>48</td>
<td>262</td>
</tr>
<tr>
<td>Prisoner</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Delivery of</td>
<td>48</td>
<td>262</td>
</tr>
<tr>
<td>Escape while in temporary custody</td>
<td>48</td>
<td>262</td>
</tr>
</tbody>
</table>

**DISCLAIMER:**

<table>
<thead>
<tr>
<th>Power of appointment</th>
<th>65</th>
<th>332</th>
</tr>
</thead>
<tbody>
<tr>
<td>See Power of Appointment.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**DOGS:**

<table>
<thead>
<tr>
<th>Killing or worrying livestock or poultry</th>
<th>5</th>
<th>31</th>
</tr>
</thead>
<tbody>
<tr>
<td>Appraision of damages</td>
<td>5</td>
<td>32</td>
</tr>
<tr>
<td>Assessment of damages</td>
<td>5</td>
<td>33</td>
</tr>
<tr>
<td>Duty of owner to kill</td>
<td>5</td>
<td>33</td>
</tr>
<tr>
<td>Proceedings before justice on failure to kill</td>
<td>5</td>
<td>33</td>
</tr>
<tr>
<td>Recovery of damages</td>
<td>5</td>
<td>31</td>
</tr>
<tr>
<td>Unlawful to harbor</td>
<td>5</td>
<td>33</td>
</tr>
<tr>
<td>Penalty</td>
<td>5</td>
<td>33</td>
</tr>
<tr>
<td>When lawful to kill</td>
<td>5</td>
<td>33</td>
</tr>
</tbody>
</table>

**DOMESTIC RELATIONS:**

<table>
<thead>
<tr>
<th>Marriage</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>See Marriages.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**DRUGS:**

| See Narcotics. |    |      |

**EDUCATION:**

| See Schools. |    |      |

**ELECTIONS:**

<table>
<thead>
<tr>
<th>Absent voters</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Voting booths provided by clerk</td>
<td>53</td>
<td>317</td>
</tr>
<tr>
<td>Display of campaign material during voting period prohibited</td>
<td>53</td>
<td>317</td>
</tr>
<tr>
<td>Definitions</td>
<td>55</td>
<td>310</td>
</tr>
<tr>
<td>Federal Voting Rights Act Amendment of 1970</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Authority of secretary of state</td>
<td>56</td>
<td>314</td>
</tr>
<tr>
<td>Persons entitled to vote under</td>
<td>56</td>
<td>313</td>
</tr>
<tr>
<td>Political parties</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Executive Committees</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Composition</td>
<td>57</td>
<td>315</td>
</tr>
<tr>
<td>Election</td>
<td>57</td>
<td>315</td>
</tr>
<tr>
<td>Organization</td>
<td>57</td>
<td>316</td>
</tr>
<tr>
<td>Terms of office</td>
<td>57</td>
<td>316</td>
</tr>
<tr>
<td>Registration of voters</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Age for registration</td>
<td>55</td>
<td>312</td>
</tr>
<tr>
<td>Prerequisite to voting</td>
<td>55</td>
<td>312</td>
</tr>
<tr>
<td>Required for voting</td>
<td>55</td>
<td>312</td>
</tr>
<tr>
<td>Scope of chapter</td>
<td>55</td>
<td>310</td>
</tr>
</tbody>
</table>
### ELECTIONS—(continued):

<table>
<thead>
<tr>
<th>Category</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Voters</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Persons entitled to vote</td>
<td>55</td>
<td>311</td>
</tr>
</tbody>
</table>

### EMINENT DOMAIN:

<table>
<thead>
<tr>
<th>Category</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Crossings and connections</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Civil action</td>
<td>59</td>
<td>319</td>
</tr>
<tr>
<td>Construction</td>
<td>59</td>
<td>318</td>
</tr>
<tr>
<td>Works of another entity</td>
<td>59</td>
<td>318</td>
</tr>
<tr>
<td>Municipalities</td>
<td>99</td>
<td>597</td>
</tr>
</tbody>
</table>

### FIDUCIARIES:

<table>
<thead>
<tr>
<th>Category</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Accounting for money not disposable at time of settlement</td>
<td>61</td>
<td>321</td>
</tr>
<tr>
<td>Investments</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Legal investments</td>
<td>62</td>
<td>322</td>
</tr>
<tr>
<td>Securities in which fiduciaries may invest trust funds</td>
<td>62</td>
<td>323</td>
</tr>
</tbody>
</table>

### FINANCE AND ADMINISTRATION:

<table>
<thead>
<tr>
<th>Category</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Budget Division</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Revenue</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Estimates of</td>
<td>50</td>
<td>264</td>
</tr>
<tr>
<td>Reports on collections</td>
<td>50</td>
<td>264</td>
</tr>
<tr>
<td>Commissioner</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Director of budget</td>
<td>49</td>
<td>263</td>
</tr>
<tr>
<td>Financial interest in purchase of commodities, printing, etc., prohibited</td>
<td>2</td>
<td>1102</td>
</tr>
<tr>
<td>Salary</td>
<td>49</td>
<td>263</td>
</tr>
<tr>
<td>Term of office</td>
<td>49</td>
<td>263</td>
</tr>
<tr>
<td>Conspiracy, purchasing division</td>
<td>2</td>
<td>1103</td>
</tr>
<tr>
<td>Data processing equipment</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Authority of governor to transfer equipment and personnel</td>
<td>52</td>
<td>266</td>
</tr>
<tr>
<td>Professional staff</td>
<td>52</td>
<td>267</td>
</tr>
<tr>
<td>Department</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Chief executive officer</td>
<td>49</td>
<td>263</td>
</tr>
<tr>
<td>Divisions</td>
<td>49</td>
<td>264</td>
</tr>
<tr>
<td>False pretenses and statements in obtaining money and property from state</td>
<td>2</td>
<td>1103</td>
</tr>
<tr>
<td>Fraud in obtaining money and property from state</td>
<td>2</td>
<td>1103</td>
</tr>
<tr>
<td>Information System Services Division</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Duties generally</td>
<td>52</td>
<td>266</td>
</tr>
<tr>
<td>Findings and reports</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Review by the governor</td>
<td>52</td>
<td>266</td>
</tr>
<tr>
<td>Leasing of grounds, buildings, office or other space</td>
<td>51</td>
<td>265</td>
</tr>
<tr>
<td>Acquiring by contract or lease</td>
<td>51</td>
<td>265</td>
</tr>
<tr>
<td>Selection</td>
<td>51</td>
<td>265</td>
</tr>
<tr>
<td>Purchasing Division</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Conspiracies, corrupt combinations, collusions, etc.</td>
<td>2</td>
<td>1103</td>
</tr>
<tr>
<td>Contracts</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fraud or deceit</td>
<td>2</td>
<td>1103</td>
</tr>
<tr>
<td>Fines and penalties</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Conspiracies, corrupt combinations, collusions, etc.</td>
<td>2</td>
<td>1103</td>
</tr>
<tr>
<td>Financial interest of commissioner, etc., in commodities, printing, etc.</td>
<td>2</td>
<td>1102</td>
</tr>
<tr>
<td>Obtaining money and property under false pretense or by fraud</td>
<td>2</td>
<td>1103</td>
</tr>
<tr>
<td>Violation of article</td>
<td>2</td>
<td>1102</td>
</tr>
<tr>
<td>Public printing and paper</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Financial interest of commissioner or employees</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Penalty</td>
<td>2</td>
<td>1102</td>
</tr>
<tr>
<td>Paper stock furnished to contractor for state printing</td>
<td>2</td>
<td>1101</td>
</tr>
<tr>
<td>Severability of article</td>
<td>2</td>
<td>1103</td>
</tr>
</tbody>
</table>
### INDEX

<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>FIREMEN’S AND POLICEMEN’S PENSIONS:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Assessments</td>
<td></td>
<td>104</td>
</tr>
<tr>
<td>Levy to maintain fund</td>
<td>104</td>
<td>609</td>
</tr>
<tr>
<td>On members of departments</td>
<td>104</td>
<td>609</td>
</tr>
<tr>
<td>Refund and return of assessments</td>
<td>104</td>
<td>609</td>
</tr>
<tr>
<td>Benefits</td>
<td></td>
<td>104</td>
</tr>
<tr>
<td>Death benefits</td>
<td>104</td>
<td>615</td>
</tr>
<tr>
<td>General provisions</td>
<td>104</td>
<td>618</td>
</tr>
<tr>
<td>Disability pensions</td>
<td>104</td>
<td>611</td>
</tr>
<tr>
<td>General provisions</td>
<td>104</td>
<td>618</td>
</tr>
<tr>
<td>Retirement pension</td>
<td>104</td>
<td>613</td>
</tr>
<tr>
<td>General provisions</td>
<td>104</td>
<td>618</td>
</tr>
<tr>
<td><strong>FISH:</strong></td>
<td></td>
<td>108</td>
</tr>
<tr>
<td>See Game and Fish.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>FORESTERS:</strong></td>
<td></td>
<td>108</td>
</tr>
<tr>
<td>Licenses</td>
<td></td>
<td>124</td>
</tr>
<tr>
<td>Expiration</td>
<td>124</td>
<td>701</td>
</tr>
<tr>
<td>Fees</td>
<td>124</td>
<td>701</td>
</tr>
<tr>
<td>Renewal</td>
<td>124</td>
<td>701</td>
</tr>
<tr>
<td><strong>FOREST CAMP FOR MALE OFFENDERS:</strong></td>
<td></td>
<td>128</td>
</tr>
<tr>
<td>Eligibility</td>
<td>128</td>
<td>729</td>
</tr>
<tr>
<td>Physical and mental examination of offenders</td>
<td>128</td>
<td>729</td>
</tr>
<tr>
<td>Transfer from one youth facility to another</td>
<td>128</td>
<td>730</td>
</tr>
<tr>
<td><strong>FORESTS:</strong></td>
<td></td>
<td>128</td>
</tr>
<tr>
<td>Creating a special interim Forest Management Review Commission (SCR 4)</td>
<td></td>
<td>1022</td>
</tr>
<tr>
<td><strong>GAME AND FISH:</strong></td>
<td></td>
<td>108</td>
</tr>
<tr>
<td>Fishing</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Unlawful methods of fishing</td>
<td>108</td>
<td>631</td>
</tr>
<tr>
<td>Funds—wildlife resources</td>
<td></td>
<td>110</td>
</tr>
<tr>
<td>Use</td>
<td>110</td>
<td>638</td>
</tr>
<tr>
<td>Hunting</td>
<td></td>
<td>108</td>
</tr>
<tr>
<td>Unlawful methods of hunting</td>
<td>108</td>
<td>631</td>
</tr>
<tr>
<td>License and permits</td>
<td></td>
<td>110</td>
</tr>
<tr>
<td>Class A resident statewide hunting and trapping license</td>
<td>110</td>
<td>639</td>
</tr>
<tr>
<td>Fee</td>
<td>110</td>
<td>639</td>
</tr>
<tr>
<td>Class AB combination resident statewide hunting, trapping and fishing license</td>
<td>110</td>
<td>639</td>
</tr>
<tr>
<td>Fee</td>
<td>110</td>
<td>640</td>
</tr>
<tr>
<td>Class B resident statewide fishing license</td>
<td>110</td>
<td>639</td>
</tr>
<tr>
<td>Fee</td>
<td>110</td>
<td>639</td>
</tr>
<tr>
<td>Class I national forest hunting, trapping and fishing license</td>
<td>110</td>
<td>640</td>
</tr>
<tr>
<td>Fee</td>
<td>110</td>
<td>640</td>
</tr>
<tr>
<td>Class L nonresident statewide bow and arrow hunting and fishing license</td>
<td>110</td>
<td>640</td>
</tr>
<tr>
<td>Fee</td>
<td>110</td>
<td>640</td>
</tr>
<tr>
<td>Disposition of license fees</td>
<td>110</td>
<td>638</td>
</tr>
<tr>
<td>Reports</td>
<td></td>
<td>110</td>
</tr>
<tr>
<td>Monthly report on licenses and permits by agents to director</td>
<td>110</td>
<td>638</td>
</tr>
<tr>
<td>Water pollution</td>
<td></td>
<td>108</td>
</tr>
<tr>
<td>See Water Pollution Control Act.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Wildlife</td>
<td></td>
<td>109</td>
</tr>
<tr>
<td>Importation of wildlife</td>
<td>109</td>
<td>636</td>
</tr>
<tr>
<td><strong>GIFTS:</strong></td>
<td></td>
<td>66</td>
</tr>
<tr>
<td>Gifts to minors</td>
<td>66</td>
<td>335</td>
</tr>
<tr>
<td><strong>GOVERNMENTAL PROCESSES:</strong></td>
<td>Ch.</td>
<td>Page</td>
</tr>
<tr>
<td>-----------------------------</td>
<td>-----</td>
<td>------</td>
</tr>
<tr>
<td>Willful disruption of</td>
<td>41</td>
<td>245</td>
</tr>
<tr>
<td>Penalty</td>
<td>41</td>
<td>245</td>
</tr>
</tbody>
</table>

**GOVERNOR:**

Appropriations

Transfer of amounts between items of appropriation for Department of Welfare 7 101

**GRAND JURY:**

Additional grand jury to sit for extended period 79 393

Selection and summoning grand jurors 78 392

**GUARDIAN:**

Disbursements

Expenditures from principal

How authorized 63 328

General provisions 63 328

Limitations on 63 328

Mentally retarded persons

Application of other provisions 64 332

Appointment of guardian 64 329

Duration of guardianship 64 330

Limited guardianship 64 330

Standby guardianship 64 331

**HABEAS CORPUS:**

Post conviction review

Direction of writ 67 345

Duties of clerk, attorney general and prosecuting attorney 67 345

Granting of writ 67 345

How writ made returnable 67 345

Refusal of writ 67 345

**HEALTH:**

Air pollution control

See Air Pollution Control.

Combined local boards of health 68 347

Counties and municipalities may combine in employment 68 347

Authorized

Jurisdiction generally 68 350

Communicable and infectious diseases

Compulsory immunization of school children against smallpox, diphtheria, polio, rubeola, rubella, tetanus and whooping cough 69 352

Compulsory testing of school children and school personnel for tuberculosis 70 354

Health Care Corporations 76 372

Local officers

Combined board of health 68 347

Counties and municipalities may combine in employment 68 347

Authorized

Jurisdiction generally 68 350

Venereal diseases

Minors

Treatment without consent of parent or guardian 71 355

**HEALTH CARE CORPORATIONS:**

Board of directors 76 372

Subscribers

Contracts furnished to 76 372

Payments for subscribers by others 76 372

Wage deductions 76 372
INDEX

HOLIDAYS:
Legal holidays enumerated .......... 84 425
Mondays as legal holidays ......... 84 425

HUMAN RIGHTS COMMISSION:
Continued Definitions .......... 77 378
Definitions .......... 77 374
Discrimination
  Defined .......... 77 375
  Unlawful discriminatory practices .......... 77 382
  Complaints .......... 77 388
  Defined .......... 77 375
  Hearing .......... 77 388
  Investigation .......... 77 388
  Orders .......... 77 388
  Procedure .......... 77 386
Executive director
  Appointment by governor .......... 77 374
  Expenses, reimbursement .......... 77 379
  Qualifications .......... 77 378
  Salary .......... 77 378
  Term of office .......... 77 378
  Exemptions of private clubs .......... 77 391
  Expenses of personnel .......... 77 379
  Functions generally .......... 77 379
Housing law
  Injunctions in certain housing complaints .......... 77 390
Meetings .......... 77 379
Officers, election .......... 77 379
Organization and personnel .......... 77 378
Policy, declaration of .......... 77 374
Posting
  Posting of law and information .......... 77 390
Powers generally .......... 77 378, 379
Remedy
  Exclusiveness of remedy .......... 77 389
Services generally .......... 77 379
Status .......... 77 378

HUNTING:
See Game and Fish.

INCOME TAX:
Corporation Net Income Tax
  Definitions .......... 170 907
Personal net income tax
  Meaning of terms in personal income tax law .......... 170 906
Withholding of tax by employers
    Payment of withheld tax .......... 171 909
Return .......... 171 909

INDUSTRIAL DEVELOPMENT AUTHORITY:
Agreement with federal agencies .......... 22 160
Definitions .......... 22 145
Fund created .......... 22 158
Loans
  Application requirements .......... 22 156
    Hearings on application .......... 22 158
  Industrial development agencies .......... 22 150
  Industrial subdivision project improvements .......... 22 153
Powers generally .......... 22 148
### INDEX

<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>INDUSTRIAL DEVELOPMENT BOND ACT:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Definitions</td>
<td>126</td>
<td>718</td>
</tr>
<tr>
<td>Legislative findings</td>
<td>126</td>
<td>718</td>
</tr>
<tr>
<td><strong>INDUSTRIAL LOAN COMPANIES:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Powers</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Limitations on</td>
<td>20</td>
<td>138</td>
</tr>
<tr>
<td><strong>INFANTS:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Gifts to Minors Act</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Amendment of article</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Application and effect</td>
<td>66</td>
<td>344</td>
</tr>
<tr>
<td>Custodian</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Powers and duties</td>
<td>66</td>
<td>339</td>
</tr>
<tr>
<td>Resignation, death or removal of custodian</td>
<td>66</td>
<td>342</td>
</tr>
<tr>
<td>Appointment of successor custodian</td>
<td>66</td>
<td>342</td>
</tr>
<tr>
<td>Definitions</td>
<td>66</td>
<td>335</td>
</tr>
<tr>
<td>Effect of gift</td>
<td>66</td>
<td>339</td>
</tr>
<tr>
<td>Liability</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Exemption of third person from liability</td>
<td>66</td>
<td>341</td>
</tr>
<tr>
<td>Procedure for making gift</td>
<td>66</td>
<td>337</td>
</tr>
<tr>
<td>Severability of article</td>
<td>66</td>
<td>344</td>
</tr>
<tr>
<td>Short title of article</td>
<td>66</td>
<td>344</td>
</tr>
<tr>
<td>Sale, lease or mortgage of lands by summary proceedings</td>
<td>136</td>
<td>763</td>
</tr>
<tr>
<td><strong>INSURANCE:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Investments</td>
<td></td>
<td></td>
</tr>
<tr>
<td>United States bonds and government obligations</td>
<td>62</td>
<td>323</td>
</tr>
<tr>
<td>Public Employees Insurance Act</td>
<td>14</td>
<td>1063</td>
</tr>
<tr>
<td>See Public Employees Insurance Act.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>INTOXICATING LIQUORS:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sales by commissioner</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Price increase for payment of Korean veterans' bonus bonds</td>
<td>167</td>
<td>883</td>
</tr>
<tr>
<td>State building revenue bonds</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Payments by commissioner into special fund for retirement of</td>
<td>167</td>
<td>883</td>
</tr>
<tr>
<td><strong>INVESTMENTS:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Board of Investments</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Investments for more than one year</td>
<td>10</td>
<td>110</td>
</tr>
<tr>
<td>Securities</td>
<td></td>
<td></td>
</tr>
<tr>
<td>In which state funds may be invested</td>
<td>10</td>
<td>110</td>
</tr>
<tr>
<td>Purchase, sale or exchange</td>
<td>11</td>
<td>113</td>
</tr>
<tr>
<td>Restrictions</td>
<td>11</td>
<td>113</td>
</tr>
<tr>
<td><strong>JAIL FEES:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Commissioner of Public Institutions</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Payment of fees incurred by escapees from forestry camp and industrial schools</td>
<td>47</td>
<td>223</td>
</tr>
<tr>
<td><strong>JAMES RUMSEY PARK:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>State authorized to receive by gift or acquire by purchase</td>
<td>116</td>
<td>880</td>
</tr>
<tr>
<td>To be used as public park and recreational area</td>
<td>116</td>
<td>880</td>
</tr>
<tr>
<td><strong>JEFFERSON COUNTY:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Board of Education</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sale of certain real estate to U. S. Department of Interior authorized</td>
<td>180</td>
<td>1006</td>
</tr>
</tbody>
</table>
**INDEX**

<table>
<thead>
<tr>
<th>JUNK AND JUNK DEALERS:</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Copper wire, brass fittings, mercury, lead, etc.</td>
<td>40</td>
<td>244</td>
</tr>
<tr>
<td>Offenses</td>
<td>40</td>
<td>244</td>
</tr>
<tr>
<td>Purchase of</td>
<td>40</td>
<td>244</td>
</tr>
<tr>
<td>Bill of sale to be secured on</td>
<td>40</td>
<td>244</td>
</tr>
<tr>
<td>Record to be kept of</td>
<td>40</td>
<td>244</td>
</tr>
<tr>
<td>Transporting from state by nonresident</td>
<td>40</td>
<td>244</td>
</tr>
</tbody>
</table>

| JURIES: | |
| Grand jury | 79 | 393 |
| Additional grand jury to sit for extended period | 78 | 392 |
| Selection and summoning grand jurors | 78 | 392 |

| JUSTICES OF THE PEACE: | |
| Criminal jurisdiction | 81 | 395 |
| Offenses within criminal jurisdiction of justices | 81 | 395 |
| Penalties on conviction | 81 | 395 |
| Service of process | 80 | 395 |
| Repealing statute providing for service of process on president or cashier of a branch bank | 80 | 395 |

| JUVENILE COURTS: | |
| Proceedings | |
| When prosecuting attorney to represent petitioner | 12 | 114 |
| Assignment of assistants | 12 | 114 |

| KANAWHA COUNTY: | |
| Circuit Court | |
| Law assistant | 33 | 221 |
| Appointment, qualifications and salary | 33 | 221 |
| Juvenile Court | 35 | 225 |
| Jurisdiction | 35 | 225 |
| Salary of judge | 35 | 226 |

| LABOR: | |
| Labor-Management Relations Act for Private Sector | 82 | 399 |
| Agency, determination of | 82 | 399 |
| Arbitration | 82 | 399 |
| Construction of article | 82 | 399 |
| Definitions | 82 | 399 |
| Elections | 82 | 408 |
| Representatives and elections | 82 | 408 |
| Employers, rights of | 82 | 402 |
| Mediation | 82 | 399 |
| Investigation and mediation by commissioner of labor | 82 | 399 |
| Representatives and elections | 82 | 415 |
| Severability of article | 82 | 415 |
| Suits by or against labor organizations | 82 | 414 |
| Unfair labor practices | 82 | 403 |
| Prevention of | 82 | 410 |

<p>| Labor-Management Relations Board | 82 | 416 |
| Created | 82 | 416 |
| Employees | 82 | 417 |
| Executive secretary | 82 | 416 |
| Oath, compensation and expenses | 82 | 416 |
| Meetings | 82 | 417 |
| Places and times | 82 | 417 |
| Members | 82 | 416 |
| Appointment | 82 | 416 |
| Vacancies | 82 | 416 |
| Quorum | 82 | 416 |
| Rules and regulations | 82 | 418 |</p>
<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>LABOR—(continued):</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Minimum wages and maximum hours standards</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Amount of minimum wage</td>
<td>83</td>
<td>420</td>
</tr>
<tr>
<td>Credits</td>
<td></td>
<td></td>
</tr>
<tr>
<td>General provisions</td>
<td>83</td>
<td>424</td>
</tr>
<tr>
<td>Definitions</td>
<td>83</td>
<td>418</td>
</tr>
<tr>
<td>Hours worked</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Defined</td>
<td>83</td>
<td>420</td>
</tr>
<tr>
<td>Maximum hours</td>
<td>83</td>
<td>421</td>
</tr>
<tr>
<td>Offenses and penalties</td>
<td>83</td>
<td>424</td>
</tr>
<tr>
<td>Overtime compensation</td>
<td>83</td>
<td>422</td>
</tr>
<tr>
<td><strong>LANDSCAPE ARCHITECTS:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Board of landscape architects</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Actions to enjoin violations</td>
<td>125</td>
<td>715</td>
</tr>
<tr>
<td>Appointment</td>
<td>125</td>
<td>705</td>
</tr>
<tr>
<td>Chairman</td>
<td>125</td>
<td>706</td>
</tr>
<tr>
<td>Composition</td>
<td>125</td>
<td>705</td>
</tr>
<tr>
<td>Created</td>
<td>125</td>
<td>705</td>
</tr>
<tr>
<td>Duties and powers generally</td>
<td>125</td>
<td>706</td>
</tr>
<tr>
<td>Expenses</td>
<td>125</td>
<td>706</td>
</tr>
<tr>
<td>Funds</td>
<td>125</td>
<td>708</td>
</tr>
<tr>
<td>Legal representative</td>
<td>125</td>
<td>716</td>
</tr>
<tr>
<td>Meetings</td>
<td>125</td>
<td>706</td>
</tr>
<tr>
<td>Oaths</td>
<td>125</td>
<td>706</td>
</tr>
<tr>
<td>Officers</td>
<td>125</td>
<td>708</td>
</tr>
<tr>
<td>Removal</td>
<td>125</td>
<td>706</td>
</tr>
<tr>
<td>Secretary</td>
<td>125</td>
<td>706</td>
</tr>
<tr>
<td>Terms of office</td>
<td>125</td>
<td>706</td>
</tr>
<tr>
<td>Vacancies</td>
<td>125</td>
<td>706</td>
</tr>
<tr>
<td>Corporations</td>
<td>125</td>
<td>711</td>
</tr>
<tr>
<td>Definitions</td>
<td>125</td>
<td>704</td>
</tr>
<tr>
<td>Exemptions</td>
<td>125</td>
<td>712</td>
</tr>
<tr>
<td>Injunctions</td>
<td>125</td>
<td>716</td>
</tr>
<tr>
<td>Legislative findings</td>
<td>125</td>
<td>703</td>
</tr>
<tr>
<td>License</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Applicants</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Examination</td>
<td>125</td>
<td>709</td>
</tr>
<tr>
<td>Exemption from examination</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Qualifications of applicants</td>
<td>125</td>
<td>708</td>
</tr>
<tr>
<td>Applications</td>
<td>125</td>
<td>710</td>
</tr>
<tr>
<td>Fee</td>
<td>125</td>
<td>710</td>
</tr>
<tr>
<td>Display</td>
<td>125</td>
<td>710</td>
</tr>
<tr>
<td>Duplicate license</td>
<td>125</td>
<td>710</td>
</tr>
<tr>
<td>Hearing, procedure</td>
<td>125</td>
<td>713</td>
</tr>
<tr>
<td>Judicial review</td>
<td>125</td>
<td>715</td>
</tr>
<tr>
<td>Issuance</td>
<td>125</td>
<td>710</td>
</tr>
<tr>
<td>Renewal</td>
<td>125</td>
<td>710</td>
</tr>
<tr>
<td>Fee</td>
<td>125</td>
<td>710</td>
</tr>
<tr>
<td>Required</td>
<td>125</td>
<td>705</td>
</tr>
<tr>
<td>Revocation</td>
<td>125</td>
<td>713</td>
</tr>
<tr>
<td>Issuance of new license after revocation</td>
<td>125</td>
<td>716</td>
</tr>
<tr>
<td>Suspension</td>
<td>125</td>
<td>713</td>
</tr>
<tr>
<td>Partnerships</td>
<td>125</td>
<td>711</td>
</tr>
<tr>
<td>Penalties</td>
<td>125</td>
<td>716</td>
</tr>
<tr>
<td>Permits, temporary</td>
<td>125</td>
<td>711</td>
</tr>
<tr>
<td>Suspension or revocation</td>
<td>125</td>
<td>713</td>
</tr>
<tr>
<td>Public policy, declaration of</td>
<td>125</td>
<td>703</td>
</tr>
<tr>
<td>Seal</td>
<td>125</td>
<td>710</td>
</tr>
<tr>
<td>Severability of provisions of article</td>
<td>125</td>
<td>717</td>
</tr>
<tr>
<td>Violations</td>
<td>125</td>
<td>716</td>
</tr>
<tr>
<td>Actions to enjoin</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>INDEX</strong></td>
<td>1143</td>
<td></td>
</tr>
<tr>
<td>---</td>
<td>---</td>
<td></td>
</tr>
<tr>
<td><strong>LEGISLATURE:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Capitol building</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Space in, for use by Legislature</td>
<td>85</td>
<td>427</td>
</tr>
<tr>
<td>Legislative findings</td>
<td>85</td>
<td>427</td>
</tr>
<tr>
<td>Compensation</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Additional compensation for president of Senate and speaker of House</td>
<td>86</td>
<td>432</td>
</tr>
<tr>
<td>Basic compensation for services</td>
<td>86</td>
<td>431</td>
</tr>
<tr>
<td>Citizens Legislative Compensation Commission</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Implementation of resolutions of</td>
<td>86</td>
<td>430</td>
</tr>
<tr>
<td>During extraordinary session</td>
<td>86</td>
<td>431</td>
</tr>
<tr>
<td>Interim compensation for members of Joint Committee on Government and Finance and Commission on Interstate Cooperation</td>
<td>86</td>
<td>432</td>
</tr>
<tr>
<td>Expenses of members</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Affidavits required</td>
<td>86</td>
<td>435</td>
</tr>
<tr>
<td>Approval of expense voucher by legislative auditor</td>
<td>86</td>
<td>435</td>
</tr>
<tr>
<td>Interim expenses</td>
<td>86</td>
<td>434</td>
</tr>
<tr>
<td>Out-of-state expenses</td>
<td>86</td>
<td>434</td>
</tr>
<tr>
<td>Reimbursement for expenses incurred during any session</td>
<td>86</td>
<td>433</td>
</tr>
<tr>
<td>Rules authorized</td>
<td>86</td>
<td>435</td>
</tr>
<tr>
<td>Travel expenses</td>
<td>86</td>
<td>433</td>
</tr>
<tr>
<td>Joint Committee on Government and Finance</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Directed to make studies of:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Acquisition and operation of a scenic railroad to be known as the Webster-Randolph Scenic Railroad (SCR 13)</td>
<td>1026</td>
<td></td>
</tr>
<tr>
<td>Budgetary process (SCR 39)</td>
<td>1038</td>
<td></td>
</tr>
<tr>
<td>Conflicts between West Virginia Rules of Civil Procedure and statutory provisions concerning civil pleading and practice (HCR 19)</td>
<td>1017</td>
<td></td>
</tr>
<tr>
<td>Conservation of oil and gas reserves (HCR 39)</td>
<td>1019</td>
<td></td>
</tr>
<tr>
<td>Consolidation of departments, agencies, etc., having authority regarding environmental matters (HCR 8)</td>
<td>1011</td>
<td></td>
</tr>
<tr>
<td>Constitutional amendment to permit consolidation of county and municipal governments (HCR 55)</td>
<td>1020</td>
<td></td>
</tr>
<tr>
<td>Department of Mental Health, Department of Health, Office of Commissioner of Public Institutions, institutions under their jurisdiction, etc. (SCR 33)</td>
<td>1033</td>
<td></td>
</tr>
<tr>
<td>Granting adult status to eighteen-year-olds (HCR 64)</td>
<td>1021</td>
<td></td>
</tr>
<tr>
<td>Land use control on areas adjoining state parks, forests and recreational facilities (SCR 8)</td>
<td>1025</td>
<td></td>
</tr>
<tr>
<td>Physical needs of health, humane, penal and correctional institutions (SCR 40)</td>
<td>1039</td>
<td></td>
</tr>
<tr>
<td>Surface mining and reclamation (SCR 37)</td>
<td>1036</td>
<td></td>
</tr>
<tr>
<td>Timber management practices (SCR 32)</td>
<td>1031</td>
<td></td>
</tr>
<tr>
<td>Studies by continued:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Banking (HCR 88, regular session, 1970)</td>
<td>1028</td>
<td></td>
</tr>
<tr>
<td>Highway safety (SCR 15, regular session, 1970)</td>
<td>1028</td>
<td></td>
</tr>
<tr>
<td>Homestead exemption (HCR 6, 1st extraordinary session, 1970)</td>
<td>1028</td>
<td></td>
</tr>
<tr>
<td>Institutions of higher education (SCR 11, regular session, 1970)</td>
<td>1028</td>
<td></td>
</tr>
<tr>
<td>Mental health complex (HCR 4, 1st extraordinary session, 1970)</td>
<td>1028</td>
<td></td>
</tr>
<tr>
<td>Nonpublic school and college aid (HCR 20, regular session, 1969)</td>
<td>1028</td>
<td></td>
</tr>
<tr>
<td>Potomac River Basin Compact (HCR 8, regular session, 1968)</td>
<td>1029</td>
<td></td>
</tr>
<tr>
<td>Public employee relations (SCR 52, regular session, 1970)</td>
<td>1029</td>
<td></td>
</tr>
<tr>
<td>Tax structure (HCR 31, regular session, 1969)</td>
<td>1029</td>
<td></td>
</tr>
<tr>
<td>Water resources (HCR 80, regular session, 1970)</td>
<td>1029</td>
<td></td>
</tr>
<tr>
<td>Joint rules amended (HCR 2)</td>
<td>1009</td>
<td></td>
</tr>
</tbody>
</table>
## LEGISLATURE—(continued):

<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Purchasing Practices and Procedures Commission</td>
<td>87</td>
<td>436</td>
</tr>
<tr>
<td><strong>Appointment and terms of members</strong></td>
<td>87</td>
<td>436</td>
</tr>
<tr>
<td><strong>Composition</strong></td>
<td>87</td>
<td>436</td>
</tr>
<tr>
<td><strong>Continued as statutory body</strong></td>
<td>87</td>
<td>436</td>
</tr>
<tr>
<td><strong>Duties</strong></td>
<td>87</td>
<td>436</td>
</tr>
<tr>
<td><strong>Executive sessions</strong></td>
<td>87</td>
<td>438</td>
</tr>
<tr>
<td><strong>Expenses</strong></td>
<td>87</td>
<td>439</td>
</tr>
<tr>
<td><strong>Generally</strong></td>
<td>87</td>
<td>439</td>
</tr>
<tr>
<td><strong>How paid</strong></td>
<td>87</td>
<td>439</td>
</tr>
<tr>
<td><strong>Joint committee approval</strong></td>
<td>87</td>
<td>439</td>
</tr>
<tr>
<td><strong>Hearings</strong></td>
<td>87</td>
<td>438</td>
</tr>
<tr>
<td><strong>Powers</strong></td>
<td>87</td>
<td>438</td>
</tr>
<tr>
<td><strong>Subpoena powers</strong></td>
<td>87</td>
<td>438</td>
</tr>
<tr>
<td><strong>Enforcement provisions</strong></td>
<td>87</td>
<td>438</td>
</tr>
</tbody>
</table>

## MARKETS:

<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Public markets</td>
<td>2</td>
<td>8</td>
</tr>
<tr>
<td><strong>Uniform standards and grades of livestock and uniform market practices</strong></td>
<td>2</td>
<td>8</td>
</tr>
</tbody>
</table>

## MARRIAGES:

<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Persons authorized to celebrate marriages</td>
<td>53</td>
<td>267</td>
</tr>
<tr>
<td>Qualifications of minister, priest or rabbi for celebrating</td>
<td>53</td>
<td>268</td>
</tr>
<tr>
<td>Ritual for ceremony of</td>
<td>53</td>
<td>268</td>
</tr>
</tbody>
</table>

## McDOWELL COUNTY:

<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Intermediate Court Appeals</td>
<td>36</td>
<td>234</td>
</tr>
<tr>
<td><strong>Docketed in circuit court</strong></td>
<td>36</td>
<td>234</td>
</tr>
<tr>
<td><strong>Petitions for</strong></td>
<td>36</td>
<td>234</td>
</tr>
<tr>
<td><strong>Proceedings on, allowed by circuit court</strong></td>
<td>36</td>
<td>235</td>
</tr>
<tr>
<td><strong>To circuit court</strong></td>
<td>36</td>
<td>233</td>
</tr>
<tr>
<td><strong>To Supreme Court of Appeals</strong></td>
<td>36</td>
<td>234</td>
</tr>
<tr>
<td><strong>Certification of cases of circuit court</strong></td>
<td>36</td>
<td>232</td>
</tr>
<tr>
<td><strong>Change of venue</strong></td>
<td>36</td>
<td>233</td>
</tr>
<tr>
<td><strong>Clerk</strong></td>
<td>36</td>
<td>231</td>
</tr>
<tr>
<td><strong>Fees</strong></td>
<td>36</td>
<td>231</td>
</tr>
<tr>
<td><strong>Signing of process, etc.</strong></td>
<td>36</td>
<td>231</td>
</tr>
<tr>
<td><strong>Contempt</strong></td>
<td>36</td>
<td>230</td>
</tr>
<tr>
<td><strong>Power to punish for</strong></td>
<td>36</td>
<td>230</td>
</tr>
<tr>
<td><strong>Established</strong></td>
<td>36</td>
<td>228</td>
</tr>
<tr>
<td><strong>General law applicable to court and judge</strong></td>
<td>36</td>
<td>236</td>
</tr>
<tr>
<td><strong>General powers and jurisdiction</strong></td>
<td>36</td>
<td>230</td>
</tr>
<tr>
<td><strong>Grand juries</strong></td>
<td>36</td>
<td>231</td>
</tr>
<tr>
<td><strong>Compensation of jurors</strong></td>
<td>36</td>
<td>231</td>
</tr>
<tr>
<td><strong>Impaneling</strong></td>
<td>36</td>
<td>231</td>
</tr>
<tr>
<td><strong>Habeas Corpus</strong></td>
<td>36</td>
<td>235</td>
</tr>
<tr>
<td><strong>Authority to grant writs of</strong></td>
<td>36</td>
<td>235</td>
</tr>
<tr>
<td><strong>Judge</strong></td>
<td>36</td>
<td>229</td>
</tr>
<tr>
<td><strong>Election, term and qualifications</strong></td>
<td>36</td>
<td>230</td>
</tr>
<tr>
<td><strong>Filling vacancy</strong></td>
<td>36</td>
<td>230</td>
</tr>
<tr>
<td><strong>Removal from office</strong></td>
<td>36</td>
<td>230</td>
</tr>
<tr>
<td><strong>Salary</strong></td>
<td>36</td>
<td>230</td>
</tr>
<tr>
<td><strong>Jurisdiction</strong></td>
<td>36</td>
<td>228</td>
</tr>
<tr>
<td><strong>Presumption of</strong></td>
<td>36</td>
<td>230</td>
</tr>
<tr>
<td><strong>Petit juries</strong></td>
<td>36</td>
<td>231</td>
</tr>
<tr>
<td><strong>Choosing and impaneling</strong></td>
<td>36</td>
<td>231</td>
</tr>
<tr>
<td><strong>Compensation of jurors</strong></td>
<td>36</td>
<td>231</td>
</tr>
<tr>
<td><strong>Prosecuting attorney</strong></td>
<td>36</td>
<td>235</td>
</tr>
<tr>
<td><strong>Duties of</strong></td>
<td>36</td>
<td>235</td>
</tr>
</tbody>
</table>
**INDEX**

**McDOWELL COUNTY—(continued):**

<table>
<thead>
<tr>
<th>Section</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Intermediate Court—(continued):</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Record books, office space and secretarial assistance</td>
<td></td>
<td></td>
</tr>
<tr>
<td>County court to provide</td>
<td>36</td>
<td>233</td>
</tr>
<tr>
<td>Sheriff</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Execution of process; etc.</td>
<td>36</td>
<td>232</td>
</tr>
<tr>
<td>Terms</td>
<td>36</td>
<td>231</td>
</tr>
</tbody>
</table>

**MEAT AND MEAT PRODUCTS:**

<table>
<thead>
<tr>
<th>Subsection</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Definitions</td>
<td>3</td>
<td>9</td>
</tr>
<tr>
<td>Distributor</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Defined</td>
<td>3</td>
<td>13</td>
</tr>
<tr>
<td>Licensing</td>
<td>3</td>
<td>16</td>
</tr>
<tr>
<td>Establishment</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Defined</td>
<td>3</td>
<td>14</td>
</tr>
<tr>
<td>Inspection</td>
<td>3</td>
<td>19</td>
</tr>
<tr>
<td>Number</td>
<td>3</td>
<td>18</td>
</tr>
<tr>
<td>Inspection, marking, labeling, branding, etc.</td>
<td>3</td>
<td>19</td>
</tr>
<tr>
<td>Exemptions from inspection</td>
<td>3</td>
<td>24</td>
</tr>
<tr>
<td>Penalties for violation of article</td>
<td>3</td>
<td>29</td>
</tr>
<tr>
<td>Processor</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Defined</td>
<td>3</td>
<td>13</td>
</tr>
<tr>
<td>Licensing</td>
<td>3</td>
<td>16</td>
</tr>
<tr>
<td>Prohibitions</td>
<td>3</td>
<td>25</td>
</tr>
<tr>
<td>Slaughterers</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Commercial and custom</td>
<td>3</td>
<td>13</td>
</tr>
<tr>
<td>Defined</td>
<td>3</td>
<td>24</td>
</tr>
<tr>
<td>Exclusion of those operating under federal law</td>
<td>3</td>
<td>16</td>
</tr>
</tbody>
</table>

**MEDICAL LICENSING BOARD:**

<table>
<thead>
<tr>
<th>Section</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Assistants to physicians and surgeons</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Approval and certification</td>
<td>121</td>
<td>697</td>
</tr>
<tr>
<td>Revocation of certification</td>
<td>121</td>
<td>697</td>
</tr>
<tr>
<td>Duties generally</td>
<td>121</td>
<td>695</td>
</tr>
<tr>
<td>Licensure of physicians and surgeons, and podiatrist</td>
<td>121</td>
<td>695</td>
</tr>
<tr>
<td>Powers generally</td>
<td>121</td>
<td>695</td>
</tr>
</tbody>
</table>

**MENTALLY ILL:**

<table>
<thead>
<tr>
<th>Section</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Department of Mental Health</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Division on alcoholism and drug abuse</td>
<td>88</td>
<td>441</td>
</tr>
<tr>
<td>Definitions</td>
<td>88</td>
<td>440</td>
</tr>
<tr>
<td>Duties</td>
<td>88</td>
<td>440</td>
</tr>
<tr>
<td>Name changed</td>
<td>88</td>
<td>440</td>
</tr>
<tr>
<td>Powers</td>
<td>88</td>
<td>440</td>
</tr>
<tr>
<td>Sale, lease or mortgage of lands</td>
<td>136</td>
<td>763</td>
</tr>
<tr>
<td>Summary proceedings</td>
<td>136</td>
<td>763</td>
</tr>
</tbody>
</table>

**MERCURY:**

<table>
<thead>
<tr>
<th>Section</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Purchase or transportation by junk dealers</td>
<td>40</td>
<td>244</td>
</tr>
</tbody>
</table>

**MINES AND MINERALS:**

<table>
<thead>
<tr>
<th>Section</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Appeal and error</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Board of appeals</td>
<td>89</td>
<td>482</td>
</tr>
<tr>
<td>Judicial review of decisions of director of department of mines</td>
<td>89</td>
<td>473</td>
</tr>
<tr>
<td>Board of Appeals</td>
<td>89</td>
<td>452</td>
</tr>
<tr>
<td>Certification of coal miners</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Apprentices</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Employment for period in excess of eight months</td>
<td>90</td>
<td>565</td>
</tr>
<tr>
<td>Generally</td>
<td>90</td>
<td>565</td>
</tr>
<tr>
<td>To wear red hats</td>
<td>90</td>
<td>565</td>
</tr>
<tr>
<td>Competency, certificate of required</td>
<td>90</td>
<td>565</td>
</tr>
</tbody>
</table>
### MINES AND MINERALS—(continued):

<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>MINES AND MINERALS—(continued):</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Certification of Coal Miners—(continued):</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Definition of coal mine or miner</td>
<td>90</td>
<td>566</td>
</tr>
<tr>
<td>Qualifications, certification of</td>
<td>90</td>
<td>565</td>
</tr>
<tr>
<td>Required</td>
<td>90</td>
<td>565</td>
</tr>
<tr>
<td>Coal mines</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Abandoned</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Capping, filling and sealing</td>
<td>89</td>
<td>556</td>
</tr>
<tr>
<td>Abandoned parts of mine</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ventilation</td>
<td>89</td>
<td>499</td>
</tr>
<tr>
<td>Belt conveyor</td>
<td>89</td>
<td>523</td>
</tr>
<tr>
<td>Boreholes</td>
<td>89</td>
<td>502</td>
</tr>
<tr>
<td>Cleaning plants</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Surface structures and practices</td>
<td>89</td>
<td>542</td>
</tr>
<tr>
<td>Communication facilities</td>
<td>89</td>
<td>537</td>
</tr>
<tr>
<td>Lightning arresters</td>
<td>89</td>
<td>538</td>
</tr>
<tr>
<td>Conveyor belts, safeguards</td>
<td>89</td>
<td>541</td>
</tr>
<tr>
<td>Conveyors</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Protection of personnel on conveyors</td>
<td>89</td>
<td>542</td>
</tr>
<tr>
<td>Dangerous places</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ascertainment, record and removal of all dangers</td>
<td>89</td>
<td>505</td>
</tr>
<tr>
<td>Duties of mine foreman</td>
<td>89</td>
<td>505</td>
</tr>
<tr>
<td>Discrimination</td>
<td>89</td>
<td>478</td>
</tr>
<tr>
<td>Doors</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Duty of mine foreman as to man doors</td>
<td>89</td>
<td>501</td>
</tr>
<tr>
<td>Drainage of water</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Duty of mine foreman</td>
<td>89</td>
<td>501</td>
</tr>
<tr>
<td>Drilling</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Hand-held electric drills and rotating tools</td>
<td>89</td>
<td>539</td>
</tr>
<tr>
<td>Drum runners, hoisting</td>
<td>89</td>
<td>516</td>
</tr>
<tr>
<td>Dryers</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Thermal coal dryers and plants</td>
<td>89</td>
<td>552</td>
</tr>
<tr>
<td>Dust</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cleaning plants</td>
<td>89</td>
<td>542</td>
</tr>
<tr>
<td>Control of coal dust</td>
<td>89</td>
<td>506, 541, 542</td>
</tr>
<tr>
<td>Dust-tight electrical equipment</td>
<td>89</td>
<td>542</td>
</tr>
<tr>
<td>Electric face equipment</td>
<td>89</td>
<td>510</td>
</tr>
<tr>
<td>Respiratory equipment, when to be worn</td>
<td>89</td>
<td>541</td>
</tr>
<tr>
<td>Rock dusting</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Control of dust</td>
<td>89</td>
<td>541</td>
</tr>
<tr>
<td>Requirements</td>
<td>89</td>
<td>508</td>
</tr>
<tr>
<td>Surface structures and practices</td>
<td>89</td>
<td>542</td>
</tr>
<tr>
<td>Electricity</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Base equipment</td>
<td>89</td>
<td>524</td>
</tr>
<tr>
<td>Battery charging</td>
<td>89</td>
<td>524</td>
</tr>
<tr>
<td>Cables</td>
<td>89</td>
<td>524</td>
</tr>
<tr>
<td>Trailing cables</td>
<td>89</td>
<td>539</td>
</tr>
<tr>
<td>Drills and rotating tools</td>
<td>89</td>
<td>539</td>
</tr>
<tr>
<td>Dust-tight electrical equipment</td>
<td>89</td>
<td>542</td>
</tr>
<tr>
<td>Electrical equipment in mines</td>
<td>89</td>
<td>538</td>
</tr>
<tr>
<td>Equipment generally</td>
<td>89</td>
<td>524</td>
</tr>
<tr>
<td>Face equipment</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Responsibility for care and maintenance</td>
<td>89</td>
<td>541</td>
</tr>
<tr>
<td>Gassy mines</td>
<td>89</td>
<td>524</td>
</tr>
<tr>
<td>Trolley and feeder wires</td>
<td>89</td>
<td>524</td>
</tr>
<tr>
<td>Lighting</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Installation of lighting</td>
<td>89</td>
<td>539</td>
</tr>
<tr>
<td>Lightning arresters</td>
<td>89</td>
<td>538</td>
</tr>
<tr>
<td>Movement of mining equipment</td>
<td>89</td>
<td>499</td>
</tr>
<tr>
<td>Tracks, bonding track</td>
<td>89</td>
<td>537</td>
</tr>
<tr>
<td>Transformers</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Surface and underground transformers</td>
<td>89</td>
<td>524</td>
</tr>
<tr>
<td>MINES AND MINERALS—(continued):</td>
<td>Ch.</td>
<td>Page</td>
</tr>
<tr>
<td>---------------------------------</td>
<td>-----</td>
<td>------</td>
</tr>
<tr>
<td>Coal Mines—(continued):</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Electricity—(continued):</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Welding and cutting</td>
<td>89</td>
<td>539</td>
</tr>
<tr>
<td>Protective clothing and equipment</td>
<td>89</td>
<td>544</td>
</tr>
<tr>
<td>Elevated platforms and stairways</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Toeboards required</td>
<td>89</td>
<td>542</td>
</tr>
<tr>
<td>Employees</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Course of instruction</td>
<td>89</td>
<td>503</td>
</tr>
<tr>
<td>Instruction by mine foreman</td>
<td>89</td>
<td>503</td>
</tr>
<tr>
<td>Engineers</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Hoisting machinery</td>
<td>89</td>
<td>516</td>
</tr>
<tr>
<td>Entering mine</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Unlawful to enter mine until fire boss reports it safe</td>
<td>89</td>
<td>507</td>
</tr>
<tr>
<td>Exceptions</td>
<td>89</td>
<td>507</td>
</tr>
<tr>
<td>Escapeways</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Recovery tunnels</td>
<td>89</td>
<td>551</td>
</tr>
<tr>
<td>Equipment</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Movement of</td>
<td>89</td>
<td>499</td>
</tr>
<tr>
<td>Protective</td>
<td>89</td>
<td>544</td>
</tr>
<tr>
<td>Respiratory</td>
<td>89</td>
<td>541</td>
</tr>
<tr>
<td>Standards for mechanical</td>
<td>89</td>
<td>541</td>
</tr>
<tr>
<td>Explosives</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Authorized explosives</td>
<td>89</td>
<td>511</td>
</tr>
<tr>
<td>Blasting</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Blasting cables</td>
<td>89</td>
<td>513</td>
</tr>
<tr>
<td>Misfires, procedure</td>
<td>89</td>
<td>515</td>
</tr>
<tr>
<td>Other blasting devices</td>
<td>89</td>
<td>515</td>
</tr>
<tr>
<td>Practices</td>
<td>89</td>
<td>513</td>
</tr>
<tr>
<td>Preparation of shots</td>
<td>89</td>
<td>513</td>
</tr>
<tr>
<td>Detonators</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Electric</td>
<td>89</td>
<td>513</td>
</tr>
<tr>
<td>Magazines</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Surface magazines for explosives</td>
<td>89</td>
<td>511</td>
</tr>
<tr>
<td>Misfires, procedure</td>
<td>89</td>
<td>515</td>
</tr>
<tr>
<td>Storage</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Surface magazines</td>
<td>89</td>
<td>511</td>
</tr>
<tr>
<td>Underground storage</td>
<td>89</td>
<td>512</td>
</tr>
<tr>
<td>Transportation</td>
<td>89</td>
<td>511</td>
</tr>
<tr>
<td>Use of unauthorized</td>
<td>89</td>
<td>511</td>
</tr>
<tr>
<td>Face equipment</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Responsibility for care and maintenance</td>
<td>89</td>
<td>549</td>
</tr>
<tr>
<td>Fans</td>
<td></td>
<td>494</td>
</tr>
<tr>
<td>Fences</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fencing temporarily inactive mine</td>
<td>89</td>
<td>556</td>
</tr>
<tr>
<td>Fire boss</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Duties, authority to perform other</td>
<td>89</td>
<td>508</td>
</tr>
<tr>
<td>Duties generally</td>
<td>89</td>
<td>506</td>
</tr>
<tr>
<td>Employment, when required</td>
<td>89</td>
<td>505</td>
</tr>
<tr>
<td>Examinations generally</td>
<td>89</td>
<td>506</td>
</tr>
<tr>
<td>Preparation of danger signal prior to examination</td>
<td>89</td>
<td>506</td>
</tr>
<tr>
<td>Report</td>
<td>89</td>
<td>506</td>
</tr>
<tr>
<td>Safety requirements</td>
<td>89</td>
<td>543</td>
</tr>
<tr>
<td>Superior officer to all employees in mine</td>
<td>89</td>
<td>507</td>
</tr>
<tr>
<td>First-aid equipment</td>
<td>89</td>
<td>549</td>
</tr>
<tr>
<td>Flammable liquids</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Storage</td>
<td>89</td>
<td>543</td>
</tr>
<tr>
<td>Gassy mines</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Flame safety lamps</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Detection of methane and oxygen deficiency</td>
<td>89</td>
<td>504</td>
</tr>
<tr>
<td>Inspection by mine foreman</td>
<td>89</td>
<td>504</td>
</tr>
<tr>
<td>Inspectors, duties</td>
<td>89</td>
<td>504</td>
</tr>
<tr>
<td>Topic</td>
<td>Ch.</td>
<td>Page</td>
</tr>
<tr>
<td>-------------------------------------------</td>
<td>-----</td>
<td>------</td>
</tr>
<tr>
<td>Coal Mines—(continued):</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Haulage roads</td>
<td>89</td>
<td>518</td>
</tr>
<tr>
<td>Equipment</td>
<td>89</td>
<td>518</td>
</tr>
<tr>
<td>Mine foreman, duties</td>
<td>89</td>
<td>502</td>
</tr>
<tr>
<td>Regulations</td>
<td>89</td>
<td>550</td>
</tr>
<tr>
<td>Shelter holes</td>
<td>89</td>
<td>518</td>
</tr>
<tr>
<td>Signals</td>
<td>89</td>
<td>502</td>
</tr>
<tr>
<td>Transportation of men</td>
<td>89</td>
<td>521</td>
</tr>
<tr>
<td>Hoisting</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Drum runners</td>
<td>89</td>
<td>515</td>
</tr>
<tr>
<td>Engineers</td>
<td>89</td>
<td>515</td>
</tr>
<tr>
<td>Machinery</td>
<td>89</td>
<td>515</td>
</tr>
<tr>
<td>Safety devices</td>
<td>89</td>
<td>515</td>
</tr>
<tr>
<td>Telephones</td>
<td>89</td>
<td>515</td>
</tr>
<tr>
<td>Housekeeping requirements</td>
<td>89</td>
<td>543</td>
</tr>
<tr>
<td>Inspections</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Daily inspection of working places</td>
<td>89</td>
<td>504</td>
</tr>
<tr>
<td>Records</td>
<td>89</td>
<td>504</td>
</tr>
<tr>
<td>Safety inspection</td>
<td>89</td>
<td>504</td>
</tr>
<tr>
<td>Intoxicating liquors</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Prohibited in mine</td>
<td>89</td>
<td>545</td>
</tr>
<tr>
<td>Lighting</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Underground illumination</td>
<td>89</td>
<td>539</td>
</tr>
<tr>
<td>Loading machinery</td>
<td>89</td>
<td>541</td>
</tr>
<tr>
<td>Locomotives</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Requirements</td>
<td>89</td>
<td>518</td>
</tr>
<tr>
<td>Loose coal, slate or rock</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Duty of mine foreman</td>
<td>89</td>
<td>501</td>
</tr>
<tr>
<td>Maps</td>
<td>89</td>
<td>488</td>
</tr>
<tr>
<td>Mechanical equipment, safeguards</td>
<td>89</td>
<td>541</td>
</tr>
<tr>
<td>Methane</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Detection by flame safety lamps</td>
<td>89</td>
<td>504</td>
</tr>
<tr>
<td>Mine foreman</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Annual examination of persons using flame safety lamps</td>
<td>89</td>
<td>503</td>
</tr>
<tr>
<td>Records of examination</td>
<td>89</td>
<td>503</td>
</tr>
<tr>
<td>Assistants generally</td>
<td>89</td>
<td>500</td>
</tr>
<tr>
<td>Boreholes</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Duties of foreman</td>
<td>89</td>
<td>502</td>
</tr>
<tr>
<td>Cages, operation of</td>
<td>89</td>
<td>502</td>
</tr>
<tr>
<td>Certificates</td>
<td>89</td>
<td>500</td>
</tr>
<tr>
<td>Dangerous places</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ascertainment, record and removal of all dangers</td>
<td>89</td>
<td>505</td>
</tr>
<tr>
<td>Duties as to</td>
<td>89</td>
<td>504</td>
</tr>
<tr>
<td>Death or resignation</td>
<td>89</td>
<td>505</td>
</tr>
<tr>
<td>Successor</td>
<td>89</td>
<td>505</td>
</tr>
<tr>
<td>Doors, duty as to</td>
<td>89</td>
<td>501</td>
</tr>
<tr>
<td>Drainage of water, duties as to</td>
<td>89</td>
<td>501</td>
</tr>
<tr>
<td>Duties generally</td>
<td>89</td>
<td>501</td>
</tr>
<tr>
<td>Employees</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Annual examination of</td>
<td>89</td>
<td>503</td>
</tr>
<tr>
<td>Instruction of</td>
<td>89</td>
<td>503</td>
</tr>
<tr>
<td>Employment</td>
<td></td>
<td></td>
</tr>
<tr>
<td>When to be employed</td>
<td>89</td>
<td>500</td>
</tr>
<tr>
<td>Fires; duties as to</td>
<td>89</td>
<td>537</td>
</tr>
<tr>
<td>Gases; removal of</td>
<td>89</td>
<td>504</td>
</tr>
<tr>
<td>Haulage roads; duties as to</td>
<td>89</td>
<td>502</td>
</tr>
<tr>
<td>Haulways; duties as to</td>
<td>89</td>
<td>502</td>
</tr>
<tr>
<td>Incline planes; duties as to</td>
<td>89</td>
<td>502</td>
</tr>
<tr>
<td>Inspection</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Daily inspection of working places</td>
<td>89</td>
<td>504</td>
</tr>
<tr>
<td>Safety inspection</td>
<td>89</td>
<td>504</td>
</tr>
</tbody>
</table>
# Index

## Mines and Minerals—(continued):  
### Coal Mines—(continued):

<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mine foreman—(continued):</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lights at mouth and bottom of shaft</td>
<td>89</td>
<td>502</td>
</tr>
<tr>
<td>Loose coal, slate or rock; duties as to</td>
<td>89</td>
<td>501</td>
</tr>
<tr>
<td>Notice to operator when unable to comply with law</td>
<td>89</td>
<td>505</td>
</tr>
<tr>
<td>Props; duties as to</td>
<td>89</td>
<td>501</td>
</tr>
<tr>
<td>Qualifications</td>
<td>89</td>
<td>500</td>
</tr>
<tr>
<td>Records</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Daily inspection of working places</td>
<td>89</td>
<td>504</td>
</tr>
<tr>
<td>Examination of persons using flame safety lamps</td>
<td>89</td>
<td>503</td>
</tr>
<tr>
<td>Generally</td>
<td>89</td>
<td>504</td>
</tr>
<tr>
<td>Inspection records</td>
<td>89</td>
<td>504</td>
</tr>
<tr>
<td>Removal of dangers</td>
<td>89</td>
<td>505</td>
</tr>
<tr>
<td>Reports of fire boss; examination of</td>
<td>89</td>
<td>504</td>
</tr>
<tr>
<td>Resignation and appointment of successor</td>
<td>89</td>
<td>505</td>
</tr>
<tr>
<td>Safety requirements</td>
<td>89</td>
<td>543</td>
</tr>
<tr>
<td>Shafts; lights</td>
<td>89</td>
<td>502</td>
</tr>
<tr>
<td>Slopes; duties as to</td>
<td>89</td>
<td>502</td>
</tr>
<tr>
<td>Successor on death or resignation of</td>
<td>89</td>
<td>505</td>
</tr>
<tr>
<td>Ventilation, duties as to</td>
<td>89</td>
<td>501</td>
</tr>
<tr>
<td>Mine rescue crews</td>
<td>89</td>
<td>483</td>
</tr>
<tr>
<td>Mine rescue stations and equipment</td>
<td>89</td>
<td>483</td>
</tr>
<tr>
<td>Mine rescue teams</td>
<td>89</td>
<td>485</td>
</tr>
<tr>
<td>Moving of mining equipment</td>
<td>89</td>
<td>499</td>
</tr>
<tr>
<td>Opening or reopening of mine</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Approval of director of mines required</td>
<td>89</td>
<td>554</td>
</tr>
<tr>
<td>Procedure</td>
<td>89</td>
<td>563</td>
</tr>
<tr>
<td>Director of department of natural resources</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Duties</td>
<td>89</td>
<td>563</td>
</tr>
<tr>
<td>Notice to</td>
<td>89</td>
<td>563</td>
</tr>
<tr>
<td>Operators</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bulletin boards; requirements</td>
<td>89</td>
<td>472</td>
</tr>
<tr>
<td>Fires; duties as to</td>
<td>89</td>
<td>557</td>
</tr>
<tr>
<td>Furnish director and inspector proper facilities</td>
<td>89</td>
<td>487</td>
</tr>
<tr>
<td>Notice to by mine foreman when unable to comply with law</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Duty of operator</td>
<td>89</td>
<td>505</td>
</tr>
<tr>
<td>Notices, order and decisions</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Delivery to agent of operator</td>
<td>89</td>
<td>472</td>
</tr>
<tr>
<td>Names and addresses to be filed by operators</td>
<td>89</td>
<td>473</td>
</tr>
<tr>
<td>Posting</td>
<td>89</td>
<td>472</td>
</tr>
<tr>
<td>Offices; requirements</td>
<td>89</td>
<td>472</td>
</tr>
<tr>
<td>Reports</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Accidents</td>
<td>89</td>
<td>557</td>
</tr>
<tr>
<td>Monthly report</td>
<td>89</td>
<td>564</td>
</tr>
<tr>
<td>Supplies for mine foreman</td>
<td>89</td>
<td>505</td>
</tr>
<tr>
<td>Ventilation; duties</td>
<td>89</td>
<td>496</td>
</tr>
<tr>
<td>Rescue crews and teams</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>89</td>
<td>483, 485</td>
</tr>
<tr>
<td>Rock dusting</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Contents of rock dust</td>
<td>89</td>
<td>508</td>
</tr>
<tr>
<td>Control of dust</td>
<td>89</td>
<td>541</td>
</tr>
<tr>
<td>Fire protection</td>
<td>89</td>
<td>545</td>
</tr>
<tr>
<td>Requirements</td>
<td>89</td>
<td>508</td>
</tr>
<tr>
<td>Roof control programs and plans</td>
<td>89</td>
<td>509</td>
</tr>
<tr>
<td>Canopies or cabs</td>
<td>89</td>
<td>510</td>
</tr>
<tr>
<td>Correction of dangerous conditions</td>
<td>89</td>
<td>510</td>
</tr>
<tr>
<td>Electric face equipment</td>
<td>89</td>
<td>510</td>
</tr>
<tr>
<td>Examination and testing</td>
<td>89</td>
<td>510</td>
</tr>
<tr>
<td>Roof bolt recovery</td>
<td>89</td>
<td>510</td>
</tr>
<tr>
<td>Roof support</td>
<td>89</td>
<td>510</td>
</tr>
</tbody>
</table>
## MINES AND MINERALS—(continued):

<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Coal Mines—(continued):</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Safety provisions and requirements</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Abandoned workings; mining close to</td>
<td>89</td>
<td>556</td>
</tr>
<tr>
<td>Checking systems</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Identification of persons underground</td>
<td>89</td>
<td>544</td>
</tr>
<tr>
<td>Closing mine</td>
<td>89</td>
<td>556</td>
</tr>
<tr>
<td>Clothing, protective</td>
<td>89</td>
<td>544</td>
</tr>
<tr>
<td>Communication with outlets</td>
<td>89</td>
<td>551</td>
</tr>
<tr>
<td>Compliance with article by supervisor</td>
<td>89</td>
<td>543</td>
</tr>
<tr>
<td>Conveyors; protection of personnel on</td>
<td>89</td>
<td>542</td>
</tr>
<tr>
<td>Equipment; protective</td>
<td>89</td>
<td>544</td>
</tr>
<tr>
<td>Escapeways</td>
<td>89</td>
<td>550</td>
</tr>
<tr>
<td>Fences, when mine closed</td>
<td>89</td>
<td>556</td>
</tr>
<tr>
<td>Fire protection</td>
<td>89</td>
<td>545</td>
</tr>
<tr>
<td>Fires in or about mine</td>
<td>89</td>
<td>557</td>
</tr>
<tr>
<td>First-aid equipment</td>
<td>89</td>
<td>549</td>
</tr>
<tr>
<td>Haulage roads</td>
<td>89</td>
<td>550</td>
</tr>
<tr>
<td>Hoisting equipment</td>
<td>89</td>
<td>550</td>
</tr>
<tr>
<td>Safety devices</td>
<td>89</td>
<td>518</td>
</tr>
<tr>
<td>Intoxicating liquors; search for</td>
<td>89</td>
<td>545</td>
</tr>
<tr>
<td>Ladders</td>
<td>89</td>
<td>542</td>
</tr>
<tr>
<td>Lights</td>
<td>89</td>
<td>545</td>
</tr>
<tr>
<td>Lubricating oil and grease regulated</td>
<td>89</td>
<td>548</td>
</tr>
<tr>
<td>Matches; search for</td>
<td>89</td>
<td>545</td>
</tr>
<tr>
<td>Mechanical equipment; safeguards</td>
<td>89</td>
<td>541</td>
</tr>
<tr>
<td>Notice</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Rules and regulations</td>
<td>89</td>
<td>543</td>
</tr>
<tr>
<td>To director of department of mines and district mine inspector</td>
<td>89</td>
<td>557</td>
</tr>
<tr>
<td>Opening or reopening mine</td>
<td>89</td>
<td>554</td>
</tr>
<tr>
<td>Openings or outlets</td>
<td>89</td>
<td>550</td>
</tr>
<tr>
<td>Records</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Identification of persons underground</td>
<td>89</td>
<td>544</td>
</tr>
<tr>
<td>Rock dust; fire protection</td>
<td>89</td>
<td>545</td>
</tr>
<tr>
<td>Rules and regulations</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Printing and distribution</td>
<td>89</td>
<td>543</td>
</tr>
<tr>
<td>Safe roadways for emergencies</td>
<td>89</td>
<td>550</td>
</tr>
<tr>
<td>Sealing</td>
<td>89</td>
<td>556</td>
</tr>
<tr>
<td>Security</td>
<td></td>
<td></td>
</tr>
<tr>
<td>No act permitted endangering security of mine</td>
<td>89</td>
<td>545</td>
</tr>
<tr>
<td>Shafts and slopes</td>
<td>89</td>
<td>557</td>
</tr>
<tr>
<td>Smoking prohibited</td>
<td>89</td>
<td>545</td>
</tr>
<tr>
<td>Walkways or safety devices around thickeners</td>
<td>89</td>
<td>542</td>
</tr>
<tr>
<td>Sealing permanently closed or abandoned mines</td>
<td>89</td>
<td>556</td>
</tr>
<tr>
<td>Severability of article</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Shaft outlets</td>
<td>89</td>
<td>564</td>
</tr>
<tr>
<td>Shafts and slopes</td>
<td>89</td>
<td>550</td>
</tr>
<tr>
<td>Shelter holes; requirements</td>
<td>89</td>
<td>557</td>
</tr>
<tr>
<td>Signals; transportation system</td>
<td>89</td>
<td>518</td>
</tr>
<tr>
<td>Smoking prohibited</td>
<td>89</td>
<td>545</td>
</tr>
<tr>
<td>In and around surface structures prohibited</td>
<td>89</td>
<td>543</td>
</tr>
<tr>
<td>Stairways; requirements</td>
<td>89</td>
<td>542</td>
</tr>
<tr>
<td>Storage</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Coal storage bins</td>
<td>89</td>
<td>551</td>
</tr>
<tr>
<td>Coal storage piles</td>
<td>89</td>
<td>551</td>
</tr>
<tr>
<td>Flammable liquids</td>
<td>89</td>
<td>543</td>
</tr>
<tr>
<td>Housekeeping requirements</td>
<td>89</td>
<td>543</td>
</tr>
<tr>
<td>Recovery tunnels</td>
<td>89</td>
<td>561</td>
</tr>
<tr>
<td>Superintendent</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Duties as to accidents</td>
<td>89</td>
<td>558</td>
</tr>
<tr>
<td>Telephone service</td>
<td>89</td>
<td>517, 537</td>
</tr>
</tbody>
</table>
INDEX

MINES AND MINERALS—(continued):

Coal Mines—(continued):

Thermal coal dryers and plants ........................................... 89 552
Tipples
Surface structures and practices ........................................... 89 542
Transportation
Belt conveyor ........................................................................ 89 522
Belts .................................................................................... 89 521
Haulage roads ....................................................................... 89 518
Inspection ............................................................................. 89 518
Men .................................................................................... 89 521
Prohibited practices .............................................................. 89 518
Self-propelled equipment ...................................................... 89 521
Shelter holes ......................................................................... 89 518
Signals ................................................................................... 89 518
Unused parts of mine
Ventilation ............................................................................ 89 499
Ventilation
Abandoned workings ............................................................... 89 499
Duty of mine foreman ............................................................ 89 501
Fans ..................................................................................... 89 494
Generally ............................................................................ 89 496
Plan; requirements and approval by director .......................... 89 493
Surface structures and practices .......................................... 89 542
Unused parts of mine ............................................................. 89 499
Welding and cutting ............................................................... 89 539
Workings, abandoned
Boreholes ............................................................................... 89 502
Mineral close to ..................................................................... 89 556
Procedure for reopening ....................................................... 89 563
Definitions ............................................................................ 89 447
Department of Mines
Established ........................................................................... 89 453
Purpose .................................................................................. 89 453
Director of the Department of Mines
Accidents, duties as to ............................................................ 89 556
Appointment and term of office ............................................. 89 453
Bond ..................................................................................... 89 456
Coal mines
Approval of ventilation plans ................................................. 89 493
Decisions, judicial review of .................................................. 89 473
Duties generally .................................................................... 89 454
Eligibility ............................................................................... 89 455
Findings and orders of inspectors
Hearings on ........................................................................... 89 470
Hearings; powers as to witnesses ............................................ 89 463
Injunctions ............................................................................. 89 475
Inspectors
Authority to enter mines ....................................................... 83 467
Judicial review ........................................................................ 89 473
Mine inspectors examining board
Secretary to ............................................................................ 89 464
Notice
Findings and orders of inspectors .......................................... 89 470
Oath ....................................................................................... 89 456
Administration of oaths ......................................................... 89 463
Opening or reopening of coal mines
Approval of director required ................................................ 89 554
Certificate of approval ............................................................ 89 555
General provisions ................................................................. 89 555
Fee ......................................................................................... 89 554
Powers generally .................................................................... 89 454
MINES AND MINERALS—(continued):
Director of the Department of Mines—(continued):
  Qualifications................................................................. 89  455
  Records and reports.......................................................... 89  479
  Annual report to governor.................................................. 89  455
  Salary ................................................................. 89  455
  Vacancies; filling.......................................................... 89  454

Drunkenness
  Intoxicated person prohibited in coal mine................................ 89  545

Electrical inspectors
  Duties ................................................................. 89  459
  Findings and orders....................................................... 89  470
  Inspections by............................................................ 89  470
  Powers ......................................................................... 89  470
  Reports ................................................................. 89  470
  Salary ................................................................. 89  460

Evidence
    Preservation of, following accident, etc.,.............................. 89  557

Examinations
  Certificates of qualification............................................... 89  481
  Withdrawal of certification................................................ 89  481
  Certification of successful applicants to director..................... 89  481
  Investigation of applicants................................................. 89  480
  Mine foreman examiner
    Appointment, salary and duties.......................................... 89  480
    Notice ..................................................................... 89  480
    Notice of intention to take examination.................................. 89  480
  Place and time for examinations............................................... 89  480
  Preparation of examinations.................................................. 89  480
  Record of examinations....................................................... 89  481

Inspectors

  Accidents
    Duties and investigations............................................... 89  556
    Reports after fatal accidents............................................ 89  467
    Visit scene of fatal accident.......................................... 89  467
  Age limit ..................................................................... 89  457
  Appeals from suspension orders of director.............................. 89  466
  Appointment by director..................................................... 89  457
    Eligibility .................................................................. 89  457
    Register list of examining board...................................... 89  457
    Term ........................................................................ 89  457
  Assistant inspector at large.................................................. 89  457
  At large for each division..................................................... 89  457
  Bond ........................................................................ 89  458

  Districts
    Assignment of inspectors by director.................................... 89  456
    Divisions designated by director......................................... 89  456
    Duties generally............................................................ 89  458
    Devote full time to duty.................................................... 89  467

  Electrical inspectors
    Duties ..................................................................... 89  459
    Findings and orders....................................................... 89  470
    Inspections by............................................................ 89  470
    Powers ..................................................................... 89  470
    Reports ................................................................. 89  470

  Employment by director.......................................................... 89  454

  Examining board
    Appeal of suspension orders by director................................. 89  466
    Appointed by governor..................................................... 89  464
    Composition and chairman................................................ 89  464
    Duties generally............................................................ 89  465
    Examinations ................................................................ 89  461
### MINES AND MINERALS—(continued):

#### Inspectors—(continued):

**Examining board—(continued):**

- Meetings .................................................. 89 465
- Register of certified eligible candidates ................. 89 465
- Report to governor ......................................... 89 466
- Secretary .................................................. 89 464
- Term of office ............................................. 89 464
- Expenses, reimbursement ................................... 89 462

**Findings and orders**

- Affirmance of order ........................................ 89 471
- Annulment, revision, etc., of order ....................... 89 471
- Given to operator of mine ................................ 89 470
- Penalties for violation of orders ......................... 89 475
- Posting .................................................... 89 472
- Requirements ............................................... 89 472
- Requirements generally ................................... 89 472
- Review by director ........................................ 89 470

**Inspection procedure**

- Findings, orders and notices ................................ 89 468
- Interest in coal mine prohibited .......................... 89 458
- Oath .......................................................... 89 456

**Permits**

- Examination to determine compliance with .................. 89 564
- Qualifications .............................................. 89 461
- Register of certified eligible candidates ................. 89 465
- Removal from register ...................................... 89 465
- Removal ...................................................... 89 462
- Residence designated by director .......................... 89 457
- Salaries ..................................................... 89 461
- Severability of article .................................... 89 485
- Suspension by director ..................................... 89 454

**Vacancies**

- Appointment to fill vacancy in department ................. 89 459
- Permanent tenure benefits not affected .................... 89 459

**Mine rescue crews** ...................................... 89 483
**Mine rescue stations** .................................... 89 483
**Mine rescue teams** ...................................... 89 485

**Mine safety instructor**

- Examinations ................................................. 89 458
- Expenses .................................................... 89 459
- Number ...................................................... 89 458
- Qualifications .............................................. 89 458
- Register of qualified eligible candidates ................ 89 459
- Salary ....................................................... 89 459
- To devote entire time to duties of office ................. 89 459

**Penalties** ................................................ 89 475

**Permits**

- Examinations to determine compliance with ................ 89 564

**Surface mining and reclamation**

- Benches
  - Requirements where benches do not result ................ 112 665
  - Requirements where benches result ........................ 112 663
- Blasting restriction ....................................... 112 661
- Filing preplan .............................................. 112 661
- Formula ................................................................ 112 661
- Notice ................................................................ 112 661
- Penalties ..................................................... 112 661

- Bonds
  - Performance ................................................ 112 668
  - Cessation of operation by inspector ....................... 112 667
  - Damages, treble ........................................... 112 672
### MINES AND MINERALS—(continued):

<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Surface mining and reclamation—(continued):</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Definitions</td>
<td>112</td>
<td>645</td>
</tr>
<tr>
<td>Drainage system, installation</td>
<td>112</td>
<td>657</td>
</tr>
<tr>
<td>Exemptions</td>
<td>112</td>
<td>659</td>
</tr>
<tr>
<td>Fees</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Special reclamation fee</td>
<td>112</td>
<td>670</td>
</tr>
<tr>
<td>Injunctive relief</td>
<td>112</td>
<td>672</td>
</tr>
<tr>
<td>Limitation on issuance of new permits for surface mining</td>
<td>112</td>
<td>674</td>
</tr>
<tr>
<td>Mandamus</td>
<td>112</td>
<td>659</td>
</tr>
<tr>
<td>Offenses</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Injunctive relief</td>
<td>112</td>
<td>672</td>
</tr>
<tr>
<td>Operator, obligations of</td>
<td>112</td>
<td>666</td>
</tr>
<tr>
<td>Penalties</td>
<td>112</td>
<td>672</td>
</tr>
<tr>
<td>Performance bonds</td>
<td>112</td>
<td>668</td>
</tr>
<tr>
<td>Permits</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Limitation of new permits</td>
<td>112</td>
<td>674</td>
</tr>
<tr>
<td>Plans</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Alternative plans</td>
<td>112</td>
<td>657</td>
</tr>
<tr>
<td>Preplanning plans</td>
<td>112</td>
<td>654</td>
</tr>
<tr>
<td>Preplans</td>
<td>112</td>
<td>654</td>
</tr>
<tr>
<td>Blasting restrictions</td>
<td>112</td>
<td>661</td>
</tr>
<tr>
<td>Penalties for nonadherence to</td>
<td>112</td>
<td>661</td>
</tr>
<tr>
<td>Planting</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Completion of planting</td>
<td>112</td>
<td>668</td>
</tr>
<tr>
<td>Evaluation</td>
<td>112</td>
<td>668</td>
</tr>
<tr>
<td>Inspection</td>
<td>112</td>
<td>668</td>
</tr>
<tr>
<td>Postponement of reclamation</td>
<td>112</td>
<td>649</td>
</tr>
<tr>
<td>Prosecutions</td>
<td>112</td>
<td>672</td>
</tr>
<tr>
<td>Prospecting, permit</td>
<td>112</td>
<td>649</td>
</tr>
<tr>
<td>Application and bond</td>
<td>112</td>
<td>649</td>
</tr>
<tr>
<td>Fee</td>
<td>112</td>
<td>649</td>
</tr>
<tr>
<td>Reclamation Commission</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Assistant attorney general may be assigned</td>
<td>112</td>
<td>648</td>
</tr>
<tr>
<td>Compensation</td>
<td>112</td>
<td>648</td>
</tr>
<tr>
<td>Created</td>
<td>112</td>
<td>648</td>
</tr>
<tr>
<td>Duties</td>
<td>112</td>
<td>648</td>
</tr>
<tr>
<td>Expenses</td>
<td>112</td>
<td>648</td>
</tr>
<tr>
<td>Meetings</td>
<td>112</td>
<td>648</td>
</tr>
<tr>
<td>Powers</td>
<td>112</td>
<td>648</td>
</tr>
<tr>
<td>Special reclamation fee</td>
<td>112</td>
<td>670</td>
</tr>
<tr>
<td>Supervisors and inspectors</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cessation of operation by inspector</td>
<td>112</td>
<td>667</td>
</tr>
<tr>
<td>Duties</td>
<td>112</td>
<td>647</td>
</tr>
<tr>
<td>Surface mining permits</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Application</td>
<td>112</td>
<td>650</td>
</tr>
<tr>
<td>Exemptions</td>
<td>112</td>
<td>659</td>
</tr>
<tr>
<td>Fees</td>
<td>112</td>
<td>650</td>
</tr>
<tr>
<td>Use of proceeds</td>
<td>112</td>
<td>650</td>
</tr>
<tr>
<td>Issuance</td>
<td>112</td>
<td>650</td>
</tr>
<tr>
<td>Renewal</td>
<td>112</td>
<td>650</td>
</tr>
<tr>
<td>Required</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Time limitations</td>
<td>112</td>
<td>657</td>
</tr>
</tbody>
</table>

### MINGO COUNTY:

<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prosecuting attorney</td>
<td>28</td>
<td>193</td>
</tr>
<tr>
<td>Assistant and stenographer</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Salary</td>
<td>28</td>
<td>193</td>
</tr>
</tbody>
</table>

### MONONGALIA COUNTY:

<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Board of Education</td>
<td>19</td>
<td>1095</td>
</tr>
<tr>
<td>Transfer of University High School to</td>
<td></td>
<td></td>
</tr>
<tr>
<td>MOTOR CARRIERS:</td>
<td>Ch.</td>
<td>Page</td>
</tr>
<tr>
<td>----------------</td>
<td>-----</td>
<td>-------</td>
</tr>
<tr>
<td>Assessment</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fixed by public service commission</td>
<td>134</td>
<td>756</td>
</tr>
<tr>
<td>Public service commission motor carrier fund</td>
<td>134</td>
<td>756</td>
</tr>
<tr>
<td>Contract carriers by motor vehicle</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Defined</td>
<td>133</td>
<td>752</td>
</tr>
<tr>
<td>Definitions</td>
<td>133</td>
<td>752</td>
</tr>
<tr>
<td>Fees</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Power unit</td>
<td>134</td>
<td>759</td>
</tr>
<tr>
<td>Uniform vehicle identification card</td>
<td>134</td>
<td>759</td>
</tr>
<tr>
<td>Fund</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Motor carrier fund</td>
<td>134</td>
<td>759</td>
</tr>
<tr>
<td>Public Service Commission</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Registration of Interstate Commerce Commission authority</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Filing of authority required</td>
<td>133</td>
<td>754</td>
</tr>
<tr>
<td>Exception</td>
<td>133</td>
<td>754</td>
</tr>
<tr>
<td>Identification cards and stamps</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Alteration, loss, mutilation, etc., of cab cards</td>
<td>133</td>
<td>758</td>
</tr>
<tr>
<td>Application</td>
<td>133</td>
<td>755, 756</td>
</tr>
<tr>
<td>Destruction or nullification of cab cards</td>
<td>133</td>
<td>755</td>
</tr>
<tr>
<td>Expiration</td>
<td>133</td>
<td>756</td>
</tr>
<tr>
<td>Form of cab card</td>
<td>133</td>
<td>757</td>
</tr>
<tr>
<td>Form of identification stamp</td>
<td>133</td>
<td>757</td>
</tr>
<tr>
<td>Inspection of cab cards</td>
<td>133</td>
<td>758</td>
</tr>
<tr>
<td>Issuance and use</td>
<td>133</td>
<td>755</td>
</tr>
<tr>
<td>Option of commission to issue stamp, card or combination thereof</td>
<td>133</td>
<td>757</td>
</tr>
<tr>
<td>Use</td>
<td>133</td>
<td>755</td>
</tr>
<tr>
<td>Use of cab cards in connection with vehicles not used in driveaway operations</td>
<td>133</td>
<td>757</td>
</tr>
<tr>
<td>Use of cab cards in driveaway operations</td>
<td>133</td>
<td>757</td>
</tr>
<tr>
<td>Prior registration</td>
<td>133</td>
<td>754</td>
</tr>
<tr>
<td>Registration</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Expiration</td>
<td>133</td>
<td>756</td>
</tr>
<tr>
<td>When required</td>
<td>133</td>
<td>754</td>
</tr>
<tr>
<td>Taxes</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Collection of state taxes and fees not affected</td>
<td>133</td>
<td>758</td>
</tr>
<tr>
<td>MOTOR VEHICLES:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Certificate of title</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Application</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Contents</td>
<td>91</td>
<td>566</td>
</tr>
<tr>
<td>Execution</td>
<td>91</td>
<td>566</td>
</tr>
<tr>
<td>Form</td>
<td>91</td>
<td>566</td>
</tr>
<tr>
<td>Tax for privilege of effecting certification</td>
<td>91</td>
<td>567</td>
</tr>
<tr>
<td>Definitions</td>
<td>93</td>
<td>571</td>
</tr>
<tr>
<td>Encumbrances. See within this heading, &quot;Liens.&quot;</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Equipment</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Special restrictions on lamps</td>
<td>94</td>
<td>581</td>
</tr>
<tr>
<td>Liens</td>
<td>92</td>
<td>589</td>
</tr>
<tr>
<td>Certificate of title to show liens or encumbrances</td>
<td>92</td>
<td>589</td>
</tr>
<tr>
<td>Information to be shown</td>
<td>92</td>
<td>569</td>
</tr>
<tr>
<td>Created subsequent to original issue of title</td>
<td>92</td>
<td>570</td>
</tr>
<tr>
<td>Manufacturer</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Defined</td>
<td>93</td>
<td>577</td>
</tr>
<tr>
<td>Special plates</td>
<td>93</td>
<td>578</td>
</tr>
<tr>
<td>Motorcycles</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Safety equipment and requirements for motorcyclists and motorcycles</td>
<td>95</td>
<td>583</td>
</tr>
<tr>
<td>Safety responsibility law</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Proof of financial responsibility</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Money or securities as proof</td>
<td>97</td>
<td>588</td>
</tr>
</tbody>
</table>
## MOTOR VEHICLES—(continued):

<table>
<thead>
<tr>
<th>Size</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Excess size&lt;br&gt;Permits</td>
<td>96</td>
<td>587</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Traffic regulations and laws of the road</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Emergency vehicles&lt;br&gt;Authorized&lt;br&gt;Right-of-way&lt;br&gt;Operation of vehicles and streetcars on approach</td>
<td>94</td>
<td>580</td>
</tr>
<tr>
<td>Transporter&lt;br&gt;Defined&lt;br&gt;Special plates</td>
<td>93</td>
<td>577</td>
</tr>
<tr>
<td>Weight&lt;br&gt;Excess weight&lt;br&gt;Permits</td>
<td>96</td>
<td>587</td>
</tr>
</tbody>
</table>

### MUNICIPAL PUBLIC WORKS BONDS:

<table>
<thead>
<tr>
<th>Ordinance for construction, etc.</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sinking fund&lt;br&gt;Commission&lt;br&gt;Purchase of outstanding bonds&lt;br&gt;Transfer of funds&lt;br&gt;Use</td>
<td>103</td>
<td>605</td>
</tr>
</tbody>
</table>

### MUNICIPALITIES:

<table>
<thead>
<tr>
<th>Bond issues&lt;br&gt;Charges for municipal services&lt;br&gt;Elections</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Combined waterworks and sewerage systems&lt;br&gt;Purchase of abstract of ordinance and notice</td>
<td>103</td>
<td>607</td>
</tr>
<tr>
<td>Eminent domain&lt;br&gt;Right of&lt;br&gt;Fire fighting&lt;br&gt;Charges for municipal services&lt;br&gt;Hours of duty&lt;br&gt;Volunteer fire companies&lt;br&gt;Dissolution</td>
<td>99</td>
<td>597</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Firemen's pensions&lt;br&gt;See Firemen's and Policemen's Pensions.</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Housing and urban development&lt;br&gt;Standards of federal department of housing and urban development for factory-built housing, etc., adopted</td>
<td>105</td>
<td>621</td>
</tr>
<tr>
<td>Motor vehicles&lt;br&gt;Additional special provisions to motor vehicle parking facilities</td>
<td>99</td>
<td>594</td>
</tr>
<tr>
<td>Municipal services&lt;br&gt;Special charges for</td>
<td>99</td>
<td>592</td>
</tr>
<tr>
<td>Ordinances&lt;br&gt;Charges for municipal services</td>
<td>99</td>
<td>592</td>
</tr>
<tr>
<td>Police&lt;br&gt;Pensions. See Firemen’s and Policemen's Pensions.&lt;br&gt;Special parking lot or parking building police officers</td>
<td>100</td>
<td>602</td>
</tr>
<tr>
<td>Public utilities&lt;br&gt;Public utilities tax</td>
<td>98</td>
<td>590</td>
</tr>
<tr>
<td>Public works&lt;br&gt;Municipal public works bonds&lt;br&gt;Ordinance for construction, etc.</td>
<td>99</td>
<td>599</td>
</tr>
<tr>
<td>Taxation&lt;br&gt;Public utilities tax</td>
<td>98</td>
<td>590</td>
</tr>
</tbody>
</table>


## Index

### MUNICIPALITIES—(continued):

<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Transportation</td>
<td></td>
<td></td>
</tr>
<tr>
<td>See Urban Mass Transportation Authority.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Waterworks</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Publication of abstract of ordinance and notice</td>
<td>103</td>
<td>607</td>
</tr>
</tbody>
</table>

### NARCOTICS:

**Uniform Controlled Substances Act**

- **Board of pharmacy**
  - Authority to administer act | 54 | 274 |
  - Definitions | 54 | 270 |
  - Educational programs | 54 | 305 |
- **Enforcement and administration**
  - Burden of proof | 54 | 304 |
  - Cooperative arrangements between state and federal agencies | 54 | 301 |
  - Confidential information | 54 | 301 |
  - Forfeitures | 54 | 302 |
  - Injunctions | 54 | 300 |
  - Inspections and warrants | 54 | 297 |
  - Judicial review | 54 | 305 |
  - Liability of officers | 54 | 304 |
  - Orders under other law continued | 54 | 308 |
  - Pending proceedings | 54 | 307 |
  - Powers of enforcement personnel | 54 | 298 |
- **Interpretation** | 54 | 308 |
- **Manufacture, distribution and dispensing controlled substances**
  - Fees | 54 | 295 |
  - Registration
    - Determination of who may register | 54 | 296 |
      - Public interest | 54 | 296 |
    - Effect of | 54 | 295 |
    - Exemptions | 54 | 285 |
    - Inspections | 54 | 286 |
    - Record of registrants | 54 | 289 |
    - Required | 54 | 285 |
    - Rights of registrants | 54 | 286 |
    - Suspension or revocation of | 54 | 297 |
      - Show cause order | 54 | 288 |
      - Proceedings on | 54 | 288 |
      - When order not required | 54 | 299 |
    - Waiver | 54 | 298 |
  - Rules | 54 | 285 |
  - Continuation of, under other laws | 54 | 308 |
  - **Nomenclature** | 54 | 275 |
- **Offenses and penalties**
  - Conditional discharge for first offense of possession | 54 | 295 |
  - Distribution to person under eighteen years of age | 54 | 294 |
  - Penalties | 54 | 294 |
  - Penalties under other laws | 54 | 294 |
  - Prohibited acts A and penalties | 54 | 291 |
  - Prohibited acts B and penalties | 54 | 292 |
  - Prohibited acts C and penalties | 54 | 293 |
  - Prosecution of offenders bar to | 54 | 294 |
  - Second or subsequent offenses | 54 | 296 |
  - Order forms | 54 | 289 |
  - Prescriptions | 54 | 290 |
  - Research | 54 | 305 |
  - Severability of provisions | 54 | 306 |
  - **Short title** | 54 | 308 |
### NARCOTICS—(continued):

#### Uniform Controlled Substances Act—(continued):

<table>
<thead>
<tr>
<th>Standards and schedules</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Authority to control</td>
<td>54</td>
<td>274</td>
</tr>
<tr>
<td>Schedules</td>
<td></td>
<td></td>
</tr>
<tr>
<td>I. Substances included in</td>
<td>54</td>
<td>276</td>
</tr>
<tr>
<td>Tests</td>
<td>54</td>
<td>275</td>
</tr>
<tr>
<td>II. Substances included in</td>
<td>54</td>
<td>279</td>
</tr>
<tr>
<td>Tests</td>
<td>54</td>
<td>278</td>
</tr>
<tr>
<td>III. Substances included in</td>
<td>54</td>
<td>280</td>
</tr>
<tr>
<td>Tests</td>
<td>54</td>
<td>280</td>
</tr>
<tr>
<td>IV. Substances included in</td>
<td>54</td>
<td>283</td>
</tr>
<tr>
<td>Tests</td>
<td>54</td>
<td>282</td>
</tr>
<tr>
<td>V. Substances included in</td>
<td>54</td>
<td>284</td>
</tr>
<tr>
<td>Tests</td>
<td>54</td>
<td>283</td>
</tr>
<tr>
<td>Republishing of schedules</td>
<td>54</td>
<td>284</td>
</tr>
</tbody>
</table>

### NATURAL RESOURCES:

- Conservation officers: 113 674
- Duties generally: 114 677
- Powers: 114 677
- Special and emergency conservation officers: 113 675

#### Department

- Director: 
  - Importation of wild animals: 109 636

#### Fines, penalties and forfeitures

- Violations of chapter: 115 679

#### Game and fish

- See Game and Fish.

#### James Rumsey Park

- State authorized to receive by gift or acquire by purchase: 116 680
- To be used as public park and recreational area: 116 680

#### Penalties

- Surface mining and reclamation: 115 679
- See Mines and Minerals.
- Water pollution: 115 679
  - See Water Pollution Control Act.

### NONINTOXICATING BEER:

#### Brewers

- Franchise agreements with distributors: 9 107
- Cancellation: 9 108
- Injunction to enforce: 9 109
- Unlawful acts: 9 107
- Penalties: 9 109

#### Distributors

- Franchise agreements with brewers: 9 107
- Unlawful acts: 9 107
- Penalties: 9 109

#### Hours during which beer may be sold, dispensed, etc.

- 8 103

#### Unlawful acts of licensees

- 8 102
- Penalties: 8 106

### NOTICES:

- Service by publication to nonresidents: 117 631

### NURSES:

- Registered professional: 123 700
- Licensure of aliens: 123 700
INDEX

OFFICERS:

Appointive state officers
  Appointment 119
  Powers 119
  Qualifications 119
  Salaries 119
  Terms 119

OHIO COUNTY:
  Intermediate Court
    Salary of judge 38

OIL AND GAS:
  Pipeline safety
    Gas pipeline safety fund established 135
    Use of 135
    Special license fees 135
  Public service commission
    Salaries of members, compensation, etc., of employees 135

PARKS AND RECREATION:
  See Public Recreation and Playgrounds.

PHYSICIANS AND SURGEONS:
  Assistants to physicians
    Approval and certification by medical licensing board 121
    Certification of assistant to ophthalmologist not permitted 121
    Definition 121
    Duties, limitation on scope of 121
    Fees 121
  License to practice
    Permits in prescribed areas 122
    Practitioners from other states 122
    Required 121
  Podiatrists, licensure of 121
  Practice of medicine and surgery
    Who deemed practitioner 121
  Qualifications to practice
    Evidence of qualifications 121

PODIATRISTS:
  See Physicians and Surgeons.

POWER OF APPOINTMENT:
  Release or disclaimer
    General powers of appointment 65
    Methods of effecting 65
    Other than general power of appointment 65
    Validity of release or disclaimer 65

PRISONERS OF WAR:
  Expressing concern and sympathy to families of persons held as prisoners of war in Southeast Asia (SCR 24) 1029

PROSECUTING ATTORNEY:
  Assistants, deputies and employees
    Appointment 23
    Compensation 23
    Payment 23
    Discharge 23
    Mileage allowance 23
    Removal 23
### PROSECUTING ATTORNEY—(continued):

<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Compensation</td>
<td>23</td>
<td>175</td>
</tr>
<tr>
<td>Affidavit acknowledging receipt of</td>
<td>23</td>
<td>170</td>
</tr>
<tr>
<td>Fixed by county court</td>
<td>23</td>
<td>169</td>
</tr>
<tr>
<td>Maximum and minimum limits</td>
<td>23,13</td>
<td>1061</td>
</tr>
<tr>
<td>Payment</td>
<td>23</td>
<td>174</td>
</tr>
<tr>
<td>Sharing that of assistants, etc., prohibited</td>
<td>23</td>
<td>176</td>
</tr>
<tr>
<td>Penalty</td>
<td>23</td>
<td>176</td>
</tr>
<tr>
<td>Crime</td>
<td>27</td>
<td>192</td>
</tr>
<tr>
<td>Appointment of investigator of</td>
<td>27</td>
<td>191</td>
</tr>
<tr>
<td>Detection of</td>
<td>27</td>
<td>191</td>
</tr>
<tr>
<td>Rewards</td>
<td>26</td>
<td>190</td>
</tr>
<tr>
<td>Duties generally</td>
<td>26</td>
<td>190</td>
</tr>
<tr>
<td>On election days</td>
<td>26</td>
<td>190</td>
</tr>
<tr>
<td>Expenditures</td>
<td>23</td>
<td>179</td>
</tr>
<tr>
<td>Report to county court</td>
<td>23</td>
<td>179</td>
</tr>
<tr>
<td>Expenses</td>
<td>23</td>
<td>178</td>
</tr>
<tr>
<td>Travel</td>
<td>23</td>
<td>178</td>
</tr>
<tr>
<td>Juveniles</td>
<td>12</td>
<td>144</td>
</tr>
<tr>
<td>Representation of petitioners in proceedings in counties of population exceeding 200,000</td>
<td>12</td>
<td>144</td>
</tr>
<tr>
<td>Mileage allowance</td>
<td>23</td>
<td>178</td>
</tr>
<tr>
<td>Mingo County</td>
<td>28</td>
<td>193</td>
</tr>
<tr>
<td>Assistant and stenographer</td>
<td>28</td>
<td>193</td>
</tr>
<tr>
<td>Salary</td>
<td>28</td>
<td>193</td>
</tr>
<tr>
<td>When to devote full time to public duties</td>
<td>23</td>
<td>171</td>
</tr>
</tbody>
</table>

### PUBLIC EMPLOYEES INSURANCE ACT:

<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Acts of Congress</td>
<td>14</td>
<td>1072</td>
</tr>
<tr>
<td>Authorization to take advantage of</td>
<td>14</td>
<td>1072</td>
</tr>
<tr>
<td>Administration of article</td>
<td>14</td>
<td>1073</td>
</tr>
<tr>
<td>Rules and regulations</td>
<td>14</td>
<td>1073</td>
</tr>
<tr>
<td>Benefits, to whom paid</td>
<td>14</td>
<td>1070</td>
</tr>
<tr>
<td>Board</td>
<td>14</td>
<td>1064</td>
</tr>
<tr>
<td>Body corporate</td>
<td>14</td>
<td>1064</td>
</tr>
<tr>
<td>Chairman</td>
<td>14</td>
<td>1064</td>
</tr>
<tr>
<td>Compensation</td>
<td>14</td>
<td>1064</td>
</tr>
<tr>
<td>Composition</td>
<td>14</td>
<td>1064</td>
</tr>
<tr>
<td>Created</td>
<td>14</td>
<td>1064</td>
</tr>
<tr>
<td>Duties generally</td>
<td>14</td>
<td>1065</td>
</tr>
<tr>
<td>Effective date of programs</td>
<td>14</td>
<td>1065</td>
</tr>
<tr>
<td>Executive secretary</td>
<td>14</td>
<td>1065</td>
</tr>
<tr>
<td>Expenses</td>
<td>14</td>
<td>1065</td>
</tr>
<tr>
<td>First meeting</td>
<td>14</td>
<td>1065</td>
</tr>
<tr>
<td>Powers generally</td>
<td>14</td>
<td>1065</td>
</tr>
<tr>
<td>Transactions in name of board</td>
<td>14</td>
<td>1065</td>
</tr>
<tr>
<td>Citation</td>
<td>14</td>
<td>1064</td>
</tr>
<tr>
<td>Contracts</td>
<td>14</td>
<td>1067</td>
</tr>
<tr>
<td>Authorized to execute</td>
<td>14</td>
<td>1067</td>
</tr>
<tr>
<td>Limitations</td>
<td>14</td>
<td>1067</td>
</tr>
<tr>
<td>Awarding</td>
<td>14</td>
<td>1068</td>
</tr>
<tr>
<td>Discontinuances</td>
<td>14</td>
<td>1069</td>
</tr>
<tr>
<td>Gain from contracts</td>
<td>14</td>
<td>1072</td>
</tr>
<tr>
<td>No member or employee of board shall gain from any contract</td>
<td>14</td>
<td>1072</td>
</tr>
<tr>
<td>Criminal penalties</td>
<td>14</td>
<td>1068</td>
</tr>
<tr>
<td>Limitations</td>
<td>14</td>
<td>1068</td>
</tr>
<tr>
<td>Provisions for group hospital and surgical, group major medical, and group life and accidental death insurance for retiring employees, their spouses and dependents</td>
<td>14</td>
<td>1069</td>
</tr>
<tr>
<td>Reinsurance</td>
<td>14</td>
<td>1069</td>
</tr>
</tbody>
</table>
**PUBLIC EMPLOYEES INSURANCE ACT—(continued):**

<table>
<thead>
<tr>
<th>Costs</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Payment of costs by employer and employee</td>
<td>14</td>
<td>1070</td>
</tr>
<tr>
<td>Payment of costs by state as employer</td>
<td>14</td>
<td>1071</td>
</tr>
<tr>
<td>Special funds created</td>
<td>14</td>
<td>1071</td>
</tr>
<tr>
<td>Duties of treasurer with respect thereto</td>
<td>14</td>
<td>1071</td>
</tr>
<tr>
<td>Definitions</td>
<td>14</td>
<td>1064</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Dependents</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Coverage for employee's dependents</td>
<td>14</td>
<td>1070</td>
</tr>
<tr>
<td>Effective date of program</td>
<td>14</td>
<td>1065</td>
</tr>
<tr>
<td>Expense fund</td>
<td>14</td>
<td>1072</td>
</tr>
<tr>
<td>Gifts, grants and matching funds</td>
<td>14</td>
<td>1072</td>
</tr>
<tr>
<td>Permissive participation</td>
<td>14</td>
<td>1072</td>
</tr>
<tr>
<td>Exemptions</td>
<td>14</td>
<td>1072</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Plans</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Administration</td>
<td>14</td>
<td>1066</td>
</tr>
<tr>
<td>Authorization to establish various plans</td>
<td>14</td>
<td>1066</td>
</tr>
<tr>
<td>Conditions</td>
<td>14</td>
<td>1067</td>
</tr>
<tr>
<td>Rules and regulations for administration</td>
<td>14</td>
<td>1066</td>
</tr>
<tr>
<td>What plans may provide</td>
<td>14</td>
<td>1066</td>
</tr>
<tr>
<td>Rules and regulations</td>
<td>14</td>
<td>1073</td>
</tr>
<tr>
<td>Severability of provisions of article</td>
<td>14</td>
<td>1073</td>
</tr>
<tr>
<td>Short title</td>
<td>14</td>
<td>1064</td>
</tr>
</tbody>
</table>

**PUBLIC EMPLOYEES RETIREMENT SYSTEM:**

<table>
<thead>
<tr>
<th>Annuity</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Defined</td>
<td>127</td>
<td>724</td>
</tr>
<tr>
<td>Retirement annuity</td>
<td>127</td>
<td>726</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Funds</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Members' deposit fund</td>
<td>127</td>
<td>727</td>
</tr>
</tbody>
</table>

**Legislature**

<table>
<thead>
<tr>
<th>Contributions by members</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Final average salary</td>
<td>127</td>
<td>727</td>
</tr>
<tr>
<td>Included in definition of employee</td>
<td>127</td>
<td>727</td>
</tr>
<tr>
<td>Retirement annuity</td>
<td>127</td>
<td>727</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Membership generally</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contributions, general provisions</td>
<td>127</td>
<td>727</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Retirement annuity</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Service defined</td>
<td>127</td>
<td>726</td>
</tr>
</tbody>
</table>

**PUBLIC RECREATION AND PLAYGROUNDS:**

<table>
<thead>
<tr>
<th>Park and recreation board</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>A corporation</td>
<td>120</td>
<td>692</td>
</tr>
<tr>
<td>Annual accounting</td>
<td>120</td>
<td>693</td>
</tr>
<tr>
<td>Bonded officers</td>
<td>120</td>
<td>694</td>
</tr>
<tr>
<td>Creation</td>
<td>120</td>
<td>692</td>
</tr>
<tr>
<td>Debts prohibited</td>
<td>120</td>
<td>694</td>
</tr>
<tr>
<td>Dissolution</td>
<td>120</td>
<td>692</td>
</tr>
<tr>
<td>Name</td>
<td>120</td>
<td>692</td>
</tr>
<tr>
<td>Powers and authority</td>
<td>120</td>
<td>693</td>
</tr>
</tbody>
</table>

**PUBLIC SERVICE COMMISSION:**

<table>
<thead>
<tr>
<th>Appointment by governor</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chairman</td>
<td>131</td>
<td>747</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Chief administrative officer of commission</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Designated by governor</td>
<td>131</td>
<td>747</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Composition</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>One member to be a lawyer</td>
<td>131</td>
<td>747</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Elections</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Member not to be a candidate for public office or member</td>
<td>131</td>
<td>747</td>
</tr>
<tr>
<td>of a political executive committee</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
PUBLIC SERVICE COMMISSION—(continued):

<table>
<thead>
<tr>
<th>Employees</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Compensation</td>
<td>132</td>
<td>751</td>
</tr>
<tr>
<td>Hearings, power to conduct</td>
<td>132</td>
<td>751</td>
</tr>
<tr>
<td>May not accept passes or free transportation</td>
<td>131</td>
<td>747</td>
</tr>
<tr>
<td>Terms and salaries fixed by commission</td>
<td>131</td>
<td>747</td>
</tr>
<tr>
<td>To devote full time to duties</td>
<td>131</td>
<td>747</td>
</tr>
<tr>
<td>Evidence, time and place for taking</td>
<td>131</td>
<td>747</td>
</tr>
<tr>
<td>Federal acts</td>
<td>131</td>
<td>749</td>
</tr>
<tr>
<td>Enforcement of</td>
<td>131</td>
<td>749</td>
</tr>
<tr>
<td>Gas pipeline safety</td>
<td>131</td>
<td>748</td>
</tr>
<tr>
<td>Hearings, time and place of</td>
<td>131</td>
<td>748</td>
</tr>
<tr>
<td>Number of commissioners required for taking action</td>
<td>131</td>
<td>748</td>
</tr>
<tr>
<td>Jurisdiction</td>
<td>131</td>
<td>748</td>
</tr>
<tr>
<td>Licenses</td>
<td>131</td>
<td>749</td>
</tr>
<tr>
<td>Fees, time for payment</td>
<td>131</td>
<td>749</td>
</tr>
<tr>
<td>Special fees</td>
<td>131</td>
<td>749</td>
</tr>
<tr>
<td>Motor carriers. See Motor Carriers.</td>
<td>131</td>
<td>747</td>
</tr>
<tr>
<td>Oaths, administration of</td>
<td>131</td>
<td>747</td>
</tr>
<tr>
<td>Offices at capitol</td>
<td>132</td>
<td>751</td>
</tr>
<tr>
<td>Hours to be kept open</td>
<td>131</td>
<td>748</td>
</tr>
<tr>
<td>Passes prohibited to members and employees</td>
<td>131</td>
<td>747</td>
</tr>
<tr>
<td>Public utilities</td>
<td>131</td>
<td>747</td>
</tr>
<tr>
<td>Commissioner prohibited from owning stock in</td>
<td>131</td>
<td>747</td>
</tr>
<tr>
<td>Qualifications</td>
<td>131</td>
<td>747</td>
</tr>
<tr>
<td>Quorum</td>
<td>131</td>
<td>748</td>
</tr>
<tr>
<td>Removal from office</td>
<td>131</td>
<td>747</td>
</tr>
<tr>
<td>Salaries</td>
<td>131</td>
<td>747</td>
</tr>
<tr>
<td>Secretary</td>
<td>132</td>
<td>751</td>
</tr>
<tr>
<td>Appointment by commission</td>
<td>132</td>
<td>751</td>
</tr>
<tr>
<td>Compensation</td>
<td>132</td>
<td>751</td>
</tr>
<tr>
<td>Custodian of records</td>
<td>132</td>
<td>751</td>
</tr>
<tr>
<td>Duties</td>
<td>132</td>
<td>751</td>
</tr>
<tr>
<td>Term of office</td>
<td>131</td>
<td>747</td>
</tr>
<tr>
<td>Vacancy in office</td>
<td>131</td>
<td>747</td>
</tr>
<tr>
<td>Filing</td>
<td>131</td>
<td>747</td>
</tr>
<tr>
<td>Political activity</td>
<td>131</td>
<td>747</td>
</tr>
</tbody>
</table>

PUBLIC SERVICE DISTRICTS FOR WATER AND SEWAGE SERVICES:

| Public service boards | 72 | 360 |
| Appointment, terms, removal and qualifications of members | 72 | 356 |
| Creation of governing boards | 72 | 356 |
| Filling vacancies | 72 | 356 |
| Organization | 72 | 356 |

PUBLICATION:

| Notices to nonresidents | 117 | 631 |

PYRAMID PROMOTIONAL SCHEMES:

| Attorney General | 138 | 768 |
| Restraining prohibited acts | 138 | 768 |
| Contracts | 138 | 767 |
| Against public policy | 138 | 767 |
| Void and unenforceable | 138 | 767 |
| Crimes and offenses | 138 | 768 |
| Penalties for violations | 138 | 768 |
| Definitions | 138 | 767 |
| Injunctions restraining prohibited acts | 138 | 768 |
| Promotion unlawful | 138 | 767 |
| Prosecuting attorney | 138 | 768 |
| Restraining prohibited acts | 138 | 768 |
| Severability of provisions of article | 138 | 768 |
### Index

#### R

<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>RAILROADS:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Interim legislative study of acquisition and operation of a scenic railroad to be known as the Webster-Randolph Scenic Railroad (SCR 13)</td>
<td></td>
<td>1026</td>
</tr>
<tr>
<td>Requesting the National Rail Passenger Corporation to establish a route between Norfolk, Virginia, and Cincinnati, Ohio, with intermediate stops in West Virginia (HCR 22)</td>
<td></td>
<td>1018</td>
</tr>
</tbody>
</table>

| RALEIGH COUNTY: | | |
| Airport authority | | 181 |
| Powers generally | | 1006 |

| REAL PROPERTY: | | |
| Lands of infants, insane persons or convicts | | |
| Summary proceedings for sale, lease or mortgage | | 138 |
| Notice | | 138 |
| Petition | | 138 |

| REGULATION OF TRADE: | | |
| Pyramid promotional schemes | | 138 |
| See Pyramid Promotional Schemes. | | |
| Safety glazing materials | | 137 |
| See Safety Glazing Materials. | | |

| RIPLEY: | | |
| Issuance of bonds to finance library and swimming pool | | 182 |

| ROADS AND HIGHWAYS: | | |
| Construction | | |
| Relocation assistance to and replacement housing for persons dislocated by | | 17 |
| County courts | | |
| Levy on property outside municipalities | | 168 |
| Road bonds | | |
| Issuance and sale of $20 million of bonds under authority of Better Roads Amendment of 1964 | | 141, 16 |
| Issuance and sale of $90 million of bonds under authority of Roads Development Amendment of 1968 | | 140, 16 |
| State Road System | | |
| Contracts for construction, maintenance, etc. | | |
| Bond by successful bidder | | |
| Required | | 139 |
| Return or forfeiture | | 139 |

| SAFETY GLAZING MATERIALS: | | |
| Contracts | | |
| Prior contracts not affected | | 137 |
| Crimes and offenses | | |
| Penalties | | 137 |
| Definitions | | 137 |
| Effective date of article | | 137 |
| Employees | | |
| No liability created for workmen | | 137 |
| Hazardous locations | | |
| When materials required | | 137 |
| Labeling required | | 137 |

| SALARIES: | | |
| Appointive state officers | | 119 |

8
## SALE OF LANDS FOR SCHOOL FUND:

| Commissioner of Forfeited and Delinquent Lands | 172 | 911 |
| Compensations of deputy commissioners | 172 | 911 |
| Court costs | 172 | 911 |
| Deed | 172 | 912 |
| Purchaser's deed | 172 | 912 |
| Redemption | 172 | 912 |

## SCHOLARSHIPS:

| Awards | 160 | 843 |
| State scholarship program | 160 | 843 |

## SCHOOLS:

| Board of Regents | 153, 168 | 830, 888 |
| See Universities and Colleges. | 153, 168 | 830, 888 |
| Boards of Education | 153, 168 | 830, 888 |
| See Boards of Education. | 153, 168 | 830, 888 |
| Education Commission of the States | 153, 168 | 830, 888 |
| Members | 153, 168 | 830, 888 |
| Appointment, term and qualifications | 153, 168 | 830, 888 |
| Exceptional children | 153, 168 | 830, 888 |
| Special programs and teaching services for | 153, 168 | 830, 888 |
| Finance and administration | 153, 168 | 830, 888 |
| Administration of school finances by state board of education | 153, 168 | 830, 888 |
| Funds | 153, 168 | 830, 888 |
| General school fund and its use | 153, 168 | 830, 888 |
| Personnel | 153, 168 | 830, 888 |
| Auxiliary minimum pay | 153, 168 | 830, 888 |
| Public school support | 153, 168 | 830, 888 |
| Appraisal and assessment of property | 153, 168 | 830, 888 |
| Computation of local share | 153, 168 | 830, 888 |
| County basic foundation program | 153, 168 | 830, 888 |
| County request schedule | 153, 168 | 830, 888 |
| Definitions | 153, 168 | 830, 888 |
| Enrollment | 153, 168 | 830, 888 |
| Allowance for increased enrollment | 153, 168 | 830, 888 |
| Foundation allowance | 153, 168 | 830, 888 |
| Administrative cost | 153, 168 | 830, 888 |
| Basic foundation program | 153, 168 | 830, 888 |
| Current expenses | 153, 168 | 830, 888 |
| Fixed charges | 153, 168 | 830, 888 |
| National average attainment | 153, 168 | 830, 888 |
| Personnel generally | 153, 168 | 830, 888 |
| Professional educators | 153, 168 | 830, 888 |
| Transportation cost | 153, 168 | 830, 888 |
| Inconsistent provisions of code repealed | 153, 168 | 830, 888 |
| Local share, computation of | 153, 168 | 830, 888 |
| Loss reduction, allowance for | 153, 168 | 830, 888 |
| Plan | 153, 168 | 830, 888 |
| Total basic state aid allowance | 153, 168 | 830, 888 |
| Pupils | 153, 168 | 830, 888 |
| Age for school attendance | 148 | 799 |
| Transfer of pupils between districts | 147 | 800 |
| Computation of net enrollment | 147 | 800 |
| Tuition | 147 | 800 |
| Agreed upon by districts | 147 | 800 |
| Paid by district from which pupil transferred | 147 | 800 |

## Rules and regulations

<p>| Public school support | 153 | 830 |
| Authority of state board of education | 153 | 830 |</p>
<table>
<thead>
<tr>
<th>INDEX</th>
<th>1165</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>SCHOOLS</strong>—(continued):</td>
<td></td>
</tr>
<tr>
<td>Salaries</td>
<td>Ch.</td>
</tr>
<tr>
<td>Minimum salary schedule</td>
<td>153</td>
</tr>
<tr>
<td>Substitute teachers</td>
<td>153</td>
</tr>
<tr>
<td>Scholarships</td>
<td>160</td>
</tr>
<tr>
<td>Awards, state scholarship program</td>
<td></td>
</tr>
<tr>
<td>School terms</td>
<td>146</td>
</tr>
<tr>
<td>Schools for the deaf and blind</td>
<td>158</td>
</tr>
<tr>
<td>Continuation and management</td>
<td>158</td>
</tr>
<tr>
<td>Salary scale</td>
<td></td>
</tr>
<tr>
<td>State Board of Education</td>
<td>See Boards of Education.</td>
</tr>
<tr>
<td>Taxation</td>
<td>146</td>
</tr>
<tr>
<td>Minimum school term</td>
<td></td>
</tr>
<tr>
<td>Teachers</td>
<td>153</td>
</tr>
<tr>
<td>Minimum salary schedule</td>
<td></td>
</tr>
<tr>
<td>Teachers Retirement System</td>
<td>See State Teachers Retirement System.</td>
</tr>
<tr>
<td>Universities and colleges</td>
<td>161</td>
</tr>
<tr>
<td>Fees and other money</td>
<td></td>
</tr>
<tr>
<td>Special capital improvements funds</td>
<td></td>
</tr>
<tr>
<td>Vocational Rehabilitation</td>
<td>154</td>
</tr>
<tr>
<td>Division</td>
<td></td>
</tr>
<tr>
<td>Administration</td>
<td></td>
</tr>
<tr>
<td>Director</td>
<td>154</td>
</tr>
<tr>
<td>Powers and duties generally</td>
<td>156</td>
</tr>
<tr>
<td>Operation of food service in public office buildings</td>
<td></td>
</tr>
<tr>
<td>West Virginia University</td>
<td>157</td>
</tr>
<tr>
<td>Security officers</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>SECURITIES:</strong></td>
<td></td>
</tr>
<tr>
<td>Secured transactions</td>
<td>See Commercial Code.</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>SHERIFF:</strong></td>
<td></td>
</tr>
<tr>
<td>Assistants, deputies and employees</td>
<td>23</td>
</tr>
<tr>
<td>Appointment</td>
<td></td>
</tr>
<tr>
<td>Compensation</td>
<td>23</td>
</tr>
<tr>
<td>Payment</td>
<td>23</td>
</tr>
<tr>
<td>Discharge</td>
<td>23</td>
</tr>
<tr>
<td>Mileage allowance</td>
<td>23</td>
</tr>
<tr>
<td>Training deputies</td>
<td>23</td>
</tr>
<tr>
<td>Payment of expense</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>Compensation</td>
<td>23</td>
</tr>
<tr>
<td>Affidavit acknowledging receipt of</td>
<td></td>
</tr>
<tr>
<td>Fixed by county court</td>
<td>23</td>
</tr>
<tr>
<td>Maximum and minimum limits</td>
<td>23, 23</td>
</tr>
<tr>
<td>Payment</td>
<td>23</td>
</tr>
<tr>
<td>Sharing that of deputy, etc., prohibited</td>
<td>23</td>
</tr>
<tr>
<td>Penalty</td>
<td>23</td>
</tr>
<tr>
<td>Conservators of the peace</td>
<td>118</td>
</tr>
<tr>
<td>Appointment, removal, etc., of local conservators of the peace</td>
<td></td>
</tr>
<tr>
<td>Deputies</td>
<td>See Civil Service.</td>
</tr>
<tr>
<td>Civil service system for appointment, etc.</td>
<td>29</td>
</tr>
<tr>
<td>Expenditures</td>
<td></td>
</tr>
<tr>
<td>Report to county court</td>
<td>23</td>
</tr>
<tr>
<td>Expenses</td>
<td>23</td>
</tr>
<tr>
<td>Mileage allowance</td>
<td>23</td>
</tr>
<tr>
<td>Prisoners</td>
<td>Allowance for keeping and feeding</td>
</tr>
<tr>
<td>SHERIFF—(continued):</td>
<td>Ch.</td>
</tr>
<tr>
<td>------------------------</td>
<td>-----</td>
</tr>
<tr>
<td>Request for appropriation of funds</td>
<td>23</td>
</tr>
<tr>
<td>Training</td>
<td>23</td>
</tr>
<tr>
<td>Payment of expenses</td>
<td>23</td>
</tr>
<tr>
<td>When to devote full time to public duties</td>
<td>23</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>SPECULATIVE SECURITIES AND FRAUDULENT SALES:</th>
<th>166</th>
<th>864</th>
</tr>
</thead>
<tbody>
<tr>
<td>Transactions not included</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>STATE INSTITUTIONS:</th>
<th>166</th>
<th>864</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commissioner of Public Institutions</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Information officer and administrator for agreement on</td>
<td>48</td>
<td>262</td>
</tr>
<tr>
<td>detainers</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Payment of jail fees incurred by escapees from forestry</td>
<td>47</td>
<td>253</td>
</tr>
<tr>
<td>camp, industrial home for girls and industrial school for</td>
<td></td>
<td></td>
</tr>
<tr>
<td>boys</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>STATE TEACHERS RETIREMENT SYSTEM:</th>
<th>150</th>
<th>815</th>
</tr>
</thead>
<tbody>
<tr>
<td>Annuities</td>
<td>150</td>
<td>808</td>
</tr>
<tr>
<td>Computation</td>
<td>151</td>
<td>812</td>
</tr>
<tr>
<td>Supplemental benefits to certain annuitants</td>
<td>151</td>
<td>814</td>
</tr>
<tr>
<td>Definitions</td>
<td>149</td>
<td>804</td>
</tr>
<tr>
<td>Institutions of higher education</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Supplemental and additional plans for employees</td>
<td>150</td>
<td>810</td>
</tr>
<tr>
<td>Loans to members</td>
<td>152</td>
<td>815</td>
</tr>
<tr>
<td>Options</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Certain members may elect between systems</td>
<td>150</td>
<td>808</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>STOCK LAW:</th>
<th>166</th>
<th>886</th>
</tr>
</thead>
<tbody>
<tr>
<td>Running at large</td>
<td>4</td>
<td>30</td>
</tr>
<tr>
<td>Damages</td>
<td>4</td>
<td>30</td>
</tr>
<tr>
<td>Impounding</td>
<td>4</td>
<td>30</td>
</tr>
<tr>
<td>Stock trespassing on grounds of another</td>
<td>4</td>
<td>30</td>
</tr>
<tr>
<td>Damages</td>
<td>4</td>
<td>30</td>
</tr>
<tr>
<td>Impounding</td>
<td>4</td>
<td>30</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>SUMMERS COUNTY:</th>
<th>166</th>
<th>887</th>
</tr>
</thead>
<tbody>
<tr>
<td>County Court</td>
<td>183</td>
<td>1008</td>
</tr>
</tbody>
</table>
| Expenditure of county funds for Summers County Cen-
| tennial celebration |      |      |

<table>
<thead>
<tr>
<th>TAX COMMISSIONER:</th>
<th>23</th>
<th>166</th>
</tr>
</thead>
<tbody>
<tr>
<td>Establishment of in-service training program for county</td>
<td>23</td>
<td>166</td>
</tr>
<tr>
<td>officials</td>
<td></td>
<td></td>
</tr>
<tr>
<td>See Taxation.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>TAXATION:</th>
<th>166</th>
<th>886</th>
</tr>
</thead>
<tbody>
<tr>
<td>Assessment and valuation of property</td>
<td>168</td>
<td>886</td>
</tr>
<tr>
<td>Personal property books</td>
<td>168</td>
<td>886</td>
</tr>
<tr>
<td>Contents</td>
<td>168</td>
<td>886</td>
</tr>
<tr>
<td>Assesors</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Salaries of assessors, deputies, assistants and employees</td>
<td>168</td>
<td>887</td>
</tr>
<tr>
<td>Payable out of county fund</td>
<td></td>
<td></td>
</tr>
<tr>
<td>See Assessors.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Business and occupation tax</td>
<td></td>
<td></td>
</tr>
<tr>
<td>See Business and Occupation Tax.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Capitation taxes</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Collection for tax year 1979</td>
<td>168</td>
<td>887</td>
</tr>
<tr>
<td>Carriers</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Tax on gross income of certain</td>
<td>169</td>
<td>890</td>
</tr>
<tr>
<td>Rate of tax</td>
<td>169</td>
<td>891</td>
</tr>
</tbody>
</table>
**INDEX**

**TAXATION—(continued):**

<table>
<thead>
<tr>
<th>Description</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Collection of taxes</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Receipt for taxes</td>
<td>168</td>
<td>887</td>
</tr>
<tr>
<td>Corporations</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Meaning of terms in corporation net income tax</td>
<td>170</td>
<td>904</td>
</tr>
<tr>
<td>Counties</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Levy on property outside municipalities</td>
<td>168</td>
<td>888</td>
</tr>
<tr>
<td>Income tax</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Corporate net income tax</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Definitions</td>
<td>170</td>
<td>907</td>
</tr>
<tr>
<td>Personal net income tax</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Meaning of terms</td>
<td>170</td>
<td>906</td>
</tr>
<tr>
<td>Sale of lands for taxes</td>
<td></td>
<td></td>
</tr>
<tr>
<td>See Sale of Lands for School Fund.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**TRAVEL EXPENSES:**

Out-of-State

| Description                                                                 |     |      |
| Persons invited to visit campus of institution of higher education         | 142 | 788  |
| Promulgation of rules and regulations                                      |     |      |

**TRUSTS:**

Distribution of income from trust deemed a private foundation               | 173 | 915  |
| Prohibitions as to trusts which are deemed private foundation or split-interest trusts | 173 | 915  |

**TUBERCULOSIS:**

Compulsory testing of school children and school personnel for tuberculosis | 70  | 384  |

**UNEMPLOYMENT COMPENSATION:**

Benefits

| Description                                                                 |     |      |
| Disqualification                                                           | 174 | 951  |
| Hospitals                                                                  |     |      |
| Benefit payments for service with state hospitals                         | 174 | 959  |
| Nonprofit organizations                                                    |     |      |
| Benefit payments for service with                                          | 174 | 959  |
| Financing benefits paid to employees of                                   | 174 | 939  |
| Rate                                                                       |     |      |
| Total unemployment                                                          | 174 | 956  |
| Annual computation and publication of rates                                 | 174 | 959  |
| Table                                                                       | 174 | 957  |
| Universities and colleges                                                  |     |      |
| Benefit payments for services with                                         | 174 | 959  |
| Commissioner of Employment Security                                         |     |      |
| Federal-state cooperation                                                  | 174 | 934  |
| Definitions                                                                |     |      |
| Employer coverage and responsibility                                        | 174 | 917  |
| Elective coverage by political subdivisions                                 | 174 | 937  |
| Rate of contribution                                                       |     |      |
| Amount                                                                      | 174 | 945  |
| Experience rating                                                          |     |      |
| Adjustment of accounts and rates                                           | 174 | 948  |
| Debit balance account rates                                                | 174 | 948  |
| Decreased rates                                                            | 174 | 948  |
| Fixing rates by commissioner                                               | 174 | 945  |
| Termination of coverage                                                    | 174 | 937  |
| Voluntary coverage                                                         | 174 | 937  |
### UNEMPLOYMENT COMPENSATION—(continued):

<table>
<thead>
<tr>
<th>Extended benefits program</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Beginning</td>
<td>174</td>
<td>964</td>
</tr>
<tr>
<td>Definitions</td>
<td>174</td>
<td>960</td>
</tr>
<tr>
<td>Effective date of article</td>
<td>174</td>
<td>964</td>
</tr>
<tr>
<td>Eligibility requirements</td>
<td>174</td>
<td>963</td>
</tr>
<tr>
<td>Regular benefits</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Effect of state law relating to regular benefits on claims for and payment of extended benefits</td>
<td>174</td>
<td>963</td>
</tr>
<tr>
<td>Termination</td>
<td>174</td>
<td>964</td>
</tr>
<tr>
<td>Total extended benefit amount</td>
<td>174</td>
<td>964</td>
</tr>
<tr>
<td>Weekly extended benefit amount</td>
<td>174</td>
<td>964</td>
</tr>
<tr>
<td>Federal aid</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Federal-state cooperation</td>
<td>174</td>
<td>934</td>
</tr>
</tbody>
</table>

### UNIVERSITIES AND COLLEGES:

<table>
<thead>
<tr>
<th>Board of Regents</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Accreditation of institutions of higher education</td>
<td>164</td>
<td>881</td>
</tr>
<tr>
<td>Advisory council on federal resources</td>
<td>163</td>
<td>854</td>
</tr>
<tr>
<td>Branch colleges and off-campus locations of state universities and colleges</td>
<td>165</td>
<td>862</td>
</tr>
<tr>
<td>Capital improvements funds</td>
<td>161</td>
<td>845</td>
</tr>
<tr>
<td>Community colleges</td>
<td>165</td>
<td>862</td>
</tr>
<tr>
<td>Definitions</td>
<td>162</td>
<td>850, 856</td>
</tr>
<tr>
<td>Directed to formulate a plan for the establishment of state system of community colleges (HCR 16)</td>
<td>1015</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Employees</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Retirement</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Options of certain members to elect between retirement systems</td>
<td>150</td>
<td>806</td>
</tr>
<tr>
<td>Guaranteed student loan program</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Administered by board of regents</td>
<td>162</td>
<td>856</td>
</tr>
<tr>
<td>Board's authority to buy and sell student obligations</td>
<td>162</td>
<td>856</td>
</tr>
<tr>
<td>Construction of article</td>
<td>163</td>
<td>860</td>
</tr>
<tr>
<td>Expenses</td>
<td>162</td>
<td>857</td>
</tr>
<tr>
<td>Obligations</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Acquisition of contingent interest in from lending institutions</td>
<td>163</td>
<td>858</td>
</tr>
<tr>
<td>Terms</td>
<td>163</td>
<td>859</td>
</tr>
<tr>
<td>Collection of delinquent</td>
<td>163</td>
<td>858</td>
</tr>
<tr>
<td>Powers and duties of board of regents</td>
<td>163</td>
<td>887</td>
</tr>
<tr>
<td>Purpose of article</td>
<td>163</td>
<td>860</td>
</tr>
<tr>
<td>Title to property</td>
<td>163</td>
<td>858</td>
</tr>
<tr>
<td>Trust fund established</td>
<td>163</td>
<td>859</td>
</tr>
<tr>
<td>Limitations on use of</td>
<td>162</td>
<td>859</td>
</tr>
<tr>
<td>Special account created</td>
<td>163</td>
<td>859</td>
</tr>
<tr>
<td>Payment of expenses</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Moving expenses of new employees</td>
<td>142</td>
<td>788</td>
</tr>
<tr>
<td>Persons invited to visit campus of institutions of higher education</td>
<td>142</td>
<td>788</td>
</tr>
<tr>
<td>Powers and duties</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Transfer of powers, duties, etc., of commission on higher education to board of regents</td>
<td>163</td>
<td>853</td>
</tr>
<tr>
<td>State agency to participate in federal and private grants to higher education</td>
<td>163</td>
<td>852</td>
</tr>
<tr>
<td>West Virginia University Security officers</td>
<td>157</td>
<td>839</td>
</tr>
<tr>
<td>University High School Transfer to board of education of Monongalia County</td>
<td>19</td>
<td>1095</td>
</tr>
</tbody>
</table>
INDEX

URBAN MASS TRANSPORTATION AUTHORITY:

Appropriations
Nonstock, nonprofit corporations
Museums, cultural centers, etc._________________________ 107 629
Board
Appointed by governing bodies_________________________ 106 623
Eligibility of members_________________________ 106 624
Filling vacancies_________________________ 106 624
Management of authority vested in_________________________ 106 623
Number and terms of members_________________________ 106 623
Terms of office_________________________ 106 623
Vote of members_________________________ 106 623
Bond issues
General provisions_________________________ 106 624
Dissolution_________________________ 106 627
Disposition of assets after payment of debts_________________________ 106 627
Taxation
Exempt from taxation_________________________ 106 627
Workmen's compensation
Employees to be covered by_________________________ 106 628

VENEREAL DISEASES:

Minors
Treatment without consent of parent or guardian_________________________ 71 355

VOCATIONAL REHABILITATION:

Division
Administration_________________________ 154 833
Director
Powers and duties generally_________________________ 154 833
Operation of a food service in public office buildings_________________________ 156 837

WATER POLLUTION CONTROL ACT:

Appeal and error
Appeal to water resources board_________________________ 111 641
Chief of division of water resources
Appeal to water resources board_________________________ 111 641

WEAPONS:

Dangerous
Purchase of firearms in contiguous state_________________________ 42 246
Sale of firearms to residents of contiguous state_________________________ 42 246

WELFARE, DEPARTMENT OF:

Appropriations
Transfer of amounts between items of total appropriation_________________________ 7 101

WILDLIFE:

Resources. See Game and Fish.

WOOD COUNTY:

Intermediate Court
Jurisdiction_________________________ 39 239
Salary of judge_________________________ 39 243

WORKMEN'S COMPENSATION:

Administrative expenses
Bond of commissioners_________________________ 176 967
Payment of salaries and expenses_________________________ 176 969
Manner and limitation_________________________ 176 969
### Workmen's Compensation—(continued):

<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Attorneys at law</td>
<td>177</td>
<td>1000</td>
</tr>
<tr>
<td>Fees for representing claimant</td>
<td>177</td>
<td>993</td>
</tr>
<tr>
<td>Awards</td>
<td>177</td>
<td>993</td>
</tr>
<tr>
<td>Jurisdiction of commissioner over cases continuous</td>
<td>177</td>
<td>993</td>
</tr>
<tr>
<td>Modification of by commissioner</td>
<td>177</td>
<td>993</td>
</tr>
<tr>
<td>Time limitation on awards</td>
<td>177</td>
<td>993</td>
</tr>
<tr>
<td>Reimbursement of claimant for expenses</td>
<td>177</td>
<td>993</td>
</tr>
<tr>
<td>Commissioner</td>
<td>176</td>
<td>968</td>
</tr>
<tr>
<td>Appeals</td>
<td>176</td>
<td>966</td>
</tr>
<tr>
<td>Appointment</td>
<td>176</td>
<td>967</td>
</tr>
<tr>
<td>Bond</td>
<td>176</td>
<td>967</td>
</tr>
<tr>
<td>Evidence</td>
<td>176</td>
<td>967</td>
</tr>
<tr>
<td>Copies of orders, proceedings or records</td>
<td>176</td>
<td>968</td>
</tr>
<tr>
<td>Holding other office prohibited</td>
<td>176</td>
<td>968</td>
</tr>
<tr>
<td>Legal services</td>
<td>176</td>
<td>968</td>
</tr>
<tr>
<td>Modification of finding or order</td>
<td>177</td>
<td>993</td>
</tr>
<tr>
<td>Nonmedical questions determined by</td>
<td>177</td>
<td>991</td>
</tr>
<tr>
<td>Occupational pneumoconiosis</td>
<td>177</td>
<td>991</td>
</tr>
<tr>
<td>Notice of decision to parties</td>
<td>177</td>
<td>997</td>
</tr>
<tr>
<td>Objections and hearing</td>
<td>177</td>
<td>997</td>
</tr>
<tr>
<td>Oath of office</td>
<td>176</td>
<td>967</td>
</tr>
<tr>
<td>Salary</td>
<td>176</td>
<td>967</td>
</tr>
<tr>
<td>Term of office</td>
<td>176</td>
<td>967</td>
</tr>
<tr>
<td>Vacancy, filling</td>
<td>176</td>
<td>967</td>
</tr>
<tr>
<td>Disability and death benefits</td>
<td>177</td>
<td>990</td>
</tr>
<tr>
<td>Application for benefits</td>
<td>177</td>
<td>990</td>
</tr>
<tr>
<td>Time for making</td>
<td>177</td>
<td>990</td>
</tr>
<tr>
<td>Classification of disability benefits</td>
<td>177</td>
<td>976</td>
</tr>
<tr>
<td>Computation of benefits</td>
<td>177</td>
<td>989</td>
</tr>
<tr>
<td>Death benefits</td>
<td>177</td>
<td>986</td>
</tr>
<tr>
<td>Classification</td>
<td>177</td>
<td>986</td>
</tr>
<tr>
<td>Dependent defined</td>
<td>177</td>
<td>987</td>
</tr>
<tr>
<td>Disability benefits</td>
<td>177</td>
<td>987</td>
</tr>
<tr>
<td>Claimants</td>
<td>177</td>
<td>982</td>
</tr>
<tr>
<td>Classification</td>
<td>177</td>
<td>976</td>
</tr>
<tr>
<td>Hernia</td>
<td>177</td>
<td>981</td>
</tr>
<tr>
<td>Impairments</td>
<td>177</td>
<td>986</td>
</tr>
<tr>
<td>Preexisting physical, not considered in fixing compensation</td>
<td>177</td>
<td>986</td>
</tr>
<tr>
<td>Exception</td>
<td>177</td>
<td>986</td>
</tr>
<tr>
<td>When payment after injury to begin</td>
<td>177</td>
<td>975</td>
</tr>
<tr>
<td>Funeral expenses</td>
<td>177</td>
<td>975</td>
</tr>
<tr>
<td>Disabled workmen's relief fund</td>
<td>177</td>
<td>966</td>
</tr>
<tr>
<td>Administration of fund</td>
<td>177</td>
<td>994</td>
</tr>
<tr>
<td>Payment of salaries of employees</td>
<td>177</td>
<td>994</td>
</tr>
<tr>
<td>Composition of fund</td>
<td>177</td>
<td>994</td>
</tr>
<tr>
<td>Computation of benefits</td>
<td>177</td>
<td>994</td>
</tr>
<tr>
<td>Created</td>
<td>177</td>
<td>994</td>
</tr>
<tr>
<td>Custodian</td>
<td>177</td>
<td>994</td>
</tr>
<tr>
<td>Employers providing own system of compensation</td>
<td>177</td>
<td>996</td>
</tr>
<tr>
<td>How designated</td>
<td>177</td>
<td>994</td>
</tr>
<tr>
<td>Mode of payment</td>
<td>177</td>
<td>995</td>
</tr>
<tr>
<td>Powers of commissioner over fund</td>
<td>177</td>
<td>996</td>
</tr>
<tr>
<td>To whom benefits paid</td>
<td>177</td>
<td>995</td>
</tr>
<tr>
<td>Employers</td>
<td>177</td>
<td>990</td>
</tr>
<tr>
<td>Report of injuries of employees</td>
<td>177</td>
<td>990</td>
</tr>
<tr>
<td>Fund</td>
<td>177</td>
<td>972</td>
</tr>
<tr>
<td>To whom disbursed</td>
<td>177</td>
<td>990</td>
</tr>
<tr>
<td>Interest on benefits</td>
<td>177</td>
<td>990</td>
</tr>
</tbody>
</table>
# INDEX

WORKMEN'S COMPENSATION—(continued):

<table>
<thead>
<tr>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Occupational diseases</td>
<td>177</td>
</tr>
<tr>
<td>Defined</td>
<td>974</td>
</tr>
<tr>
<td>Occupational pneumoconiosis board</td>
<td>177</td>
</tr>
<tr>
<td>Autopsy</td>
<td>983</td>
</tr>
<tr>
<td>Findings required of board</td>
<td>984</td>
</tr>
<tr>
<td>Objection to findings</td>
<td>985</td>
</tr>
<tr>
<td>Presumption</td>
<td>984</td>
</tr>
<tr>
<td>Procedure</td>
<td>984</td>
</tr>
<tr>
<td>Reports and distribution thereof</td>
<td>984</td>
</tr>
<tr>
<td>Pneumoconiosis</td>
<td>177</td>
</tr>
<tr>
<td>Claims for</td>
<td>991</td>
</tr>
<tr>
<td>Defined</td>
<td>973</td>
</tr>
<tr>
<td>&quot;Injury&quot; and &quot;personal injury&quot; included in definition</td>
<td>973</td>
</tr>
<tr>
<td>Review</td>
<td>177</td>
</tr>
<tr>
<td>Appeal board</td>
<td>177</td>
</tr>
<tr>
<td>Application for review</td>
<td>998</td>
</tr>
<tr>
<td>Time limit</td>
<td>998</td>
</tr>
<tr>
<td>Appointment by governor</td>
<td>999</td>
</tr>
<tr>
<td>Budget</td>
<td>1000</td>
</tr>
<tr>
<td>Citation</td>
<td>998</td>
</tr>
<tr>
<td>Claims not to be denied on technicalities</td>
<td>1000</td>
</tr>
<tr>
<td>Clerical staff</td>
<td>999</td>
</tr>
<tr>
<td>Composition</td>
<td>998</td>
</tr>
<tr>
<td>Continuances and supplemental hearings</td>
<td>1000</td>
</tr>
<tr>
<td>Created</td>
<td>998</td>
</tr>
<tr>
<td>Fees of attorney for claimant</td>
<td>1000</td>
</tr>
<tr>
<td>Meetings</td>
<td>999</td>
</tr>
<tr>
<td>Qualification of members</td>
<td>998</td>
</tr>
<tr>
<td>Salaries</td>
<td>999</td>
</tr>
<tr>
<td>Severability of chapter</td>
<td>1001</td>
</tr>
</tbody>
</table>

# ERRATA

Page 977, §23-4-6, line 38, the second "and" should be "or."